

Disputing Strategies in Medieval Scandinavia

Medieval Law and Its Practice

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Edited by

Kim Esmark, Lars Hermanson,
Hans Jacob Orning & Helle Vogt



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Cover illustrations: Detail from Magnus the Lawmender's National Law, early 14th century, Hardenberg's Codex, GKS 1154 2º, The Royal Library, Copenhagen. With kind permission of The Royal Library, Copenhagen.

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LIST OF KINGS

Kings of Denmark

Harald I Bluetooth	958–986/7
Svend I Forkbeard	986/7–1014
Harald II	1014–1018
Knud II the Great	1018–1035
Knud III (Hardeknud)	1035–1042
Magnus the Good	1042–1047
Svend II Estridsen	1047–1074
Harald III	1074–1080
Saint Knud IV	1080–1086
Oluf I Hunger	1086–1095
Erik I the Good	1095–1103
Niels	1104–1134
Erik II the Unforgettable	1134–1137
Erik III the Lamb	1137–1146
Svend III Grathe	1146–1157
Knud V	1146–1157
Valdemar I the Great	1154–1182
Knud VI	1182–1202
Valdemar II the Victorious	1202–1241
Erik IV Plough–penning	1241–1252
Christopher I	1252–1259
Erik V Klipping	1259–1286
Erik VI Menved	1286–1319
Christopher II	1320–1326, 1329–1332
Valdemar III	1326–1329
Interregnum	1332–1340
Valdemar IV	1340–1375
Olav II	1375–1387
Margrethe I	1387–1397 (1412)
Kalmar Union of Denmark, Sweden and Norway	1397–1523

Kings of Norway

Saint Olav II Haraldsson	1015 –1028
Svend Alfivason	1030–1035
Magnus II the Good	1035–1047
Harald Hardruler	1047–1066
Olav III Kyrre (the Peaceful)	1066–1093
Håkon Magnusson	1093–1094
Magnus III Barefoot	1093–1103
Olav IV Magnusson	1103–1115
Øystein I Magnusson	1103–1123
Sigurd I the Crusader	1103–1130
Harald Gille	1130–1136
Magnus IV the Blind	1130–1136
Sigurd II Mouth	1136–1155
Eystein II Haraldsson	1136–1157
Inge I Hunchback	1136–1161
Haakon II Sigurdsson	1157–1162
Magnus V Erlingsson	1162–1184
Sverre Sigurdsson	1177/84–1202
Haakon III Sverresson	1202–1204
Guttorm Sigurdsson	1204
Inge II Baardsson	1204–1217
Haakon IV Haakonsson	1217–1263
Magnus VI the Lawmender	1263–1280
Eirik II Magnusson	1280–1299
Haakon V Magnusson	1299–1319
Magnus V Eriksson	1319–1343
Haakon VI Magnusson	1343–1380
Olav V Haakonsson	1380–1387
Margrethe I	1387–1389(1412)
Erik III of Pomerania	1389(1412)–1442

Kings of Sweden

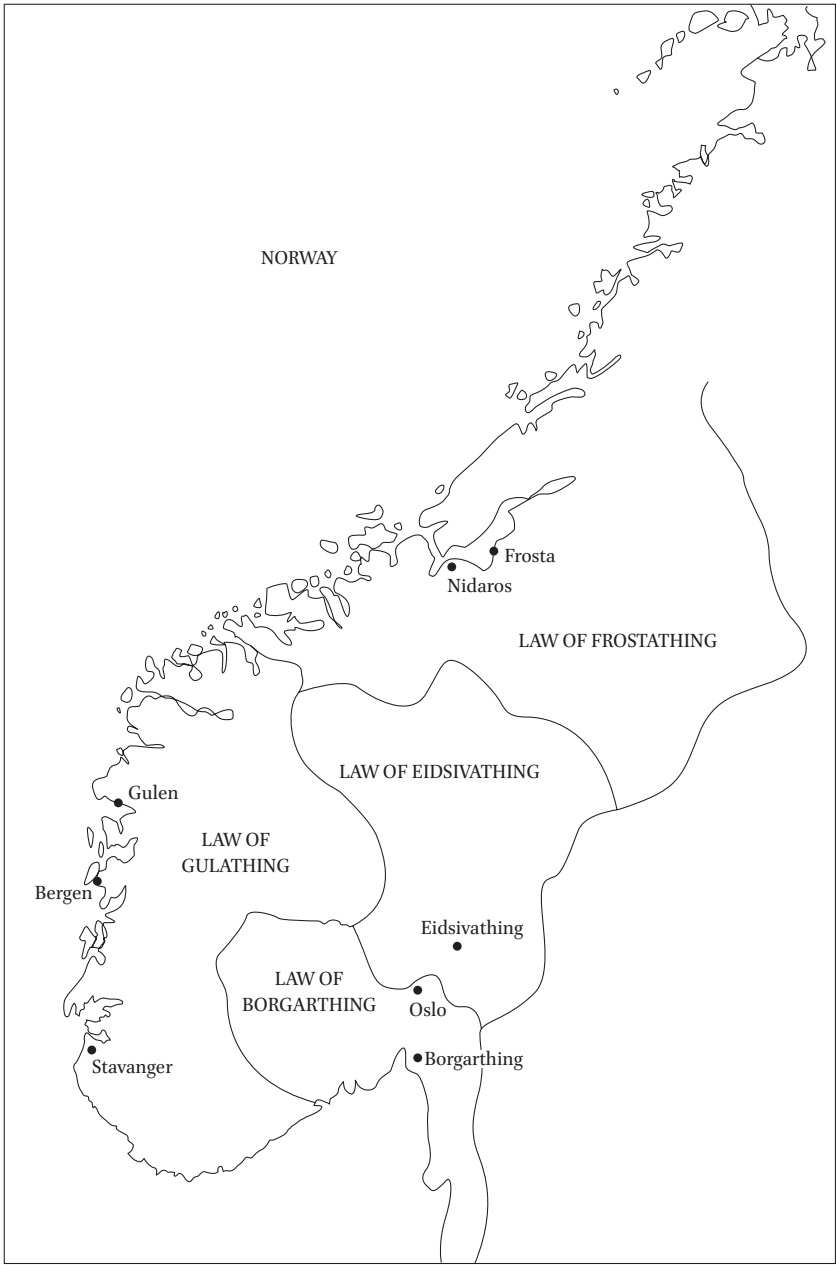
Sverker I the Elder	1125–1156
Erik IX the Saint	1156–1160
Magnus Henriksson	1160–1161
Karl VII Sverkersson	1161–1167

Knut I Eriksson	1167–1196
Sverker II the Younger	1196–1208
Erik X Knutsson	1208–1216
Erik XI the Lisp and Lamé	1222–1229
Knut II the Tall	1229–1234
Erik XI the Lisp and Lamé	1234–1250
Valdemar I Birgersson	1250–1275
Magnus III Barnlock	1275–1290
Birger Magnusson	1290–1318
Magnus IV Eriksson	1319–1364
Albert	1363–1389
Margrethe	1389–1396(1412)
Erik of Pomerania	1396(1412)–1439
Christopher of Bavaria	1441–1448

GENERAL MAPS



Map 1: Denmark



Map 2: Norway



Map 3: Sweden

GENERAL INTRODUCTION¹

Kim Esmark and Hans Jacob Orning

This book is the result of a series of workshops arranged since 2007² by a group of Scandinavian medieval historians who share a preoccupation with topics such as conflict resolution, ritual, gift-giving, gender, and kinship strategies. Within the national and constitutional paradigms which dominated Norwegian, Swedish, and Danish history-writing for most of the twentieth century, such topics have traditionally played a rather marginal role. The main impulse behind the formation of the group and the setting up of the workshops has therefore come from outside, from the historiography often referred to as “legal anthropology” or “medieval dispute studies”—a cross-national, interdisciplinary tendency which since the 1970s has provided important new and stimulating approaches to problems of legal conflict and social order in “stateless” or “decentralised” societies of medieval Europe. In 2010 the group’s work resulted in the publication of an anthology in Scandinavian languages.³ Beginning in that same year the group also enjoyed the participation of a group of American, British, and French historians, all distinguished experts from the field of dispute studies. These non-Scandinavian scholars joined the workshops and contributed not only by offering valuable criticism and comments to drafts of articles written by the Scandinavian members but also by presenting studies of their own. The present volume represents the outcome of this process.⁴

The book has a twofold purpose. First, it is intended to explore and discuss how methods and insights from dispute studies can be applied in new readings of otherwise well known Scandinavian sources; second, it

¹ The editors wish to express their very special thanks to Kate Gilbert, whose expert linguistic assistance, attentive comments and useful suggestions provided an invaluable help and inspiration in preparing this book.

² University College, Volda 2007; Carlsberg Academy, Copenhagen 2010; Faculty of Law, University of Copenhagen 2011 and 2012.

³ Hans Jacob Orning, Kim Esmark, and Lars Hermanson, eds., *Gaver, ritualer, konflikter. Et rettsantropologisk perspektiv på nordisk middelalderhistorie* (Oslo: Unipub, 2010).

⁴ In addition to the authors represented in this volume, the group and the workshops also benefited from the participation of Caroline Humfress, Bruno Lemesle, Michael H. Gelting, and Mia Münster-Swendsen.

is meant to encourage scholars, Nordic and non-Nordic alike, to include the northern world in a European context of research, and to conduct comparative investigations both between the Scandinavian realms and between this region and the rest of Europe. Reading the scattered records from the north against the more solid background of French, English, German, Spanish, Polish, and Irish materials, among others, may help to uncover the social logic of disputing in medieval Norway, Sweden, and Denmark, while at the same time making the Scandinavian evidence relevant to the general discussion.

The first two parts of the present anthology are dedicated to Scandinavian source material and are written by Scandinavian historians. Part I comprises articles focusing on strategies pursued in the political game at the top level of society, as these are described in narrative sources. The articles in Part II deal with cases of a somewhat more economic nature (although this dimension is inseparable from broader socio-political issues), and operate in more local contexts, concerning different kinds of claims and exchanges (of women, gifts, and land). Here, the main sources are charters and laws. In the final part, non-Scandinavian historians who have been central in the development of dispute studies discuss themes that are relevant to this anthology (Stephen D. White on emotions, Gerd Althoff on violence) and reflect on the contributions in this volume (John Hudson).

The following introduction falls into three parts. The first outlines themes, concepts, and perspectives in dispute studies which have informed the group's basic understanding of conflict and guided its approach to the Scandinavian material. This leads, secondly, to a discussion of what we in the group see as challenges or points of critique in relation to this historiography. Finally, as a background for non-Scandinavian readers, we provide a brief overview of how the historiography of dispute studies has been received, adopted, and adapted in Scandinavian scholarship thus far.

Dispute Studies

To provide a thorough historiographical overview of dispute studies is a complicated task and one well beyond the scope of this introduction.⁵ The

⁵ Useful contributions to a critical overview of dispute studies including references to key literature within the tradition can be found in Patrick J. Geary, "Moral Obligations and Peer Pressure: Conflict Resolution in the Medieval Aristocracy," in *Georges Duby: L'écriture*

historiography designated by the term “dispute studies” does not constitute a well-defined “school.” It has no generally accepted name: the term “dispute studies” is used more or less interchangeably with “conflict studies,” the study of “conflict resolution” or “dispute settlement,” the “American school of legal anthropology,” and other labels. Moreover, it has no unifying research program or specific methodological recipe for studying disputes; and it did not develop from one single scholar or institution.

The historians commonly associated with the development of dispute studies—Fredric Cheyette, Stephen White, William Ian Miller, Patrick Geary, Geoffrey Koziol, Paul Hyams, the British Bucknell group led by Wendy Davies and Paul Fouracre, Dominique Barthélemy, and Chris Wickham, to name only some of those most frequently cited—have come from different national fields. Their work originated within different academic traditions (legal history, anthropology, sociology, and religious studies, among others) and in response to different problems and phases of research and debate. Some scholars have worked with problems and issues clearly related to those explored by dispute studies without necessarily adopting wholesale their agenda or anthropological assumptions.⁶

Thus, “dispute studies” may perhaps best be described as a loosely organised library of interrelated texts which deal with common questions, draw on related conceptual frameworks and methodologies, and participate in an on-going discussion of how disputes were handled in medieval societies

de l'Histoire, ed. Claude Duhamel-Amado and Guy Lobrichon (Brussels: De Boeck Université, 1996); Stephen D. White, “From Peace to Power: The Study of Disputes in Medieval France,” in *Medieval Transformations: Text, Power, and Gifts in Context*, ed. E. Cohen and M. de Jong (Leiden: Brill, 2001); Warren C. Brown and Piotr Górecki, “What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970–2000,” in *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, ed. W.C. Brown and P. Górecki (Aldershot: Ashgate, 2003); and in Scandinavian languages Kim Esmark, “Feudalisme og antropologi. Nye perspektiver på magt, orden og konfliktregulering i højmiddelalderen,” *Historisk tidskrift* (Swedish) 126 (2006); Orning, Esmark, and Hermanson, *Gaver*. The references in the discussion below serve mainly as examples and make no claim to anything like comprehensiveness. For an impression of the legal anthropological literature behind medieval dispute studies, see Laura Nader and H. Todd Jr, eds., *The Disputing Process: Law in Ten Societies* (New York: Columbia University Press, 1978); Simon Roberts, “The Study of Disputes: Anthropological Perspectives,” in *Disputes and Settlements: Law and Human Relations in the West*, ed. J. Bossy (Cambridge: Cambridge University Press, 1983); John L. Comaroff and Simon Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981).

⁶ Among the latter one could include Janet Nelson, John Hudson, Robert Bartlett, and Michael Clanchy in England. In Germany Gerd Althoff’s studies of political ritual and *Spielregeln* in the Ottonian Empire developed along relatively independent paths while concurring in many aspects with elements of legal anthropology.

before the emergence of strong centralised states. Originating in the 1970s and gaining momentum with a series of defining works in the 1980s, dispute studies have thus been referred to and discussed critically as an identifiable and even prominent tendency (or sub-field?) within medieval history at least since the 1990s, when a number of its proponents engaged in heated debates about “feudal anarchy,” the supposed mutation of the year 1000, and the possible ways to comprehend legal justice and social power in the Middle Ages. While initially focusing on conflicts between nobles in post-Carolingian rural France, dispute studies today deal with both earlier and later periods across many parts of Europe, looking not only at knights and clerics but also at peasants and townspeople, men and women alike. Approaches, concepts, and ideas originating from the early works are now being applied in varied ways to increasingly diverse chronologies, sources, and socio-political arenas.

Just as dispute studies do not constitute a unified “school,” the members of our group do not subscribe to a unified program. The aim of the workshops has not been to enclose a particular thematic or methodological territory. We work on various Scandinavian regions, periods, and types of source, and neither the specific questions we pursue nor the scholarly literature we have been reading are necessarily the same. We do, however, agree on some common points of orientation inspired by the historiography of dispute studies. These common points will be outlined below.

Conflict, Practice and Process

To begin with, we take the fundamental overall concept of *conflict* to include all sorts of social tension, along with the multiform modes and mechanisms of handling it. These diverse modes and mechanisms include formal law, litigation, and everything that goes on in judicial settings, but also threats, promises, negotiation, out-of-court mediation, rituals, emotional posturing, violence, feuding, and whatever may happen before, during, after, or instead of formal legal proceedings.⁷ Furthermore, conflict in this widely encompassing sense includes not only overt disputes or hostilities, but also other forms of strategic behaviour which concern power structures. Thus, seemingly non-conflictual socio-cultural practices such as marriage contracting, gift exchange, land transactions, and the

⁷ Definition inspired by Brown and Gorecki, “What Conflict Means,” 1–2.

construction of bonds of friendship are relevant, because these practices were instrumental in shaping and modifying local power relations, i.e. in both provoking and preventing future tension and/or enabling actors to handle it.

The purpose of approaching conflict from this broad, inclusive perspective is to explore how medieval people experienced, perceived, and managed conflict within their own particular historical context. The aim is not to search for origins (of Scandinavian laws and legal institutions, for instance) by seeking to reconstruct rules and structures that point towards later ages, but to analyse the varied actions and interactions of individuals and groups involved in actual dispute processes. Conflict is looked upon as “a distinct object of historical inquiry.”⁸ The emphasis is on the actual *doing* of conflict, which is often (but not exclusively) investigated in the form of contextualised case-studies of individual disputes. How did people behave when they were contesting power, property, rights, honour, and other kinds of material or symbolic assets or when they tried to settle issues of violence and wrongdoing? How did such conflicts evolve over time? What strategies did people apply, and what options and constraints did they experience? In short: what was going on, viewed from the perspective of the parties involved, and how do we make sense of it?

Focusing, in this way, on “what actually took place in medieval conflict,”⁹ makes *practice* and *process* key concepts of analysis. Disputes are approached as privileged moments—*situations caractéristiques*¹⁰—in which the complex web of mutual relations, hierarchies, and power that make up the social world is actualised and articulated, put to work, and put at risk. This approach also opens up the relevant context beyond a specific judicial sphere to include socio-cultural attitudes and practices in a wide sense, if not actually implying a sort of “total history.”¹¹ One of the main achievements of dispute studies has been to elucidate the extensive catalogue of so-called extra-legal means of conflict resolution, not only in societies in the early or high Middle Ages, when permanent judicial institutions were supposedly wholly absent in many parts of Europe, but

⁸ White, “From Peace to Power,” 204.

⁹ Brown and Gorecki, “What Conflict Means,” 3.

¹⁰ Dominique Barthélemy, “Le comte, les sires et les ‘nobles de châteaux’ dans la Touraine du XI^e siècle,” in *Campagnes médiévales: L’homme et son espace. Études offertes à Robert Fossier*, ed. E. Mornet (Paris: Publications de la Sorbonne, 1995), 447.

¹¹ Claude Gauvard, “Conclusion,” in *Le règlement de conflits au moyen âge. Actes du XXXI^e congrès de la SHMESp (Angers 2000)* (Paris: Publications de la Sorbonne, 2001), 369: “La ‘résolution de conflits’ implique bien une histoire totale [...]”

also in societies in which some form of secular and ecclesiastical courts were in fact available. This catalogue includes bilateral negotiation, mediation, informal arbitration, ad hoc assemblies, settlement by compromise, religious peace-keeping, oaths, and rituals of chastisement and reconciliation—in short, the whole spectrum of moral obligations and social pressure hinted at by Duby in his famous article on the judicial courts of the Mâconnais.¹²

Dispute studies draw attention to local networks of friends, kinsmen, neighbours, lords, vassals, and religious associations. As Stephen White has observed, “in the absence of well-developed governmental institutions, it was this sort of network—rather than the church, the state, the regional principality, the county, or the feudal lordship—that provided the main framework for effective political action” in conflicts.¹³ White and Dominique Barthélemy in particular have convincingly argued that both family and vassalage must be treated not as institutionalised structures but as changeable cultural constructions, “as things that medieval nobles made (though not exactly as they pleased) and with which they did things—or tried to do things.”¹⁴ When negotiating inheritance or property rights, nobles could invoke different, coexisting definitions of kinship and competing ideas of honour, lordship, fidelity, or treason, all depending on context, interest, and power. Medieval family organisation and “feudal” relationships, in this view, were subject to continuous (re-)construction or (re-)negotiation in a dialectics of action and discourse, of practical considerations and public norms.¹⁵

Again, the broad conception of conflict constitutes a platform from which it is possible to study phenomena that at first sight seem unconnected because they are not directly related to litigation in the narrow sense. It is a perspective on how social order is not only challenged and transformed, but also created, sustained, and strengthened. And it provides a model for explaining social order that avoids the lenses of central

¹² Georges Duby, “Recherches sur l’évolution des institutions judiciaires pendant le X^e et le XI^e siècle dans le sud de la Bourgogne,” *Le Moyen Age* 53 (1947).

¹³ Stephen D. White, “Feuding and Peace-making in the Touraine Around the Year 1100,” *Traditio* 42 (1986), 258.

¹⁴ Stephen D. White, *Re-thinking Kinship and Feudalism in Early Medieval Europe* (Aldershot: Ashgate, 2005), vii.

¹⁵ Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1000–1150* (Chapel Hill: University of North Carolina Press, 1988); White, *Re-thinking Kinship*; Dominique Barthélemy, *La société dans le comté de Vendôme de l’an mil au XIV^e siècle* (Paris: Fayard, 1993), 507–651.

authorities or formal institutions, and instead focuses on how people interact in a society dominated by personal bonds, where “conflict” can no more be meaningfully separated from what Marcel Mauss would call “the total social context” than can “economy” or “religion.” Even where disputes are handled in a specifically “legal” setting (court assembly, judges judging according to law, and so on), the conflict can only be fully understood with reference to a larger context: the prehistory and social relationships of the parties involved, their competition for status and resources in a particular social and physical locality, their subjective feelings of honour and shame. Hence, allegedly “religious” or “economic” issues can perfectly well be studied from a dispute perspective. Scholars such as Patrick Geary and Lester Little have opted for a holistic approach in studying religious practices such as saints’ cults and monastic curses.¹⁶ Barbara Rosenwein, Stephen White, Arnoud-Jan Bijsterveld and others have demonstrated how gifts to monasteries in the early and high Middle Ages were far more than purely economic transactions, as the establishment of mutual social bonds between donors and monks and the association of lay people with saints all formed part of the framework within which disputes were handled. Disputes arising, in turn, from reclaiming of gifts concerned not only property but also—and often more importantly—recognition of social relations, status, history, prestige, and salvation.¹⁷

Violence and Emotions

Many historians of medieval disputes do not see conflict as necessarily disruptive or as a sign of malfunction or crisis. In a certain regard it may even be viewed as part of the “normal functioning” of the medieval social fabric. Because opponents in this face-to-face social world could not escape contact with each other, neutrality or indifference was rarely an option. As Dominique Barthélemy has remarked, “Une fois l’interconnaissance

¹⁶ Patrick J. Geary, *Furta Sacra: Thefts of Relics in the Central Middle Ages* (New Jersey: Princeton University Press, 1978); Patrick J. Geary, “Humiliation of Saints,” in *Living with the Dead in the Middle Ages* (Ithaca: Cornell University Press, 1994), 95–115; Lester K. Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca: Cornell University Press, 1993).

¹⁷ Barbara H. Rosenwein, *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny’s Property, 909–1049* (Ithaca: Cornell University Press, 1989); White, *Custom, Kinship, and Gifts to Saints*; Arnoud-Jan Bijsterveld, *Do ut Des: Gift Giving, “Memoria,” and Conflict Management in the Medieval Low Countries* (Hilversum: Verloren, 2007).

établie, il ne peut y avoir qu'amitié ou hostilité."¹⁸ Conflicts therefore tended to be what Patrick Geary calls "a constant and ongoing part of life [...] more *structures* than *events*."¹⁹ They were something people used as a means of influencing social relations and power structures; and because conflicts usually involved not just two individual parties but wide circles or networks of people, they served to define and integrate groups in a sociologically "constructive" manner.

These and like-minded scholars warn against exaggerating the violence which—according to much conventional historiography—haunted medieval societies before the advent of central coercive authorities. Most reports of violence and destruction, they point out, are found in texts written by ecclesiastical authors who were themselves often parties to the conflicts they described. Consequently, these reports were not neutral observations but cleverly crafted rhetorical strategies aimed at delegitimizing particular claims and actions of their opponents.²⁰ Critical, detailed analyses of individual conflicts thus reveal how the supposedly excessive, unrestrained exercise of brute force (mirroring a Hobbesian "war of everyone against everyone") was in fact intimately bound up with disputing processes, in which violence was anything but chaotic or arbitrary. Lay nobles' destruction of mills, burning of crops, capture of animals, and even killings of humans often served as rational, carefully measured means of expressing a legal claim, to pressure opponents to enter negotiation, to mobilise support, etc.²¹

Caution likewise applies when reading medieval narratives of seemingly irrational outbreaks of anger, wrath, joy, and overexcitement. Such narratives should not be read at face value, and it is misleading to explain these reactions with reference to a general inability of medieval men and

¹⁸ Barthélemy, *La société*, 367.

¹⁹ Patrick J. Geary, "Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050–1200," in *Living with the Dead*, 137 and 139.

²⁰ Tracey Billado's work on monastic complaints about lay lords' exaction of so-called "evil customs" (*malae consuetudines*) in eleventh-century France constitutes a perfect example: see her "Rhetorical Strategies and Legal Arguments: 'Evil Customs' and Saint-Florent de Saumur, 979–1011," in *Oral History of the Middle Ages*, ed. G. Jaritz and M. Richter (Budapest: Medium Aevum Quotidianum, 2001).

²¹ According to Barthélemy, vengeance was "soumise à des normes, insérés dans un système d'obligations et d'interdit": Dominique Barthélemy, *Chevaliers et miracles. La violence et le sacré dans la société féodale* (Paris: A. Colin, 2004), 6. For an impression of the arguments, see the important debate in *Past & Present* in the 1990s.

women to control emotional impulses.²² Challenging the evolutionary theories of human psychology underlying much historiography, proponents of dispute studies again stress the strategic dimension of emotional posturing in conflict processes. Public displays of emotions such as wrath or sorrow were elements of a distinct political culture or discourse and embodied political and legal (as well as religious) meanings—as, for instance, construing a certain action as an offense or injury which merited revenge. Medieval authors therefore distinguished between, say, the righteous anger of a wronged lord and the mad wrath of rebelling peasants, and between saintly anger and anger as the activity of demons. In other words, one cannot understand representations of emotions such as anger without considering the specific setting in which they took place and the textual conventions and rhetorical strategies that informed the narrative. Rather than evidence of a general emotional instability, reports of anger should be read as expressions of symbolic power.²³

Teleology and the State

A counter-evolutionary stance is also prevalent within dispute studies in relation to the fundamental issue of the state. There has been a tendency in much previous writing to equate the strengthening of “public” institutions backed by state and church in the high Middle Ages with some sort of rationalization or modernization, a progressive step towards what Richard Southern called “something more complex, more sensitive to the positive merits of organized society” and thus, ultimately, a step towards

²² A supposed lack of self-control which is often explained, most prominently by Norbert Elias, as the mental or psychological derivative of the lack of central coercive powers.

²³ Dominique Barthélemy, “Devils in the Sanctuary: Violence in the *Miracles of Saint Benedict*,” in *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White*, ed. Belle S. Tuten and Tracey L. Billado (Aldershot: Ashgate, 2013); Barbara Rosenwein, “Worrying about Emotions in Medieval History,” *The American Historical Review* 107:3 (2002); Stephen D. White, “Repenser la violence: de 2000 à 1000,” *Médiévales* 37 (1999); White, “The Politics of Anger,” in *Anger's Past: The Social Uses of an Emotion in the Middle Ages*, ed. Barbara H. Rosenwein (Ithaca: Cornell University Press, 1998); Richard E. Barton, “‘Zealous anger’ and the Renegotiation of Aristocratic Relationships in Eleventh- and Twelfth-century France,” in Rosenwein, *Anger's Past*; Gauvard, “Conclusion,” 373–75; Daniel Lord Smail, “Hatred as a Social Institution in Late Medieval Society,” *Speculum* 76 (2011); William Ian Miller, *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence* (Ithaca: Cornell University Press, 1993). See also the contribution by Stephen D. White in this volume.

our own state.²⁴ It is one of the chief merits of dispute studies to have challenged this widely shared evolutionary and teleological model, which Fredric Cheyette has labelled the “Whig meta-narrative” of medieval political history.²⁵ One implication of this meta-narrative scheme is that it separates phenomena of the medieval past from their contemporary context and interprets them in terms of what they were to become at some later stage. Alienated from their own world, these phenomena become “transients on the road to somewhere else.”²⁶ However, the development from decentralised societies into more centralised “states” built around a professionalised legal apparatus was neither natural nor inevitable, but the hotly contested outcome of prolonged struggles between competing groups and agents in medieval society. The growth of jurisprudence and legal institutions and the concurrent rise of a new corps of professional jurists was not perceived as a universal good by all. Fredric Cheyette puts it this way: “There is no reason to believe that individuals (any more than collectives called ‘nations’) prefer objective neutrality to partiality in their own favour.”²⁷

To be able to grasp the historical individuality of medieval conflict it is necessary to break with the “controlling image of the state”²⁸ that shapes the teleological meta-narrative. The supposed transhistorical applicability of modern legal concepts and classifications must be questioned, because such classifications and modes of thought are themselves the historical products of the state. Taking them as starting point is hardly the best way to approach conflict in a world which may not have been completely without Malinowski’s “codes, courts and constables,”²⁹ but which certainly did not know the kind of institutionalised legal machinery of our time. State-generated distinctions between public and private authority, for instance, or between rule of law and moral norm, may have limited analytical value for scholars trying to identify the specific medieval means and practices of disputing. This applies particularly (but not only) to the much-debated

²⁴ Richard W. Southern, *The Making of the Middle Ages* (New Haven: Yale University Press, 1953), 87.

²⁵ Fredric L. Cheyette, “Feudalism’: A Memoir and an Assessment,” in Tuten and Billado, *Feud*, 126 ff.

²⁶ Cheyette, “Feudalism’,” 127.

²⁷ Fredric L. Cheyette, “Suum Cuique Tribuere,” *French Historical Studies* 6 (1970): 290.

²⁸ Fredric L. Cheyette, “The Invention of the State,” in *The Walter Prescott Webb Memorial Lectures: Essays on Medieval Civilization*, ed. Bede Karl Lackner and Kenneth Roy Philp (Austin: University of Texas Press, 1978).

²⁹ Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York: Harcourt, 1926), 14.

period before the twelfth- and thirteenth-century legal innovations and “Romanisation” of justice.

Anthropology and Law

In the effort to escape the inherent teleology of traditional legal or constitutional history, scholars of medieval disputes have turned to anthropological literature on dispute settlement in contemporary non-western societies. From this literature they have adopted comparative models of power, justice, and political order, which are less dependent on the “controlling image of the state.” Some critics have questioned the relevance of models derived from acephalous, segmentary, animistic societies in Africa when studying the highly stratified, Christian European societies of the Middle Ages.³⁰ It is difficult to see, however, why the use of anthropological models would be less adequate than applying models derived from the world of a modern bureaucratic state. At any rate, explorations of how medieval people handled conflict may, as pointed out by Stephen White, “perfectly well assume the mundane form of descriptive analyses of certain social practices,” without necessarily having to subscribe to particular anthropological theories or “contestable analogies between European and non-European societies”³¹—or, one might add, between medieval and modern ones.

Its important to stress, furthermore, that an “anthropological approach” to conflict by no means makes judicial norms, learned law, or legal institutions irrelevant. Especially when dealing with the period from the twelfth century onwards, as most contributions in this volume do, law in a more formal, autonomous sense is evidently becoming increasingly important. Yet this process did not impoverish the force and applicability of extra-legal strategies. The question is how people in particular historical contexts *made use of* courts, as well as of mediation, force, custom, etc. What we wish to highlight is the variety and interplay of strategic options available to disputing parties in medieval Scandinavian societies, some of which we may call “legal,” and others “extra-legal.” While some proponents of dispute studies may have tended to focus on the extra-legal side (because

³⁰ See for instance the discussion by Bruno Lemesle, *Conflit et justice au moyen âge: Normes, loi et résolution des conflits en Anjou aux XI^e et XII^e siècles* (Paris: Presses Universitaires de France, 2008), 9–13.

³¹ White, “From Peace to Power,” 204–205.

this side had long been neglected by legal historians), the field as a whole has now clearly “moved from a dichotomous view of periods or regions of central authority on the one hand and those dominated by private mechanisms on the other to an understanding of the mutual interpenetration of public and private modes of dealing with disputes.”³²

In other words, a practice-oriented approach has no problem acknowledging that a panoply of norms and institutions influence concrete action, but it works from the premise that it is possible to take concrete action as a point of departure, without making presuppositions about what prescribes it. This means emphasizing the strategic scope of actors in pursuing their goals. Richard Barton, for instance, describes how disputants in the eleventh- and twelfth-century county of Maine “were faced with a range of options when initiating disputes; depending on circumstances and existing personal relationships, they might choose (or be forced) to pursue mediation, compromise, adjudication or, sometimes, a combination of all three.”³³ Thus, a person or group engaging in a conflict, or about to enter a dispute, had a variety of choices in how to proceed, ranging from more formal legal responses (taking the case to court or trying to do so) to more violent action (plunder, feud, threats, exposure of wrath, ritual posture), and from antagonism to more conciliatory attitudes such as initiating mediation or arbitration or appealing to go-betweens (friends, patrons, kinsmen, local authorities) to intervene. As noted by Claude Gauvard, the general flexibility of legal norms and procedures and the labyrinths of parallel and competing modes of conflict resolution allowed for a high degree of *liberté*—at least for the upper layers of society.³⁴

The Uses of Narrative

Aiming to describe and understand the specificity of medieval conflict enlarges the spectrum of relevant sources. “If our primary concern is not with the origins of a later legal system but with how disputes were handled in societies lacking many if not most of the features of modern legal systems, then we must consider a much broader range of evidence

³² Geary, “Moral Obligations,” 222.

³³ Richard E. Barton, *Lordship in the County of Maine, c. 890–1160* (Woodbridge: The Boydell Press, 2004), 176.

³⁴ Gauvard, “Conclusion,” 390.

than [...] legal historians employ.”³⁵ The emphasis on practice and on the open-ended character of the political field also results in a new sensitivity to narratives. When studying disputes, all types of sources can be considered as narratives, not only chronicles, *gestae*, annals, and sagas of diverse kinds, but equally charters, diplomas, and legal texts. This implies a heightened awareness of the constructed and constructive character of sources, which is the more decisive as the central bias of most medieval sources (being written under the auspices of church and state institutions) has often been underestimated by researchers looking to the Middle Ages for the roots of modern civilization. Moreover, this insight is often accompanied by a reading of sources not so much for the information that they may contain about particular historical events, but rather as windows into the conceptions, attitudes, and cultural outlook of their authors, and possibly of other groups as well. In German and Scandinavian languages a methodological distinction is drawn between using a historical text as a *beretning* / *Berichte* [“account”] for its allegedly historical content, and using it as a *levning* / *Überrest* [“relic”], i.e. as a source for its contemporary context. This methodological distinction between two different ways of using a source is curiously enough not drawn in English terminology.

Approaching sources as relics rather than as accounts implies a transition from content to form, from viewing the source as a more or less reliable reflection of real events to analysing its “illocutionary power,” its position in a contemporary field and its aim of implementing change or launching a certain understanding of a phenomenon in this specific context. Stephen White and Paul Hyams have been pioneers in using “non-historical” literature such as *chansons de geste* and romances as sources for understanding attitudes and perceptions at the time of their writing. White, in particular, has shown how analyses of imaginary gifts, feuds, and legal proceedings can provide insight into the normative framework of disputing and the cultural discourses which medieval people used in order to evaluate (praise, condemn, discredit, legitimise) social actions.³⁶

³⁵ Stephen D. White, “Inheritances and Legal Arguments in Western France, 1050–1150,” *Traditio* 43 (1987): 103.

³⁶ Stephen D. White, “The Discourse of Inheritance in Twelfth-Century France: Alternative Models of the Fief in *Raoul de Cambrai*,” in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, ed. G. Garnett and J. Hudson (Cambridge: Cambridge University Press, 1994); White, “Protection, Warranty, and Revenge in *La Chanson de Roland*,” in *Peace and Protection in the Middle Ages*, Durham Medieval and Renaissance Monographs and Essays, ed. T.B. Lambert and David Rollason (Durham: Durham University, 2009); Paul Hyams, “Henry II and Ganelon,” *Syracuse Scholar* 4 (1983).

William Ian Miller, likewise, has underlined the value of Icelandic sagas as sources for contemporary social processes independently of whether their details are “true” or not.³⁷

This way of reading sources also applies to the more “dry” kind of texts such as diplomas and charters. Geoffrey Koziol has recently argued that (post-Carolingian) diplomas should not be approached as legal acts, but as performatives aiming at transforming the field in which they take part.³⁸ In a similar vein Warren Brown has shown how ecclesiastical scribes in early medieval Freising used dispute records as strategic tools to undermine claims of their opponents and promote the interests of their church in the regional political landscape.³⁹ This perspective, in short, means an enhanced sensitivity to the immediate context of sources, and to sources themselves as vehicles of particular aims, wishes, and strategies. Moreover, it is consonant with the tendency of this approach to opt for micro-history and case-studies.

Challenges (1): Functionalism?

In line with their gradual establishment as an important position in the field of medieval history, dispute studies have naturally become the object of both debate and critique. In the following we want to discuss what we consider to be three important challenges to the legal anthropological perspective on medieval conflict. First, dispute studies have been criticised for carrying functionalist assumptions. Second, their treatment of law—or lack of it—has been a matter of contest. Finally, the question of state formation needs to be more thoroughly addressed. To what degree and in what ways did the decentralised societies that constitute the main

It also works the other way around, as knowledge of how real medieval nobles settled conflict and made agreements may illuminate otherwise obscure fictional texts, as demonstrated by Fredric Cheyette and Howell Chickering in a highly original re-interpretation of Chrétien de Troyes' *Le Chevalier au lion*: “Love, Anger, and Peace: Social Practice and Poetic Play in the Ending of *Yvain*,” *Speculum* 80 (2005).

³⁷ William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990), 46. Cf. a similar approach in Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1991), 239.

³⁸ Geoffrey Koziol, *The Politics of Memory and Identity in Carolingian Royal Diplomas: The West Frankish Kingdom (840–987)* (Turnhout: Brepols, 2012).

³⁹ Warren Brown, “Charters as Weapons: On the Role Played by Early Medieval Dispute Records in the Disputes They Record,” *Journal of Medieval History* 28:3 (2002).

focus of dispute studies gradually transform in the high Middle Ages and beyond, and what are the underlying reasons for such a transition? Let us look at the issues in turn.

Some scholars of medieval disputes have been criticised for adopting a quasi-functionalist and far too optimistic idea of conflict as a regulating principle in society. In his paradigmatic article on conflict in the so-called “state-less” society of post-Carolingian France, originally published in *Annales* in 1986, Patrick Geary analysed how conflicts were solved through extra-legal means without recourse to courts.⁴⁰ Here he emphasised how disputes contributed positively to maintaining and strengthening social order and integration. “Strife played an integral, and on the whole constructive, role in daily life. Strife was an organic part of the organizational structure of this society.”⁴¹ Conflict, from this perspective, forms no real threat to social stability, and society is perceived of as a harmonious whole. Moreover, if conflicts are seen as being settled according to a principle of balance and reciprocity, nothing really changes, and the image of society tends to become static. This criticism has been levelled against William Ian Miller, for example, for viewing Freestate Iceland as an unchanging “saga society” in *Bloodtaking and Peacemaking*.⁴² Critics have argued that such a functionalistic tendency can be attributed to the influence of Mauss, Malinowski, and Gluckman (and such sociological predecessors as Durkheim and Simmel) upon scholars who work on dispute studies.⁴³ However, it is important to note two justifications that may be made in response to the charges of functionalism that are sometimes made against the work in this field.

First, the preoccupation with function and structure has not been a mere unintended side-effect of applying certain anthropological or social

⁴⁰ Geary, “Living with Conflict.”

⁴¹ *Ibid.*, 137.

⁴² Arnved Nedkvitne, “Beyond Historical Anthropology in the Study of Medieval Mentalities”, *Scandinavian Journal of History* 25 (2000); Preben Meulengracht Sørensen, “Ære, politik og litteratur”, in *Gudar på jorden: Festskrift til Lars Lönnroth*, ed. S. Hansson and M. Malm (Stockholm: B. Østlings Bogforlag, 2000), 117, 121. A weakness in these criticisms, in particular the former one, is that they tend to conflate the complexity of Miller’s argument. Jón Viðar Sigurðsson has underlined the changes in Iceland during the Freestate period: Jón Viðar Sigurðsson, *Chieftains and Power in the Icelandic Commonwealth* (Odense: Odense University Press, 1999).

⁴³ Even longer functionalist genealogies have been constructed by critics such as Philippe Buc, who specifically targeted historians working on the role of rituals: *The Dangers of Ritual: Between Early Medieval Texts and Social Scientific Theory* (New Jersey: Princeton University Press, 2001).

science theories, but rather a conscious choice of strategy when analysing societies which had previously been portrayed as chaotic interludes or preliminaries to later states. Jean-Francois Lemarignier's alarmist claim from the early 1950s that eleventh-century France experienced "a dissolution of public authority so extreme that history had never seen anything like it before and certainly never would experience anything like it again"⁴⁴ was still being echoed in the 1990s by prominent scholars such as Thomas Bisson, who described the situation around the millennium in France as intolerably disorderly, without peace or security, prone to seigneurial violence and arbitrariness.⁴⁵ For a long time there existed no alternative to this widely shared view that social order was coterminous with the implementation of law and policing by central authorities. The emphasis on the internal structure and coherence of decentralised societies within dispute studies can at least partly be regarded as a response to the dominant view of this type of society as lacking these qualities altogether.

Second, if one important source of inspiration for at least some contributors of dispute studies came from functionalist traditions, another crucial impulse derived from processual anthropology, represented by Fredrik Barth and Jeremy Boissevain, and above all Pierre Bourdieu.⁴⁶ Bourdieu's focus on practice and strategy is easily detectable and perhaps most profoundly integrated in the works of Stephen White and Dominique Barthélemy, but his concept of *habitus* and the consciously anti-functionalist, anti-structuralist perspective on social action it implies, has gained wide attention among scholars of medieval conflict. This is often overlooked by critics who tend to ignore (or be ignorant of) this anthropological and sociological tradition, or to confuse what are in fact very different positions within these fields.⁴⁷ In his analysis of Freestate Iceland, for instance, William Ian Miller manages to bring out very vividly how agents manoeuvre in situations where there is a decisive element of strategic choice, even if the range of options is far from unlimited.

⁴⁴ Jean-Francois Lemarignier, "La dislocation du 'pagus' et le problème des 'consuetudines' (X^e–XI^e siècles)," in *Mélanges Louis Halphen*, ed. C.-E. Perrin (Paris 1951), 408–409.

⁴⁵ Thomas N. Bisson, "The 'feudal revolution'," *Past and Present* 142 (1994).

⁴⁶ Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); Fredrik Barth, *Political Leadership among Swat Pathans* (London: Berg Publishers, 1965); Jeremy Boissevain, *Friends of Friends: Networks, Manipulators and Coalitions* (Oxford: Blackwell, 1978).

⁴⁷ See in this regard the apt response to Philippe Buc by Geoffrey Koziol, "Review Article: The Dangers of Polemic: Is Ritual Still an Interesting Topic of Historical Study?," *Early Medieval Europe* 11 (2002): 367–88.

Miller furthermore stresses the inherent political dimension of feuding. Feuds might lead to restoration of peace and equilibrium, but not necessarily so; they also constituted one of the “key structures” by means of which powerful people competed for dominance, struggled for appropriation of resources, and strove to transform hierarchies in their own favour.⁴⁸ Similar observations have been made in analyses of disputes in England, France, and elsewhere. Settlements which for political or ideological reasons were represented as *concordiae* in the sources could conceal what was in reality one-sided decisions.⁴⁹ Moreover, conflicts between parties of roughly equal (noble) rank often turned out to have dire consequences for people of the lower classes, who became involuntary victims of feuding activities. Some scholars even consider feuding among nobles as a tool for social dominance.⁵⁰ According to Barthélemy, narratives in charters and hagiographic literature, which are frequently read as evidence of bitter intra-class rivalry, actually reveal a class compromise between lay and clerical lords directed against the peasantry, a kind of Bourdieu-ian symbolic violence.⁵¹ In dispute studies conducted after the millennium, the increased attention devoted to the vital importance of actors’ strategies and the issue of power in disputes has rendered the critique of an alleged functionalist bias less pertinent.

Challenges (2): The Autonomy of Law?

A second critical issue in dispute studies relates to the category of law. According to critics, there has been a tendency, at least among some proponents of dispute studies, to overlook the role of specifically legal norms, i.e. of rules that can be distinguished clearly from opinions and arguments based on common social beliefs, customs, traditions, and practices. Fredric

⁴⁸ Miller, *Bloodtaking*, especially 179–220 on “Feud, Vengeance, and the Disputing Process.”

⁴⁹ See Chris Wickham’s concluding remarks entitled “Dispute Processes and Social Structures” in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1986), 228–40; the discussion by Stephen D. White, “From Peace to Power,” 215, and the illustrative case-studies in Henk Teunis, *The Appeal to the Original Status: Social Justice in Anjou in the Eleventh Century* (Hilversum: Verloren, 2006).

⁵⁰ Gadi Algazi, “The Social Use of Private War: Some Late Medieval Views Reviewed,” *Tel Aviver Jahrbuch für deutsche Geschichte: Zur Sozial- und Begriffsgeschichte des Mittelalters* 27 (1993); White, “Feuding and Peace-making,” 257–63.

⁵¹ Barthélemy, *Chevaliers et miracles*, 5–6.

Cheyette, for instance, has insisted that medieval people did not conceive of "law" in an abstract way, as something different from moral norms, wisdom, and good behaviour; that it was not regarded as something which stood above the pride and honour of the particular persons involved. The very idea of judicial rights, isolated from living humans in a specific social context or relationship, was an alien concept before the legal innovations of the later Middle Ages.⁵² Patrick Geary, likewise, has treated legal and social or religious norms as more or less synonymous. The "feudal concept of conflict was extremely complex," he wrote, "and more closely related to social and cultural structures than to legal tradition."⁵³ Law and legal systems were certainly not unknown—in fact, as Geary says, in the Middle Ages "one could almost speak of a superabundance of legal systems." What did not exist, however, was "a mutually obligating sense of community with a jurisprudential system or other means by which individuals could be controlled and constrained."⁵⁴ The customary "rules of the game" that according to Gerd Althoff structured the handling of conflict among the high nobility in the Empire provides another example of norms that are viewed as distinct from law in an autonomous sense.⁵⁵

According to critics this view makes it impossible to account for the existence of rules, courts, and judges, and for how these institutions functioned in disputes. Bruno Lemesle, for instance, in a discussion of eleventh-century western French disputes accepts that "les conflits médiévaux ne se laissent pas enfermer dans les plaids judiciaires et ne sauraient être réduits à l'étude des cours et des autorités qui les tiennent," but refuses to view judgments as nothing but a means to reach a compromise. Why did medieval people attend courts at all if they were devoid of any function? No matter why the parties to a dispute chose to go there (or were urged or forced to do so), courts gave strength to the settlement, even if it was preceded or followed by more informal negotiations.⁵⁶ John Hudson, likewise, has argued that records of disputes in post-conquest England "show a clear and significant differentiation between law and social practice,"

⁵² Cheyette, "Suum Cuique Tribuere"; Fredric L. Cheyette, "Review of Susan Reynolds's *Fiefs and Vassals*," *Speculum* 71 (1996): 1004. See in much the same vein the chapter on law in Aron Gurevich, *Categories of Medieval Culture: Problems of Belief and Perception* (London: Routledge & Kegan Paul, 1985).

⁵³ Geary, "Living with Conflict," 128.

⁵⁴ *Ibid.*, 143.

⁵⁵ Gerd Althoff, *Spielregeln der Politik im Mittelalter: Kommunikation in Frieden und Fehde* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1997).

⁵⁶ Lemesle, *Conflit et justice au moyen âge*, 36.

and that “popular opinion” could be “clearly distinguished from formal law.” While not denying that court cases were often heavily influenced by such extra-legal political factors as money and favour, Hudson insists that “such factors were distinguished from norms,” and that the twelfth-century legal reforms in England were in fact heavily dependent on the existence of “judgments, courts, and legal norms.”⁵⁷

As with functionalism, however, it is important to distinguish between differing phases and strands of this tradition when it comes to the role of law. The first generation of historians in the dispute tradition objected to the tendency of conventional legal history to isolate law as a variable and to make it coterminous with formal law as conceived by modern jurists. Exploring the workings of conflict and litigation in societies without permanent judicial institutions meant that allegedly legal issues had to be investigated in a much broader social context. In this highly commendable reaction against legal history, it was perhaps only natural that some scholars pursued an opposite and sometimes equally reductionist approach, where law was made a mere pendant of socio-political processes.

However, this approach is clearly not indicative of the view held within dispute studies in general. A considerable body of scholarship emphasises the importance of law and courts, but treats them in a more comprehensive context than the formalist one that was prevalent in much legal history. As Stephen White has shown with eleventh-century western France as example, even societies with only rudimentary legal institutions may share a “substantial legalism” and zealously invoke different, sometimes overlapping or contradicting norms, independently of whether litigation takes place in what jurists would recognise as courts of law or in more informal “discussions” (*placita*) before ad hoc assemblies. Those norms that litigants find relevant to their cases, however, need not be “clearly articulated or sharply distinguished from rules having only moral or customary status.”⁵⁸ Along similar lines Warren Brown has observed that the authority behind the norms (both written and unwritten) invoked in disputes in early medieval Bavaria could be central authority as well as custom, and that the practical influence of norms in litigation processes

⁵⁷ John Hudson, “Court Cases and Legal Arguments in England, c. 1066–1166,” *Transactions of the Royal Historical Society* 10 (2000): 93 and 115. See also the contribution by Hudson in this volume.

⁵⁸ White, “Inheritances,” 84.

depended to a considerable degree on their pragmatic usefulness in ongoing social interactions.⁵⁹

All in all, recent dispute studies seem to indicate that out-of-court mediation and settlement by compromise form no antithesis to legal arguments and adjudication. Different means of conflict handling could be deployed interchangeably in ways that challenge clear-cut classifications or periodization. Litigants with access to “public courts of law,” whether in the Carolingian era or in the later Middle Ages, might easily prefer to avoid regular judgment (or initiate a feud), just as their counterparts in “state-less” societies would.⁶⁰ In an analysis of late medieval Marseille, Daniel Lord Smail has launched the illuminating metaphor of “consuming” justice, which refers to the way in which people manoeuvred between multitudes of potential courses of action within the legal field.⁶¹ In other words, legal and extra-legal means of dispute processing must be apprehended as dynamic, interacting categories. What is at issue, therefore, is not to reduce the legal component in conflict solving to a minimum, but to analyse the interplay between different modes of pursuing and settling conflicts.

Challenges (3): Explaining the Emergence of the State?

Most dispute studies have been based on societies with relatively weak or nonexistent central powers. Post-Carolingian France and Freestate Iceland, most notably, have proven to be fruitful laboratories for analysing how conflict works in decentralised societies. As the initial project was to explore how people handled disputes in societies without state-like institutions, few historians of the dispute studies strand have so far devoted themselves to the task of investigating the historical emergence of the state itself. Most studies simply terminate before that point in time when the state gained the upper hand and definitely was able to set the premises for how conflicts should be viewed and solved. Yet this raises

⁵⁹ Warren Brown, “The Use of Norms in Disputes in Early Medieval Bavaria,” *Viator* 30 (1999).

⁶⁰ Cf. the remarks on the *longue durée* of avoiding courts and judgments in Gauvard, “Conclusion.”

⁶¹ Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca: Cornell University Press, 2003). In our group Caroline Humfress introduced us to the heuristically valuable concepts of “legal pluralism” and “forum-shopping.”

a fundamental question: If pre-state society was regulated according to well-established principles of settlement and compromise, and suffered no “crisis” or “anarchy” that the state could “save” it from, *and* if the state formation process was “neither smooth nor rapid,”⁶² then one could ask: Why did it happen after all?

Today there is hardly any way back to Joseph Strayer’s naively optimistic view that state formation resulted from “the agreement on the need for an authority which can give final judgments, and acceptance of the idea that this authority should receive the basic loyalty of its subjects.”⁶³ The state did not succeed simply because it introduced a better and more rational form of justice. Nevertheless, it might be that the state provided a more viable solution to more people, and that the pre-state social order has been described as too harmonious, considering that it actually was overthrown.

A more dominant trend among historians during the last decades has been to underscore that European states grew stronger through the use of force—a power which was rather brute to begin with, but which as time passed became entangled in gradually more complex and waterproof ideologies, culminating with Machiavelli and Thomas Hobbes.⁶⁴ Patrick Geary notes that the courts of the state did not develop “from a joyful acceptance of a better quality of justice,” but were imposed from above by rulers who “managed to expand their coercive judicial authority from their serfs and slaves to the free warriors, nobles, and clerics of Europe.”⁶⁵ If that is so, we must try to pin down what happened at the moment when particular social groups managed to install themselves as agents of the only legitimate social order, initiating this self-reinforcing process of extracting resources from the population.⁶⁶

⁶² Cheyette, “*Suum Cuique Tribuere*,” 289.

⁶³ Joseph R. Strayer, *On the Medieval Origins of the Modern State* (London: Harmondsworth, 1972), 10.

⁶⁴ Charles Tilly, *Coercion, Capital, and European States AD 990–1992* (Cambridge: Cambridge University Press, 1992); Michael Mann, *The Sources of Social Power: 1: A History of Power from the Beginning to A.D. 1760* (Cambridge: Cambridge University Press, 1986). See Bjørn Qviller, *Bottles and Battles: The Rise and Fall of the Dionysian Mode of Cultural Production* (Hermes Academic Publishing, 2004) for a discussion on the impact of Machiavelli and Thomas Hobbes on European history.

⁶⁵ Geary, “Living with Conflict,” 160.

⁶⁶ Cf. Robert I. Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (Oxford: Blackwell, 1987); and Moore, *The First European Revolution c. 970–1215* (Oxford: Blackwell, 2000).

Finally, instead of imagining state formation and centralization as a process of replacement of extra-judicial procedures by formal legal ones, dispute studies encourage us to view it as a more complicated process, in which several modes of conflict solving coexisted in an uneasy partnership that resulted in compromises as well as clashes at certain intervals. It is definitely true that the introduction of canon and Roman law and of state and church courts and tribunals worked to the advantage of agents or groups promoting centralisation, as they had superior knowledge of these laws and procedures, and could use them in order to pursue their own agendas. Still it is easy to exaggerate the importance of these centralising forces, as well as the helplessness of people in coping with legal innovations. Chris Wickham points out that the introduction of new legislation in twelfth-century Tuscany did not imply a monopolisation of the field by legal experts, but rather an extension of possible strategies that could be undertaken by litigants in a given situation:

They could feud, or go to private arbitration, or go to local private (signorial) courts, or to city tribunals, or (if clerics) to the papal curia, or even, occasionally, to the emperor and his representatives. They could appeal from these to emperor, pope, or city, if they could get away with it. They could employ Lombard or feudal or Roman or canonist or city-communal or local and customary legal norms, arguments, and rituals, or they could mix them up, whether consciously or not. They could play off force, arbitration, and court decisions against each other, both as disputing strategies and in the framework of legal argument itself.⁶⁷

As for England—Europe's most governed kingdom—Paul Hyams has argued that the king must be regarded primarily as a participant in a feuding culture focused on vengeance, that feud and law coexisted through the high Middle Ages, and that the difference between the two options was blurred in practice.⁶⁸ The persistent presence of counter-forces working

⁶⁷ Chris Wickham, *Courts and Conflict in Twelfth-century Tuscany* (Oxford, Oxford University Press, 2003), 4–5.

⁶⁸ Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca: Cornell University Press, 2003), xvii, 185. Hyams criticises what he terms a “maximalist interpretation” of royal dominance (73) and argues that so-called bastard feudalism was no novelty that signalled decay in the late Middle Ages, but a persistent feature of English society throughout the entire period (xix, 256–60). In support of this view John Hudson argues that royal dominion in England has been overstated because of an imperfect understanding that written sources are expressions not of normal affairs, but of extraordinary instances (John Hudson, *Land, Law and Lordship in Anglo-Norman England* (Oxford: Clarendon Press, 1994), 5. Cf. also Paul R. Hyams, “Nastiness and Wrong, Rancor and Reconciliation,” in

against the centralising agents of state and church is a peculiarity of European state formation over a long period of time.⁶⁹ Dispute studies provide us with tools for investigating this dynamic, and can help us avoid regarding state formation as a teleological process, even if they must also account for the emergence of the state.

Dispute Studies in Scandinavian Medieval Historiography

The impact on medieval Scandinavian historiography of the tradition of dispute studies has been limited on the whole, apart from research on Freestate Iceland. As a stateless society (until 1262/64) with a wealth of brilliant sources (family sagas), this area was already attracting the attention of anthropologically influenced historians in the late 1960s.⁷⁰ In the 1980s, Jesse Byock and in particular William Ian Miller wrote articles and books using legal anthropological perspectives on the Icelandic “saga society.”⁷¹ Since then, dispute studies have had a vivid arena of research

Brown and Gorecki, *Conflict*, 195–218. Hyams subsequently reiterated and even reinforced some of his main points on vengeance as a recurring and socially constructive feature of medieval life in *Vengeance in the Middle Ages: Emotion, Religion and Feud*, ed. Susanna A. Throop and Paul R. Hyams (Aldershot: Ashgate, 2010).

⁶⁹ Eric Jones, *The European Miracle: Environments, Economies and Geopolitics in the History of Europe and Asia* (Cambridge: Cambridge University Press, 1981); see also Mann, *Sources of Social Power*.

⁷⁰ Important examples of early anthropological influences are Aron Gurevich, “Wealth and Gift-bestowal among the Ancient Scandinavians,” *Scandinavica* 7 (1967), 126–38; Gurevich, “Space and Time in the *Weltmodell* of the Old Scandinavian Peoples,” *Medieval Scandinavia* 2 (1969), 42–53; Victor W. Turner, “An Anthropological Approach to the Icelandic Saga,” in *The Translation of Culture*, ed. O. Beidelman (London: Tavistock, 1971), 349–74; M.I. Steblin-Kamenskij, *The Saga Mind*, trans. Kenneth H. Ober (Odense: Odense University Press, 1973). See Jón Viðar Sigurðsson, “Allir sem sjá líta ekki jafnt á: Sagnaritun um íslenskar miðaldir fram um 1300,” *Saga* 38 (2000): 33–57, for an historiographical survey of this tradition in Icelandic research.

⁷¹ Jesse L. Byock, *Feud in the Icelandic Saga* (Berkeley: University of California Press, 1982); Byock, *Medieval Iceland: Society, Sagas, and Power* (Berkeley: University of California Press, 1988); William Ian Miller, “Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England,” *Law and History Review* 1 (1983): 159–204; Miller, “Avoiding Legal Judgment: The Submission of Disputes to Arbitration in Medieval Iceland,” *American Journal of Legal History* 28 (1984): 95–134; Miller, “Gift, Sale, Payment, Raid: Case Studies in the Negotiation and Classification of Exchange in Medieval Iceland,” *Speculum* 61 (1986): 18–50. Many of Miller’s findings were summed up in his book *Bloodtaking and Peacemaking* (Chicago: Chicago University Press, 1990).

and discussion in Freestate Iceland,⁷² which now also includes the contributions of Icelandic scholars.⁷³

Anthropological perspectives for a long time had little impact on Norwegian medieval research, with exception of the historian Kåre Lunden's *Økonomi og samfunn* from 1972, in which he introduced the anthropologist Karl Polanyi's concepts of reciprocity and redistribution to the study of medieval Norway and Iceland.⁷⁴ Sverre Bagge has been the most central spokesman of anthropological perspectives in Norwegian scholarship since the 1980s. In an influential article from 1986, Bagge analysed leadership in pre-state Norwegian society drawing on Marshall Sahlins's distinction between "big men" and "chiefs," and stated that it was more appropriate to describe this society as based on personal bonds (friendship, neighbourly relations, and patron-client relations) than as a "kin society," which had been the prevalent term previously.⁷⁵ In *Society and Politics in Snorri Sturluson's Heimskringla* from 1991, Bagge demonstrated how the kings' saga *Heimskringla* described a society governed by feuds in which "nothing succeeds like success," and in which the king operated only as "*primus inter pares*."⁷⁶ In Norwegian research, this marked

⁷² E. Paul Dürrenberger, *The Dynamics of Medieval Iceland* (Iowa: University of Iowa Press, 1992); Kirsten Hastrup, *Culture and History in Medieval Iceland* (Oxford: Clarendon, 1985); Hastrup, *Island of Anthropology: Studies in Past and Present Iceland* (Odense: Odense University Press, 1990); Preben Meulengracht Sørensen, *Fortælling og ære: Studier i islændingesaergerne* (Aarhus: Aarhus University Press, 1993). Many important contributions can be found in the collection of articles edited by Gísli Pálsson, *From Sagas to Society: Comparative Approaches to Early Iceland* (Enfield Lock: Hisarlik, 1992); and those edited by Ross Samson, *Social Approaches to Viking Studies* (Glasgow: Cruithne Press, 1991).

⁷³ Jón Viðar Sigurðsson, *Chieftains and Power in the Icelandic Commonwealth* (Odense: Odense University Press, 1999); Helgi Þorláksson, "Hvað er blóðhefnd?," in *Sagnþing: helgað Jónasi Kristjánssyni sjötugum 10. Apríl 1994*, ed. Gísli Sigurðsson et al. (Reykjavík: Hið íslenska bókmenntafélag, 1994), 389–414; "Feud and Feuding in the Early and High Middle Ages: Working Descriptions and Continuity," in *Feud in Medieval and Early Modern Europe*, ed. Jeppe Büchert Netterstrøm and Bjørn Poulsen (Aarhus: Aarhus University Press, 2007), 69–94. Auður Magnúsdóttir, who contributes to the present volume, explored the politics of marriage and concubinage in her *Frillor och fruar. Politik och samlevnad på Island 1120–1400* (Göteborg: Avhandlingar från Historiska institutionen, 2001).

⁷⁴ Kåre Lunden, *Økonomi og samfunn* (Oslo: Universitetsforlaget, 1972); see especially 38–50.

⁷⁵ Sverre Bagge, "Borgerkrig og statsutvikling i Norge i høymiddelalderen," *Historisk tidsskrift* 65 (1986), 145–97. He has later been followed in this effort by Lars Ivar Hansen, "Slektskap, eiendom og sosiale strategier i nordisk middelalder," *Collegium Mediaevale* 7 (1994): 103–154.

⁷⁶ Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1991). His main method was to use *Heimskringla* as evidence for Snorri Sturluson's outlook on society. Bagge has subsequently explored this theme in a series of works.

an important step away from studying the institutional administration of justice and towards a focus on the practical resolution of conflicts. Jón Viðar Sigurðsson has written several books on friendship and conflict resolution in which he treats Norway and the islands in the North Atlantic belonging to the Norse Commonwealth as one community.⁷⁷ In the last decade, several younger historians have applied the perspective of dispute studies to themes of Norwegian history, most notably Hans Jacob Orning in *Unpredictability and Presence: Norwegian Kingship in the High Middle Ages*.⁷⁸ However, in recent standard works, such as *The Cambridge History of Scandinavia* edited by Knut Helle, and Sverre Bagge's *From Viking Stronghold to Christian Kingdom*, Norwegian political development in the high Middle Ages is envisaged in a fairly traditional way, relatively unaffected by the insights gained from dispute studies.⁷⁹

In other Scandinavian countries, the influence from dispute studies has been even more limited. An exception in Danish historiography is Michael H. Gelting, who has written a series of articles emphasizing the significance of a comparative perspective and criticizing the traditional state-building thesis.⁸⁰ Drawing on the classic works by Duby, Gelting

⁷⁷ Jón Viðar Sigurðsson, *Det norrøne samfunnet* (Oslo: Pax, 2008); *Den vennlige vikingen* (Oslo: Pax, 2010); Jón Viðar Sigurðsson and Anne Irene Riisøy, *Norsk historie 800–1536: Frå krigeriske bønder til lydlige undersåttar* (Oslo: Samlaget, 2011).

⁷⁸ Hans Jacob Orning, *Unpredictability and Presence: Norwegian Kingship in the High Middle Ages* (Leiden: Brill, 2008) See also anthropologically inspired dissertations by Hanne Monclair, *Lederskapsideologi på Island i det trettende århundret. En analyse av gavegiving, gjestebud og lederfremtoning i islandsk sagamateriale* (Oslo: Universitetet i Oslo, 2003), and Magne Njåstad, *Grenser for makt: Konflikter og konfliktløsning mellom lokalsamfunn og øvrighet ca. 1300–1540* (Trondheim: NTNU, 2003), as well as several MA theses.

⁷⁹ Sverre Bagge, *From Viking Stronghold to Christian Kingdom* (Copenhagen: Museum Tusculanum Press, 2010); *The Cambridge History of Scandinavia: Prehistory to 1520*, ed. Knut Helle (Cambridge: Cambridge University Press, 2003). See also the explicit critique of the anthropological approach to Norwegian medieval history in Knut Helle, "Den primitivistiske vendingen i norsk middelalderforskning", *Historisk tidskrift* 4 (2009) with a response by Hans Jacob Orning, "Norsk middelalder i et antropologisk perspektiv. Svar til Knut Helle", *Historisk tidskrift* 2 (2010).

⁸⁰ Michael H. Gelting, "Europæisk feudalisme og dansk 1100– og 1200–tal", in *Kongemagt og samfund i middelalderen. Festskrift til Erik Ulsig*, ed. Poul Enemark et al (Århus: Arhusia, 1988); "Det komparative perspektiv i dansk højmiddelalderforskning. Om Familia og familie, Lið, Leding og Landeværn," in *(Danish) Historisk Tidsskrift* 99, (1999); "Odelsrett—lovbydelse—bøndsrett—retrait lignager: Kindred and Land in the Nordic Countries in the Twelfth and Thirteenth Centuries," in *Family, Marriage and Property Devolution in the Middle Ages*, ed. Lars Ivar Hansen, (Tromsø; 2000), 133–65; "Danmark—en del af Europa", in *Middelalderens Danmark*, ed. Per Ingesman et al. (København: Gad, 2001); "Pope Alexander III and Danish Laws of Inheritance," in *How Nordic are the Nordic Medieval Laws?: Proceedings from the First Carlsberg Conference on Medieval Legal History*, ed. Per Andersen, Ditlev Tamm, and Helle Vogt (2nd ed., Copenhagen: DJØF 2011), 85–114.

also introduced the topic of secular gift exchange in the Danish warrior society.⁸¹ In the late 1990s, Niels Lund's dissertation, *Lið, leding og landeværn*, led to an interesting debate about the relationship between the king and magnates in the early Middle Ages.⁸² An important step towards introducing anthropological perspectives in political history into Danish research came in the year 2000 with the Swedish historian Lars Hermanson's analysis of elite networks in Saxo Grammaticus's *Gesta Danorum*, although Hermanson was more inspired by friendship studies (for instance those of Gerd Althoff) than by conflict studies.⁸³ The Danish historian Kim Esmark's dissertation on rituals, gifts and conflict in Anjou was heavily inspired by dispute studies,⁸⁴ and more recently Esmark has published articles on Danish history that draw on this theoretical framework.⁸⁵ Over the last ten years, the annual Carlsberg conferences hosted by the section of Legal History at the University of Copenhagen have been a stimulating arena for discussing questions relating to legal history and legal anthropology.⁸⁶

⁸¹ Michael H. Gelting, *Roskildekroniken* (2nd rev. ed., Højbjerg: Wormianum, 2002), 72–74. On secular gift exchange, see also the recent article by Lars Kjær, "Gaver og gæstebud—*Avaritia* og *liberalitas* i *Gesta Danorum*", in *Saxo og hans samtid*, ed. Per Andersen and Thomas Heebøll-Holm (Århus: Aarhus Universitetsforlag, 2012).

⁸² In his dissertation Niels Lund launched the hypothesis that the Danish *leiðangr* organization was not so old and not so clearly controlled by the king as the high medieval legislation stipulated. Niels Lund, *Lið, leding og landeværn: Hær og samfund i Danmark i ældre middelalder* (Roskilde: Vikingskibshallen, 1996). The book occasioned a great deal of debate: see the reviews by Esben Albrechtsen in *(Danish) Historisk Tidsskrift* 98 (1998), 395–401; Gelting, "Det komparative perspektiv"; and the response by Niels Lund, "Leding, bønder og inert", *(Danish) Historisk Tidsskrift* 99 (1999), 189–207.

⁸³ Lars Hermanson, *Släkt, vänner och makt: En studie av elitens politiska kultur i 1100-talets Danmark* (Göteborg: Göteborgs Universitet, 2000); *Bärande band: Vänskap, kärlek och brödraskap i det medeltida Nordeuropa, ca. 1000–1200* (Lund: Nordic Academic Press, 2009).

⁸⁴ Kim Esmark, *De hellige døde og den sociale orden: relikviekult, ritualisering og symbolsk magt (Anjou, 10.–12. århundrede)* (Roskilde: Roskilde Universitet, 2002).

⁸⁵ Kim Esmark, "Godsgaver, *calumniae* og retsantropologi. Esrums kloster og dets naboer, ca. 1150–1250", in *Ett annat 1100-tal. Individ, kollektiv och kulturella mönster i medeltidens Danmark*, ed. Peter Carelli, Lars Hermanson and Hanne Sanders (Lund: Makadam, 2004); "Religious patronage and family consciousness: Sorø abbey and the 'Hvide family', c. 1150–1250" in *Religious and laity in Western Europe 1000–1400: Interaction, negotiation, and power*, ed. Emilia Jamrozak and Janet Burton (Turnhout: Brepols Publishers, 2006); "Humbug eller hellig handling?—Saxos ritualer", in *Saxo og hans samtid*, ed. Per Andersen and Thomas Heebøll-Holm (Århus: Aarhus Universitetsforlag, 2012).

⁸⁶ Papers from the Carlsberg Conferences on Legal History in Copenhagen (Proceedings of the Carlsberg Academy Conferences series, vols. 1–9, Copenhagen, DJØF 2005–). Helle Vogt and Per Andersen have both been key organisers of these conferences and editors of the series.

Because of the lack of written sources prior to the late thirteenth century, Sweden has a shorter pedigree of medieval historiography. Nevertheless, the University of Gothenburg has been a centre for elaborating on anthropological themes and perspectives. Thomas Lindkvist has questioned the prevailing modernist view of the medieval state in a number of works,⁸⁷ while Catharina Andersson and Thomas Småberg have employed approaches inspired by anthropology in analyses of gifts to monasteries and of late medieval elites in Sweden.⁸⁸ Many of the historians from Scandinavia who are inspired by dispute studies contributed to the anthology *Gaver, ritualer, konflikter: Et rettsantropologisk perspektiv på nordisk middelalderhistorie* (*Gifts, Rituals, Conflicts: A Legal Anthropological Perspective on Nordic Medieval History*) from 2010, which can be considered a forerunner to the present book.⁸⁹

Even if dispute studies, or anthropological perspectives more generally have had scant impact on medieval Scandinavian research, in the new millennium the tide seems to have turned somewhat. Scandinavian scholars have increasingly come to realise that it is not sufficient to stay within the confines of a national paradigm. This realisation has led to a trend towards studying external influences on Scandinavia in the Middle Ages. The largest research projects within Norway have focused on Scandinavia as a European periphery; on the literary impulses reaching Norway and Iceland from the chivalric romances; and on the Norwegian Commonwealth and the Arctic region.⁹⁰ Recent Danish projects include studies of the impact of Latin culture upon Scandinavia and the crusading

⁸⁷ Lindkvist has stressed the continuity in Sweden from the ambulating royal power of the Middle Ages, based on plunder and irregular levies, to the tax-collecting kingship of the high Middle Ages. Thomas Lindkvist, *Plundring, skatter och den feodala statens framväxt: Organisatoriska tendenser i Sverige under övergången från vikingatid till tidig medeltid* (Uppsala: Historiska institutionen, 1988).

⁸⁸ Catharina Andersson, *Kloster och aristokrati: nunnor, munkar och gåvor i det svenska samhället till 1300-talets mitt* (Göteborg: Avhandlingar från Historiska institutionen, 2006); and Thomas Småberg, *Det stängda frälset. Makt och elit i det medeltida lokalsamhället: Marks och Kinds härader i Västergötland ca 1390–1520* (Göteborg: Avhandlingar från Historiska institutionen, 2004).

⁸⁹ Cf. note 2 above.

⁹⁰ Including the following multi-year, institutionally based projects: *Periphery and Centre in Medieval Europe*, Centre for Medieval Studies, University of Bergen 2003–2013; *Translation, Transmission and Transformation: Old Norse Romantic Fiction and Scandinavian Vernacular Literacy 1200–1500*, Department of Linguistics and Scandinavian Studies, University of Oslo 2007–2010; *The Realm of Norway and its dependencies as a political system*, Department of History and Classical Studies, University of Science and Technology (NTNU), 2009–2013.

movement.⁹¹ All these projects signal that it is no longer sufficient to concentrate on the “soil” at the expense of the “seed,” to revive a famous image used by the Norwegian historian Jens Arup Seip in order to justify internal factors as decisive in historical development.⁹² Moreover, while the debates on “New Cultural History” and deconstructionism from the late twentieth century did not revolutionise the historical profession, they may have contributed to making theory formation a more generally accepted part of the historian’s work. This has led to a weakening of the empiricist paradigm, which has been hegemonic in Scandinavian historiography since the Second World War. Anthropology has definitely played a part in this transition, not least in medieval research. Our hope is that this trend can contribute towards broadening the outlook of medieval Scandinavian historians. We need comparisons with Europe which transcend the debate on whether Scandinavian countries were “feudal” or not, and we need approaches that adopt a Scandinavian and even a northern European perspective. The last years have seen improvements in terms of Scandinavian cooperative projects, as attested by several anthologies.⁹³ Yet, as scholars we still largely tend to specialise and operate within national confines. And the process of deconstructing the grand narratives of national state formation is only in the making. These are challenges which this book seeks to address, and which future historians will certainly make progress in addressing.

⁹¹ Lars Boje Mortensen (ed.), *The making of Christian myths in the periphery of Latin Christendom (c. 1000–1300)* (Copenhagen: Museum Tusculanum Press, 2006); Kurt Villads Jensen, *Korstog ved verdens yderste rand: Danmark og Portugal ca. 1000 til ca. 1250* (Odense: Syddansk Universitetsforlag, 2011).

⁹² Jens Arup Seip, “Problemer og metode i norsk middelalderforskning,” in *Problemer og metode i historieforskningen* (1940; repr., Oslo: Gyldendal, 1983), 36–37.

⁹³ Apart from the previously mentioned anthology, see *Ett annat 100-tal: Individ, kollektiv och kulturella mönster i medeltidens Danmark*, ed. Peter Carelli, Lars Hermanson, and Hanne Sanders (Makadam: Centrum för Danmarksstudier, 2004); *Feider og fred i nordisk middelalder*, ed. Erik Opsahl (Oslo: Unipub, 2007); *Feud in Medieval and Early Modern Europe*, ed. Jeppe Büchert Netterstrøm and Bjørn Poulsen (Aarhus: Aarhus University Press, 2007); *Statsutvikling i Skandinavia i middelalderen*, ed. Sverre Bagge (Oslo: Dreyer, 2012); *Settlement and Lordship in Viking and Early Medieval Scandinavia*, ed. Bjørn Poulsen and Søren Michael Sindbæk (Turnhout: Brepols, 2012).

PART ONE

POWER POLITICS: KINGSHIP, COERCION, AND CONFLICT

INTRODUCTION TO PART ONE

Hans Jacob Orning

The first section of this volume consists of three articles which are focused on strategies pursued in the political game at the top level of society, as these are described in narrative sources. Hans Jacob Orning and Auður Magnúsdóttir use the kings' saga *Morkinskinna* as a source for Norwegian society on the brink of developing a more authoritarian form of kingship, whereas Lars Hermanson deals with how challengers to Danish kings are treated in the Danish historical work *Gesta Danorum*, by Saxo Grammaticus. Both sources date from the early thirteenth century, but the societies they describe are somewhat different, in that the society of *Morkinskinna* is more decentralized than the one in Saxo. This perceived difference could stem from two causes: Either Denmark was in fact more centralized than Norway in the early thirteenth century; or the sources differ significantly in the manner in which they describe the societies where they are set. The truth probably lies between these two explanations, perhaps closer to the latter explanation than to the former. In this introduction we will first provide a short summary of the main phases of Scandinavian political development from c. 900 to c. 1250, in order to give an overview to readers who might be unfamiliar with Nordic history. Here the internal dynamic of the Scandinavian region as well as its relation to central areas of Europe will be explored. Second, we will give a broad outline of the literary context in Scandinavia, focusing on the dual impulses that contributed to its formation and development: the vernacular sagas building on oral traditions, and the Latin and predominantly clerical culture stemming from European contacts.

The Historical Context

The area now called Scandinavia received its name from the Roman name *Scania*, which refers specifically to Skåne, a region in southern Sweden that was a part of Denmark until 1658. The broader term "Scandinavia" is used to designate the three countries of Denmark, Sweden, and Norway (whereas the term "Nordic" also includes Finland, Iceland, the Faroe Islands, and Greenland). Scandinavia is part of what has been termed a

periphery of Europe. This is correct, insofar as the Scandinavian kingdoms of Denmark, Norway and Sweden have some characteristics in common with other areas situated on the outskirts of Europe such as Poland, Hungary, and Bohemia. These areas underwent a related development around the first millennium, in that after an initial period in which they threatened the centre of Europe (Viking attacks in one case and Magyar attacks in the other), an opposite movement followed, whereby the periphery was overrun by two major impulses from the centre: state formation and Christianisation. These two processes went hand in hand in these realms, resulting in a long-term transformation of the areas, as well as their closer integration into European politics and culture.¹ This way of telling the story is of course very simplified, as there are plenty of regional variations and deviations. Still, it is valid as a main pattern that can help to give a broad overview of how Scandinavia developed within a European context.

In the Viking Age (c. 800–c. 1050), the Scandinavian kingdoms were still in the making. At this time, the area formed a unity with few marked internal borders, apart from topographical ones. The most meaningful way to approach Viking Age geography is to distinguish three basins, as the sea formed the basic mode of communication. The Baltic Sea provided contacts between the Baltic and Russian shores in the east, Svealand and Gotland further west, and the northern German/Slavonic coastline, Zealand and the southeastern part of Jutland. Skagerrak and Kattegat formed another unit of communication, which included large parts of Denmark, the eastern part of Norway (called Viken) and Götaland. A third area was oriented towards the North Sea and the Atlantic, comprising western Jutland and the Frisian coast, the western parts of Norway, and the British and Atlantic Isles.² To these areas one could add the large northern region stretching from the north of Norway eastwards to the White Sea, which unlike the other three was focused on land through the nomadic Finn population.³ These areas shared some peculiarities: They were primarily centred around seas (apart from the last one); they were not strictly

¹ Robert Bartlett, *The Making of Europe. Conquest, Colonization and Cultural Change 950–1350* (London: Penguin, 1994).

² The separation into sea basins builds on standard descriptions of Viking raids, such as those of Peter Sawyer, *Kings and Vikings: Scandinavia and Europe AD 700–1100* (London: Methuen, 1982); and Else Roesdahl, *The Vikings* (London: Viking Penguin, 1991), although this division is usually not an explicit focus in such accounts.

³ Bjørnar Olsen and Lars Ivar Hansen, *Samenes historie før 1750* (Oslo: Cappelen, 2004).

separated; and they encompassed a wider area than Scandinavia proper. Finally, they were not coterminous with what later became the three Scandinavian kingdoms.

During the Middle Ages three separate realms gradually developed, resulting in the kingdoms that have persisted until today. This development was viewed as inevitable and non-problematic in older historiography, but considering the topographical layout of the region, it demands a special explanation, since the division implies that the three sea regions were divided more or less evenly among the three powers.⁴ Both Denmark and Sweden were oriented towards the Baltic, and during the Middle Ages they met competition from commercial and crusading German organisations.⁵ In the Skagerrak/Kattegat region and around the North Sea, Denmark was the strongest power, but attempts at creating Danish hegemony were repulsed.⁶ Further north, Norway, Sweden, and Novgorod competed to control the large and loosely demarcated area of Finnmark, and in the 1320s formal treaties regulating these relationships were stipulated.⁷ Hence, the major communicative spheres of Scandinavia were divided not according to a principle of dominance, but in terms of a balance of power.

A rough balance of power also characterized the relationship among the Scandinavian kingdoms when they began to develop beginning in the Viking Age. Nevertheless, until the sixteenth and seventeenth centuries, Denmark was the most powerful kingdom, except in periods when it was weakened by internal strife. The reason why Denmark was strongest is twofold. First, it was the richest in natural resources of any area in the region. It consists of islands and peninsulas, and during the Viking Age the proximity to the sea furnished an advantage in terms of naval warfare.⁸

⁴ Sverre Bagge, *From Viking Stronghold to Christian Kingdom* (Copenhagen: Museum Tusculanum Press, 2010), 33–40.

⁵ Thomas Lindkvist, *Plundring, skatter och den feodala statens framväxt* (Uppsala: Historiska institutionen, 1988); Philip Line, *Kingship and State Formation in Sweden, 1130–1290* (Leiden: Brill, 2007); *Medieval History Writing and Crusading Ideology*, ed. Tuomas M.S. Lehtonen and Kurt Villads Jensen (Helsinki: Finish Literature Society, 2005); Nils Blomkvist, *The Discovery of the Baltic: The Reception of a Catholic World-system in the European North (AD 1075–1225)* (Leiden: Brill, 2005).

⁶ Timothy Bolton, *The Empire of Cnut the Great: Conquest and the Consolidation of Power in Northern Europe in the Early Eleventh Century* (Leiden: Brill 2009); Michael Bregnsbo and Kurt Villads Jensen, *Det danske imperium. Storhed og fald* (Copenhagen: Aschehoug, 2004).

⁷ Olsen and Hansen, *Samenes historie*, 169–75.

⁸ Several sources mention that the Danes had the largest fleets in Northern Europe. See Peter Sawyer, *The Age of the Vikings* (London: Edward Arnold, 1971).

Denmark's comparative advantage persisted when external exploitation gave way to internal exploitation of agricultural resources as the magnates' primary power base after the turn of the millennium.⁹ Denmark had the most fertile land in Scandinavia, in both quantity and quality. Though far smaller in size than the two other kingdoms, it had a larger area suitable for agricultural production than either Sweden and Norway. Moreover, its concentrated lands made it easier to cultivate for surplus and enable the elite to control these resources through large estates.¹⁰ Second, of the Scandinavian kingdoms, Denmark is situated closest to the rest of Europe. This made the realm more easily accessible to and from Europe, for better or worse. On the one hand, southern Jutland (Eideren) and later the Sound were key transit areas for communication and trade between eastern and western Europe. This also implied that European impulses normally reached Denmark before they came to Norway and Sweden. On the other hand, the proximity to central Europe put Denmark in a vulnerable position, which could make it a target of expansionism from the south. Over the course of the Middle Ages, Denmark went through progressive phases of consolidation and disintegration. This was not peculiar to Denmark, as such cycles are a hallmark of state formation all over peripheral Europe. Yet Denmark's central position made its development a decisive factor for the rest of Scandinavia. In its periods of consolidation, Denmark normally put significant pressure on the two other evolving kingdoms further north, whereas periods of Danish division often widened the scope for manoeuvring among its neighbours.

Norway took its name from the "north way," and throughout the Middle Ages it was primarily a coastal realm, as can be seen from the significance of the naval levy as a military and later a fiscal unit.¹¹ However, the extent of the coastline that could be considered "Norwegian" was variable. The western coast formed the core of the first Norwegian kingdom in the late ninth century, and was a central staging area for Viking expeditions. The

⁹ On the transition from external to internal exploitation, see Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century* (Ithaca, N.Y.: Cornell University Press, 1974); Bartlett, *Making*, 300–306. On the transition in Scandinavia, see Lindkvist, *Plundering*.

¹⁰ On the structure of estates in Denmark and parts of Sweden, as distinct from Norway, see Bjørn Poulsen and Niels Hybel, *The Danish Resources C. 1000–1550: Growth and Recession* (Leiden: Brill, 2007); *Settlement and Lordship in Viking and Early Medieval Scandinavia*, eds. Bjørn Poulsen and Søren M. Sindbæk (Turnhout: Brepols, 2011).

¹¹ Bagge, *From Viking Stronghold*, 69–79. The military duty was partly commuted into a tax in the high Middle Ages. The difficulties in implementing a tax in inland areas demonstrate the coastal orientation of the Norwegian kingdom in the Middle Ages.

eastern part of the realm (Viken) often lay under the hegemony of Danish kings, as part of the Skagerrak/Kattegat basin.¹² The area further north was involved in the exchange with the Finn population, and the borders were fluid for a long time. The prospects of the Norwegian kingdom hinged very much upon the extent of Danish pressure.

Sweden was the last kingdom to unite in the Middle Ages. Until the middle of the thirteenth century, the area was divided between the Svear in the Mälaren region and the Götar (Geats) who lived further south, separated by vast forests and lakes. Before that period, we have only scant knowledge of this region, mainly stemming from scattered information from the kings' sagas, Saxo, and shorter narratives, along with archaeological finds. State formation was slow to emerge in this area, and Svealand remained pagan for a long time. Moreover, Sweden was blocked from Skagerrak in the west by Danish and Norwegian kings, and only gradually in the thirteenth century did Swedish kings manage to establish a bridgehead at Lødöse.¹³

The Viking Age was an age of expansion in Scandinavia that brought the region into close contact with Europe. Vikings ventured down the Russian rivers to Constantinople and Baghdad in the east, over the ocean to North America in the west, and south along the Frisian and Frankish coasts to the British Isles and further south to Spain and even Italy. The extension of the Danevirke, a fortification dating back to the seventh century which extended across Jutland, was probably undertaken in order to counter attacks from the Frankish kingdom—and indeed, Danish kings managed to halt the Frankish expansion northwards and penetrate into Jutland to build the towns of Hedeby and Ribe. Further north, they were able to install themselves as overlords in eastern Norway, where it is likely that they founded the town of Kaupang. In course of the ninth century, the Danes suffered some sort of internal split. This probably formed the background for the establishment of a Norwegian kingdom centred along the western coast, while the eastern part of Norway remained disputed.¹⁴

Towards the end of the tenth century, Denmark was squeezed once again by a mighty southern neighbour, this time the Ottonian rulers of

¹² Dagfinn Skre, "Towns and Markets, Kings and Central Places in South-Western Scandinavia c. AD 800–950," in *Kaupang Excavation Project Publication Series* vol. 1, ed. Dagfinn Skre (Århus: Aarhus University Press, 2007), 445–69; Claus Krag, "The Early Unification of Norway," in *The Cambridge History of Scandinavia*, vol. 1, *Prehistory to 1520*, ed. Knut Helle (Cambridge: Cambridge University Press, 2003), 184–201.

¹³ Lindkvist, *Plundering*; Peter Sawyer, *The Making of Sweden* (Alingsås: Viktoria, 1989).

¹⁴ Krag, "Early Unification"; Skre, "Towns and Markets," 460–69.

the Holy Roman Empire. This triggered Danish consolidation, as well as the adoption of Christianity. Again this put Norway, and in Sweden probably also the Götar, in a difficult position. The Norwegian and Swedish kings formed an alliance in order to counter the Danish influence, but in vain. Under King Knud the Great, Denmark managed to obtain control over Norway, which also became Christian, with a Norwegian saintly king.¹⁵ A proportion of the Götar probably had to accept Danish sovereignty as well. King Knud's conquest of England marked the high point of a Danish North Sea empire—which proved to be short-lived, as it disintegrated upon Knud's death in 1035. The Norman invasion of England in 1066 crushed the ambition of re-establishing a North Sea empire, although both Danish and Norwegian kings made unsuccessful attempts at regaining England later on. Now England was oriented towards the continent, and the Viking Age came to an end.

After 1035, the balance between Denmark and Norway shifted, and for the following century relations between the two kingdoms were more equal, and fairly peaceful. Yet in this period, from which *Morkinskinna* recounts, relations were far more fluid than is often acknowledged. First, the kings were often no more than nominal overlords in their realms. Their material basis was small and vulnerable, and often several kings were sharing power. This created tensions, and at times kings were an easy prey to differing factions among the elite. Second, national borders were highly permeable. Norwegian magnates who experienced trouble with their king were quick to venture south to Denmark in order to muster support, and vice versa.¹⁶

The stability of Scandinavian kingdoms following their integration into the European realm was interrupted in the twelfth century, when increasing unrest, tension, and rivalry resulted in internal strife in all three Scandinavian countries. In Denmark there were violent struggles from around 1130, which lasted until Valdemar the Great emerged as sole king in 1157.¹⁷ At the same time, hostilities increased in Norway. The magnate Erling

¹⁵ Norway's King Olav Haraldsson, who died in an attempt to rebuff Knud, was swiftly canonised after his death, and became the patron saint of Norway. He is popularly credited with Norway's conversion to Christianity.

¹⁶ See the articles by Orning and Magnúsdóttir in this volume.

¹⁷ Aksel E. Christensen, "Tiden 1042–1241," in *Danmarks historie. Tiden intil 1340*. 1, ed. Inge Skovgaard-Petersen, Aksel E. Christensen and Helge Paludan (København: Gyldendal, 1977); Inge Skovgaard-Petersen, "The Making of the Danish Kingdom," and "The Danish Kingdom: Consolidation and Disintegration," in Helle, ed., *The Cambridge History of Scandinavia*, vol. 1, *Prehistory to 1520*, 168–83, 353–68.

Skakke tried to crush his opponents by allying with Valdemar, becoming his earl, and at the same time securing the support of the reformed church by offering substantial privileges in return for having his son crowned king in 1163. However, Erling's attempt at suppressing internal rivalry failed. Struggles intensified after the advent of King Sverre Sigurdsson (king 1179–1202), and it was not until 1240 that a strong and unchallenged king of Norway emerged.¹⁸

Sweden was also marked by internal strife from the middle of the twelfth century to the later part of the thirteenth century. During the reign of King Knud Eriksson (1167–1196) conditions were stabilised, but after his death contenders belonging to two different royal lineages (the Sverker dynasty and the Erik dynasty) fought for the throne. Gradually the earls belonging to the Folkung dynasty gained prominent positions, and in the middle of the thirteenth century Earl Birger Magnusson ended the conflicts when his son Valdemar became king. Valdemar's brother, King Magnus Birgersson (king 1274–1290), consolidated the Swedish realm, and the royal family of the Folkungs remained unchallenged until the late fourteenth century.¹⁹

In 1170, the Danes once more became overlords to Norwegian kings. The Danish king Valdemar died in 1182, and he was followed by his two sons Knud VI (sole king 1182–1202) and Valdemar the Victorious (king 1202–41). During this interval Denmark expanded into the Baltic, and from 1169 to 1227 Danish kings were major power players in this area.²⁰ Saxo Grammaticus wrote his Danish history at this time (c. 1200), during the hegemony of the Valdemarine monarchy but while the memories of internal strife were still fresh. Saxo was an ardent defender of the Valdemarines, and his work can be read as a justification of their claim to kingship. Nevertheless, in recent decades the interpretation of *Gesta Danorum* as being solely royal propaganda has been called in question.²¹

¹⁸ Bagge, *From Viking Stronghold*; Knut Helle, "The Norwegian Kingdom: Succession Disputes and Consolidation," in Helle, ed., *The Cambridge History of Scandinavia*, vol. 1, *Prehistory to 1520*, 369–91.

¹⁹ However, in Sweden the high aristocracy was in a strong position during the thirteenth and the fourteenth centuries, partly because of their control of the offices as "lawmen" and bishops, partly due to the power of the Council of the Realm, which was the most important political institution for the Swedish high aristocracy. Herman Schück, "Sweden under the Dynasty of the Folkungs," in Helle, ed., *The Cambridge History of Scandinavia*, vol. 1, *Prehistory to 1520*, 392–410.

²⁰ Skovgaard-Petersen, "The Danish Kingdom."

²¹ Kurt Johannesson, *Saxo Grammaticus: Komposition och världsbild i Gesta Danorum* (Uppsala: Almqvist & Wiksell International, 1978), 20–29; Birgit Sawyer, "Valdemar, Absalon,

Saxo was an aristocrat familiar with both the ecclesiastical elite and the secular culture that characterised the honour-based society. He served in the court of Archbishop Absalon (archbishop 1178–1201), who commissioned him to write the work. Absalon was a member of the powerful Hvide clan, a network of magnates who controlled the most prominent ecclesiastical and royal offices of the realm. Because Absalon was one of Saxo's main sources, *Gesta Danorum* presents an idealised image of royal political action based on horizontal bonds, with one particular group of aristocrats, the Hvides, as protagonists.²²

Norway's internal strife did not end until 1240, midway through the reign of Haakon Haakonsson (king 1217–63). In the first part of his reign, Haakon had to fight internal opposition, in which the Danes played a part. Simultaneously, Norwegian expansion in Iceland increased. Iceland had been populated mainly from Norway in the late ninth century as a Free State with common laws and institutional arrangements, and no king.²³ In 1218, Snorri Sturluson became a Norwegian earl with the task of bringing Iceland under the Norwegian crown. Snorre failed, but during the next four decades Norwegian pressure on Iceland increased steadily, resulting in Iceland's subordination in 1262/64.²⁴ During this period of disputed Norwegian kingship and expansionism towards Iceland, the kings' saga *Morkinskinna* was written in Iceland (around 1220), and Snorre wrote the famous *Heimskringla* c. 1230. The unsettled context in which they were written probably had a significant influence on the kings' sagas. On the one hand, they were historical works celebrating Norwegian kings. On the other hand, they were written from the perspective of cultural outsiders with an ambivalent attitude towards kingship, and towards the Norwegian crown in particular.²⁵

and Saxo: Historiography and Politics in Medieval Denmark," *Revue Belge de Philologie et d'Histoire* 63 (1985): 685–705.

²² See the articles by Hermanson and Esmark in this volume.

²³ Jón Viðar Sigurðsson, *Chieftains and Power in the Icelandic Commonwealth* (Odense: Odense University Press, 1999).

²⁴ Jón Jóhannesson, *A History of the Old Icelandic Commonwealth: Íslendinga Saga* (Winnipeg: University of Manitoba Press, 1974); Jón Viðar Sigurðsson, *Frá goðorðum til ríkja. Þróun goðavalds á 12. og 13. öld* (Reykjavík: Sagfræðistofnun Háskóli Íslands, 1989); Randi Wærdahl, *The Incorporation and Integration of the King's Tributary Lands into the Norwegian Realm c. 1195–1397* (Leiden: Brill, 2011); Hans Jacob Orning, *Unpredictability and Presence: Norwegian Kingship in the High Middle Ages* (Leiden: Brill, 2008).

²⁵ Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1991); Theodore M. Andersson and Kari Ellen Gade, "Introduction," in Andersson and Gade, *Morkinskinna: The Earliest Icelandic Chronicle of the Norwegian Kings (1030–1157)*, (Ithaca: Cornell University Press, 2000); Ármann Jakobsson and

Around 1240 Denmark and Norway reversed roles, when King Valdemar the Victorious of Denmark died (in 1241), just as King Haakon Haakons-son of Norway was managing to put down the last rebellion in Norway. After 1240 Norway held sway in Scandinavia, partly as a result of internal strife in Denmark, partly because Norway's naval power was well suited to external raiding. This dominance came to an end in the early fourteenth century, through the combination of a stronger Swedish monarchy pressing towards Skagerrak, and the increased significance of fortifications and armed knights, a kind of delayed "feudalisation" in Scandinavia.²⁶ Not until the 1340s were the Danish kings able to govern unchallenged again, and then forces worked in favour of a Scandinavian union, aided by the crises of the plague epidemics.

The Literary Context

The Scandinavian countries entered the mainstream of European culture as Christian kingdoms around the turn of the millennium. This peculiarity of being late arrivals in an established culture helped to shape the literary development of the region. For analytical purposes, it is helpful to distinguish between two distinct impulses behind the growing written corpus of texts in the Middle Ages in Scandinavia: oral, vernacular traditions; and external, mainly Latin, influences. This division is of course an analytical one, as in practice these impulses blended. In the following, we will give a short synopsis of how vernacular traditions and foreign influences developed and interacted to create a literature that partly adapted to European models and partly followed its own course.

Oral tradition is an elusive property, and recent decades of literacy studies have demonstrated the problems of approaching an "oral culture."²⁷

þórður Ingi Guðjónsson, "Formáli," in Ármann Jakobsson and þórður Ingi Guðjónsson, *Mörkskinna I* (Reykjavík: Hið Íslenska forritafélag, 2006).

²⁶ Knut Helle, "Growing Inter-Scandinavian Entanglement," in Helle, ed., *The Cambridge History of Scandinavia*, vol. 1, *Prehistory to 1520*, 411–20; Schück, "Sweden under the Dynasty"; Michael H. Gelting, "The Problem of Danish 'Feudalism': Military, Legal, and Social Change in the Twelfth and Thirteenth Centuries," in *Feudalism: New Landscapes of Debate*, ed. Sverre Bagge, Michael H. Gelting, and Thomas Lindkvist (Turnhout: Brepols, 2011), 159–84; Sverre Bagge, "The Scandinavian Kingdoms," in David Abulafia, ed., *The New Cambridge Medieval History*, vol. 5, c. 1198–c. 1300 (Cambridge: Cambridge University Press, 2003), 730–42.

²⁷ Michael T. Clanchy, *From Memory to Written Record: England 1066–1307* (London: Arnold, 1979); Marco Mostert, ed., *New Approaches to Medieval Communication* (Turnhout:

Nevertheless, Scandinavia in the Middle Ages was lucky in having neighbours to the west who served as oral repositories, and who after writing was introduced retained a remarkable interest in preserving this heritage for posterity, now in written form. One reason why Iceland became so enmeshed in what we might call a documentary culture may derive from its status as a border society populated only in historical times, which furthermore emerged with an identity defined in contradistinction to the Scandinavian kingdoms. Medieval Icelandic “nationalism” has often been exaggerated, and it should probably be characterised in another way. Nevertheless, it is beyond doubt that Icelanders established a political system which diverged from the rest of Scandinavia in being a kingless society, and that they invested much energy into preserving and defending this status.²⁸

From early on, Icelanders served as poets in Norway, and to some extent also in Denmark and Sweden, although they had no monopoly on this position. Eddic and heroic poems were written down in the thirteenth century, but their alleged age is hotly debated. The same is true of the skaldic poems which the kings’ sagas used as historical sources, where there is no scholarly consensus as to the degree to which their written form preserved the original content unaltered, and to what degree the kings’ sagas actually built on such poems.²⁹ The first written work in Iceland is *The Book of Icelanders* (*Íslendingabók*) from c. 1130, a short account of Iceland’s past, which was later followed by a larger exposition on the settlers of the island called *The Book of Settlement* (*Landnámabók*). The language used was the vernacular Old Norse language, which was common to Scandinavia in the Middle Ages and was used as a literary language throughout the period. Indicative of this central importance of the vernacular is the production of several grammatical treatises in Iceland from the twelfth century on. Moreover, it is likely that laws were written down in Old Norse beginning in the early twelfth century.

In traditional research, the uniqueness of this Icelandic achievement was emphasised, on the theory that stories were kept in memory for centuries and then written down in the late twelfth century and after, relatively

Brepols, 2007); D.H. Green, *Medieval Listening and Reading: The Primary Reception of German Literature 800–1300*. (Cambridge: Cambridge University Press, 1994).

²⁸ Jón Viðar Sigurðsson, *Chieftains and Power*; Jón Jóhannesson, *A History*; William Ian Miller, *Blood-Taking and Peace-Making: Feud, Law, and Society in Medieval Iceland* (Chicago: Chicago University Press, 1990); Jesse L. Byock, “History and the Sagas: The Effect of Nationalism,” in G. Pálsson, ed., *From Sagas to Society* (Hisarlik, 1992), 43–60.

²⁹ For a summary of these debates, see Shami Ghosh, *Kings’ Sagas and Norwegian History: Problems and Perspectives* (Leiden: Brill, 2011).

unaffected by external factors. Only later, it was thought, did Christian and chivalric influences from Europe come to the fore, contributing to the “polluting” of Icelandic literature.³⁰ Although the development of Icelandic literature is indeed remarkable, it is not as unique as was claimed in earlier scholarship. The use of vernacular as a literary language was probably an important influence from Anglo-Saxon England, which was mediated through Norway.³¹ Recent studies have also revealed that European culture had an early impact on Icelandic literature. Some of the earliest sagas to be written in Icelandic were saints’ lives, and they were soon followed by translations and adaptations of European historical works.³² Oral traditions did not serve as repositories of cultural knowledge, but were in a constant process of change.³³ The American literary historian Theodore M. Andersson has characterised the development of Icelandic saga writing in the century after 1180 as an interaction between vernacular storytelling and the adoption of foreign literary models. The earliest attempts at combining these influences were rather rudimentary and clumsy, but in time the amalgamation was refined, and in the later thirteenth century a synthesis of these impulses was attained in the masterpieces among the Icelandic family sagas.³⁴

Icelanders were responsible for writing much of the literature about Norway as well. The kings’ sagas, written about Norwegian kings by Icelandic poets, probably antedate Icelandic family sagas as a literary genre, and may have served as a model for them. From the late twelfth century, Icelanders wrote sagas about Norwegian kings, and they had a particularly keen interest in the great missionary kings Olav Tryggvason and Olav Haraldsson. King Sverre was the first king to have his own saga written.

³⁰ See for instance Finnur Jónsson, *Den oldnorske og oldislandske litteraturs historie* (Copenhagen: Gad, 1920–24); Hans E. Kinck, *Storhetstid: om vort aandsliv og den literære kultur i det trettende aarhundrede* (Oslo: Aschehoug, 1922).

³¹ On this influence, see Marit Myking, *Vart Noreg kristna frå England? Ein gjennomgang av norsk forskning med utgangspunkt i Absalon Tarangers avhandling Den angelsaksiske kirkes indflydelse paa den norske* (Oslo: Senter for studier i vikingtid og nordisk middelalder, 2001).

³² Stefanie Würth, *Der “Antikenroman” in der isländischen Literatur des Mittelalters. Eine Untersuchung zur Übersetzung und Rezeption lateinischer Literatur im Norden* (Basel: Helbing & Lichtenhahn, 1998); Susanne Kramarz-Bein, *Die Þiðreks saga im Kontext der altnorwegischen Literatur* (Tübingen: Francke, 2002).

³³ Gísli Sigurðsson, *The Medieval Icelandic Saga and Oral Tradition: A Discourse on Method* (Cambridge, MA: Harvard University Press, 2004).

³⁴ Theodore M. Andersson, *The Growth of the Icelandic Sagas (1180–1280)* (Ithaca: Cornell University Press, 2006). The controversy between “internalists” and “externalists” continues, albeit in a less radical form than previously: see Lars Lönnroth, Review of *The Growth of the Sagas* by Theodore M. Andersson. *Scripta Islandica* 57 (2006): 121–30.

In his case, writing was used more directly for overt political and ideological purposes (something that his grandson Haakon Haakonsson also took advantage of). Yet kings' sagas written by Icelanders remained on the whole rather more "descriptive" than propagandistic. It is not easy to discern any clear bias in the voluminous kings' sagas *Fagrskinna*, *Morkinskinna*, and *Heimskringla*, written in the 1220s and 1230s.³⁵

Norway's close connection to Iceland meant that most Norwegian historical writing was done by Icelanders and therefore was in Old Norse. In Denmark, on the other hand, Latin became the language for historical writing. From the decades around 1200 two Latin histories of the Danes are preserved: the famous one by Saxo and a shorter and slightly older one by Svend Aggesen. It is not surprising that these men wrote in Latin and not in Danish, since both of them were probably schooled in a Latin learned tradition. More generally, Latin was the dominant written language in Denmark until the early fifteenth century, in both the administrative field and in the literary genres.³⁶ Nevertheless, at the time when Saxo wrote his *History of the Danes*, a written Danish language was under construction, closely connected to the writing down of the laws.³⁷ These were probably written in Danish so that they could be used and understood at the local court assemblies, where the oral procedure must have been in Danish, whereas the written administration of justice as well as all narratives were in Latin.

The impact of Christian, European culture on Scandinavia has been a main area of investigation during the last decades, as part of the internationalisation of the historical profession and the discrediting of nationalist sentiments as a legitimate purpose for historical writing. Lars Boje Mortensen has underlined the importance of Latin culture in Scandinavian literature on a general basis.³⁸ The Scandinavian laws, which were previously considered as late residues of a "Germanic" culture, have been

³⁵ Jonas Kristjánsson, *Eddas and Sagas, Iceland's Medieval Literature* (Reykjavík: Íslenska bókmenntafélag, 1988); Rory McTurk, ed., *A Companion to Old Norse-Icelandic Literature and Culture* (Oxford: Blackwell, 2005).

³⁶ Anders Leegaard Knudsen, "Testimonia Placiti—Private Charters as Public Instruments: A Study in Medieval Danish Diplomats," *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde* 57 (2011): 163.

³⁷ Ditlev Tamm and Helle Vogt: "Creating a Danish Legal Language: Legal Terminology in the Medieval Law of Scania," *Historical Research*, (London, 2013), forthcoming.

³⁸ Lars Boje Mortensen, ed., *The Making of Christian Myths in the Periphery of Latin Christendom (c. 1000–1300)* (Copenhagen: Museum Tusculanum Press, 2006); Lars Boje Mortensen, "Den formative dialog mellem latinsk og folkesproglig litteratur ca. 600–1250," in Else Mundal, ed., *Reykholt som makt- og lærdomssenter i den islandske og nordiske kontekst* (Reykholt: Snorrastofa, 2006), 229–71.

reassessed by legal historians who have demonstrated how they are permeated by Roman and canon law.³⁹ In historical writing, two foreign impulses had an impact on Scandinavia. A secular tradition drawing on Greek and Roman historians was imported from an early date, and probably contributed to expanding the universe that the Scandinavians felt themselves to be part of.⁴⁰ An even stronger impulse came from the clerical tradition, which located human history within a Christian interpretative framework. Here history was envisioned as a fight between good and evil, although feuding and honour are also present in such accounts.⁴¹ Moreover, from the thirteenth century on, the influence from chivalric literature was formidable in Scandinavia, resulting in translations of nearly thirty romances into Old Norse, as well as influencing and transforming so-called indigenous genres such as family sagas and legendary sagas.⁴² Sweden's first major literary accomplishments were undertaken under the auspices of chivalric culture, with the writing of the *Chronicle of Duke Erik*, *Erikskrönikan*, and the Eufemia songs in the early fourteenth century.⁴³ Didactic genres were also introduced as a consequence of the

³⁹ Tore Iversen, "Jordeie og jordleie—Eiendomsbegrepet i norske middelalderlover," *Collegium Medievale*, 14 (2001): 79–114; Tore Iversen, "Property and Land Tenancy—Norwegian Medieval Laws and the European Learned Law," *How Nordic Are the Nordic Medieval Laws?*, 2nd edition, ed. Per Andersen, Ditlev Tamm, and Helle Vogt (Copenhagen: DJØF, 2011), 128–70; Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010); Per Andersen, *Legal Procedure and Legal Practice in Medieval Denmark* (Leiden: Brill, 2011).

⁴⁰ For instance, in genealogical myths Scandinavian kings and magnates traced their ancestry back to Troy and the Romans. See Würth, *Der "Antikenroman."* English kings were given the same kind of lineage by Geoffrey of Monmouth.

⁴¹ Lars Boje Mortensen, "Sanctified Beginnings and Mythopoietic Moments—The First Wave of Writing on the Past in Norway, Denmark and Hungary, c. 1000–1230," in Boje Mortensen, ed., *The Making of Christian Myths in the Periphery of Latin Christendom*, 247–73; Carsten Breengaard, *Muren om Israels hus* (Copenhagen: G.E.C. Gad, 1982); Inger Ekrem, Lars Boje Mortensen, and Karen Skovgaard-Petersen, eds., *Olavslegenden og den latinske historieskrivning i 1100-tallets Norge: en artikelsamling* (Copenhagen: Museum Tusculanum Press, 2000); *Historia Norwegie*, Inger Ekrem, and Lars Boje Mortensen, ed. (Copenhagen: Museum Tusculanum Press, 2003).

⁴² For an overview of chivalric literature translated into Old Norse, see Marianne E. Kalinke, *King Arthur North-by-Northwest: The Matière de Bretagne in Old Norse-Icelandic Romances* (Copenhagen: Reitzel, 1986). For the rise of legendary sagas and their relation to foreign impulses, see Torfi H. Tulinius, *The Matter of the North: The Rise of Literary Fiction in Thirteenth-Century Iceland* (Odense: Odense University Press, 2002); Jürg Glauser, *Isländische Märchensaga: Studien zu Prosaliteratur im Spätmittelalterlichen Island* (Basel: Helbing & Lichtenhahn, 1983).

⁴³ *The Chronicle of Duke Erik: A Verse Epic from Medieval Sweden*, ed. and trans. Erik Carlgquist, Peter C. Hogg, and Eva Österberg (Lund: Nordic Academic Press, 2012); Fulvio Ferrari, "Literature as a Performative Act: *Erikskrönikan* and the Making of a Nation," in Massimiliano Bampi and Fulvio Ferrari, eds., *Lärdomber oc skämtan: Medieval Swedish Literature Reconsidered* (Uppsala: Svenska fornskriftsällskapet, 2008); William Layher, *Queen Eufemia's*

increased communication with Europe. In homily books and princely mirrors, literature was used as a vehicle to implement new ideas.

The research of the last decades has made great progress in placing Scandinavia within a broader European context. Whereas scholars previously were inclined to view Viking Age and medieval Scandinavia as a remnant of a "Germanic" culture relatively unaffected by Roman as well as medieval Christian culture,⁴⁴ recent research has showed the untenability of such a position. Does this mean that Scandinavia is just like the rest of Europe? No, partly because "Europe" itself consists of diverse areas and does not constitute a single unity; and partly because Scandinavia also has its own particular characteristics. As a latecomer to European culture, it encountered different impulses from those that exerted an influence on the realms in the heart of Europe, and its strong vernacular tradition, and possibly also its less differentiated and stratified society,⁴⁵ gave the literary activity of the area a distinct flavour. Scandinavia shared many literary characteristics with other European realms, but nowhere in Europe can we find parallels to the Icelandic sagas. Viewing the Nordic region as a whole, one could say that the European impulse was strongest in Denmark, and that the vernacular tradition was most pronounced in Iceland. Saxo cherished Icelanders for their historical knowledge, but otherwise he was a man steeped in European culture.⁴⁶ If Iceland and Denmark furnish the extreme ends of this continuum, Norway and Sweden can be positioned in the middle.

Legacy: Middle Low German Literary Culture, Royal Patronage, and the First Swedish Epic (1301), Ph.D. diss (Cambridge, MA: Harvard, 1999).

⁴⁴ See for instance Aron Gurevich, *Categories of Medieval Culture* (London: Routledge & Kegan Paul, 1985); Annette Hoff, *Lov og landskab. Landskabslovenes bidrag til forståelsen af landbrugs- og landskabsudviklingen i Danmark ca. 900–1250* (Århus: Aarhus University Press, 1997); Ole Fenger, "Germansk retsorden med særligt henblik på det 7. Århundrede," in *Fra stamme til stat i Danmark—2. Høvdingemagt og Kongemagt*, ed. Peter Mortensen, et al. (Århus: Aarhus University Press, 1991), 155–64; Helge Paludan, *Familia og familie—To europæiske kulturelementers møde i højmiddelalderens Danmark* (Århus: Aarhus University Press, 1995).

⁴⁵ Bagge, *Society and Politics*.

⁴⁶ Eric Christiansen, introduction to book 14 of Saxo Grammaticus, *Danorum Regum Heroumque Historia*, Books 10–16, trans. Eric Christiansen, BAR International Series 84 (Oxford: 1980); Karsten Friis-Jensen, "Was Saxo Grammaticus a Canon of Lund?," *Cahiers de l'Institut du Moyen Âge grec et latin* 59 (1989): 331–57; Lars Boje Mortensen, "The Nordic Archbishoprics as Literary Centres around 1200," in *Archbishop Absalon of Lund and His World*, ed. Karsten Friis-Jensen and Inge Skovgaard-Petersen (Roskilde: Roskilde museums forlag, 2000); Kurt Johannesson, *Saxo Grammaticus*.

CONFLICT AND SOCIAL (DIS)ORDER IN NORWAY, C. 1030–1160

Hans Jacob Orning

The period from c. 1030 to c. 1160 has normally been viewed as a transitional period in Norwegian history, following the formation of a national kingdom and Christianization (c. 890–1030), and leading up to the so-called civil wars (c. 1160–1240).¹ As such, it has usually been analysed as a prelude to later developments, paving the way for a stronger state in the later twelfth century, and not on its own terms. Moreover, the prevalent practice of joint rule in the period has traditionally been regarded as a sign that society was unstable. The main cause for this instability has been sought in the weakness of central power, which carried the germs of the “civil wars.”²

This article has a twofold purpose. In the first part, I want to demonstrate that Norwegian society in this period was not particularly unstable. My hypothesis is that conflicts in this society should not primarily be viewed as disruptive, but rather as integrative, partly because they very seldom developed into large-scale war, and more fundamentally because a function of conflict in this type of decentralized society is to regulate

¹ This development is not unique to Norway. Its Scandinavian neighbours Denmark and Sweden, as well as realms in the eastern part of Europe—Poland, Bohemia, and Hungary—followed a similar pattern, with a first wave of national unification and Christianization, succeeded by a period of internal strife leading to a stronger state in the High Middle Ages. See Robert Bartlett, *The Making of Europe: Conquest Colonization and Cultural Change 950–1350* (London: Penguin, 1994), 7–11, 15–23. The martyr death of St Olav and the ousting of the Danish kings in 1035 initiated the period. The terminal date in 1160 has been suggested by Sverre Bagge, contrary to traditional opinion that 1134 marks the start of the civil wars. See Sverre Bagge, “Borgerkrig og statsutvikling i Norge i middelalderen,” (*Norsk Historisk tidsskrift*, 65 (1986): 145–97; Bagge, *From Viking Stronghold to Christian Kingdom* (Copenhagen: Museum Tusculanum Press, 2010), 34–65.

² Andreas Holmsen, *Norges historie fra de eldste tider til 1660*, repr. ed. (1939; repr., Oslo: Universitetsforlaget, 1977), 188–89, 219–27; Bagge, “Borgerkrig,” 156–65; Bagge, *From Viking Stronghold*, 40–53. This view is repeated in standard textbooks such as Ole G. Moseng et al., *Norsk historie I: 750–1537*, repr. ed. (1999; repr., Oslo: Universitetsforlaget, 2007), 114–15; Jón Viðar Sigurðsson, *Norsk historie 800–1300* (Oslo: Samlaget, 1999), 126–27. An exception to this view is Narve Bjørge, “Samkongedømme kontra enekongedømme,” (*Norsk Historisk tidsskrift* 49 (1970), 1–33. See the discussion in part II of the present article. As will become apparent below, I would argue that the term “civil wars” is tendentious and misleading. Nevertheless, because it is a key term in the work of earlier scholarship, its use cannot be entirely avoided here.

power relations.³ It is furthermore my contention that the dominance of one strong chieftain is more detrimental to this social order than a situation of rivalry between chieftains of roughly equal status, if we judge by level of violence, exploitation, and unpredictable behaviour. The second section will deal with possible causes for the changes that took place after c. 1160 in Norway. I shall argue that the traditional explanations for these changes operate from a teleological premise that state formation was unavoidable due to the alleged instability of society around 1160, and that this is manifested in a belief that the change must be attributed to internal, long-term, structural causes. Instead I shall argue that the causes for the change c. 1160 must be related to external factors over the course of a much shorter time span.

The first part will consist of an analysis of conflict and leadership in the kings' saga *Morkinskinna*, which tells about events in the period c. 1030–1160. This saga is particularly well suited to investigate social order in a kingdom where the king has not (yet) attained substantial institutional power, because it gives a detailed and very vivid image of the society in exactly this period (1030–1157).⁴ Moreover, *Morkinskinna* has seldom been used by historians as an historical source. It is generally agreed

³ This comes close to a functionalist argument. While admitting this, I nevertheless would stress the need for posing the question in these terms. The issue of social functions cannot be dismissed out of hand because of functionalist connotations, because the character of social order is a central theme bringing attention to how a society can be analysed as a system with internal coherence. The contrasting approach mentioned above—which views this period as merely a prelude to a later development—has until now been the prevalent mode of analysis.

⁴ *Morkinskinna*, ed. Ármann Jakobsson and Þórður Ingi Guðjónsson, 2 vols., Íslenzk fornrit 23–24 (Reykjavík: Hið Íslenzka fornritafélag, 2011); translated into English by Theodore M. Andersson and Kari Ellen Gade as *Morkinskinna: The Earliest Icelandic Chronicle of the Norwegian Kings* (Ithaca: Cornell University Press, 2000). The Icelandic text is hereafter cited by chapter number; the English translation as Andersson and Gade. *Morkinskinna* is only one of several kings' sagas telling of the period c. 1030–1160. Apart from reasons of convenience and manageability, I have chosen this saga because the three early "Norwegian synoptics" (*Ágrip*, *Theodoricus Monachus, Historia Norvegiae*) are very brief and yield little concrete information on the workings of society. *Heimskringla* from c. 1230 has been analysed in detail by Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1991). *Fagrskinna* is less detailed than the two above-mentioned sagas and will therefore be skipped in this analysis. A main difference between *Morkinskinna* and *Heimskringla* is that the former saga contains a large number of short stories in addition to the main narrative. There has been a prolonged discussion on whether these short stories are later interpolations. The most widespread view today is that they were part of the original narrative. See Ármann Jakobsson, *Staður i nýjum heimi: Konungasagan Morkinskinna* (Reykjavík: Háskólaútgáfan, 2002); Ármann Jakobsson and Þórður Ingi Guðjónsson, "Formáli," in *Morkinskinna* I; Andersson and Gade, "Introduction," 25–57.

that the saga was written by an (anonymous) Icelander around 1220 (c. 1217–22), in the first years after Haakon Haakonsson had been acclaimed king.⁵ Haakon's long reign (1217–63) would mark the end of the “civil wars” in Norway, but around 1220 the political situation in Norway was still unresolved.

Using *Morkinskinna* as a source for Norwegian history c. 1030–1157 carries some methodological challenges. First, the saga was written up to two hundred years after the events it narrates allegedly happened, which means that its historical trustworthiness can be doubted. Second, it was written by an Icelander, not a Norwegian, which is reflected among other things in some heavy boasting about Icelanders. My defence for utilizing the saga as a historical narrative goes along two axes. First, the social structure probably had not changed radically between the time to which *Morkinskinna*'s narrative refers and the time when it was put into writing. True, conflicts had become more protracted and factions more stable since the middle of the twelfth century, when the saga narrative ends. Nevertheless, the scope of this change should not be exaggerated. The situation in the 1220s was very unsettled, and different aristocratic factions still struggled for supremacy in a “feud-like” way.⁶ Second, this way of using *Morkinskinna* as a source for investigating social order does not presuppose that it told the story accurately when it comes to names and events. Details may have been—and were, in all probability—changed due to bias and bad memory, but that does not mean that its author could invent the whole socio-political framework within which the actors operated. Sverre Bagge formulated this approach in the following way concerning the stories in *Heimskringla*:

Though we [...] have to reject them as evidence of the individual events they describe, it is a little more likely that these stories, whether true or

⁵ Andersson and Gade, “Introduction,” 66–72; Ármann Jakobsson and Þórður Ingi Guðjónsson, “Formáli,” 14–19.

⁶ Birgit Sawyer criticised Sverre Bagge for making Snorri Sturluson too “unconscious” in his social view, arguing that his view was formulated much more consciously as a reaction to and possibly an attack on the new monarchical order underway with Haakon Haakonson: Birgit Sawyer, “Samhallsbeskrivningen i Heimskringla, (Norsk) Historisk tidsskrift 72 (1993), 223–37. Sverre Bagge replied that the period when Snorri wrote *Heimskringla*, around 1230, was too early for such an ideologized view of literature to emerge: Sverre Bagge, “Samfunnsbeskrivelsen i Heimskringla: Svar til Birgit Sawyer,” (Norsk) Historisk tidsskrift 73 (1994), 205–15. On the situation in the 1220s, confirming Bagge's opinion, see also Kåre Lunden, *Norge under Sverreætten 1177–1319* (Oslo: Cappelen, 1976); Hans Jacob Orning, “Håkon Håkonsson, Skule Bårdsson og norsk statsdannelse i første halvdel av 1200-tallet,” (Norsk) Historisk tidsskrift 76 (1997), 2–19.

invented, contain some accurate information on society [...] [T]he social conditions that formed their background cannot be completely different from the actual ones.⁷

I will follow a similar approach in analysing *Morkinskinna*. As for the fact that *Morkinskinna*'s author was an Iclander, this should not deter us from using it as a source for Norwegian history. Bonds between Norway and Iceland were very close in the early thirteenth century, and the two societies did not differ fundamentally in socio-political structure or historical development in the High Middle Ages.⁸ Finally, my aim is not to recover an authorial intention behind *Morkinskinna* nor to study its royal ideology, which has been the aim of literary historians,⁹ but rather to investigate the underlying ideas of social order in the saga narrative. Used in this manner, the saga has a wider application, and the obvious Icelandic patriotism is irrelevant to the more fundamental theme of what type of social order it describes. Thus, *Morkinskinna* can be used as a source for the period c. 1030–1160, provided we investigate phenomena characterized by a certain stability, such as social order, conflicts, and leadership.

In the second part of the article, which concerns the changes after 1160, I will not analyse primary sources in detail, but discuss different views on this transition, adding my own view, which can be regarded as a continuation of my arguments from the first part of the article about the nature of social order before 1160.

⁷ Bagge, *Society and Politics*, 239. However, Bagge is rather cautious in drawing inferences about historical conditions from this literary work. See William Ian Miller, *Bloodtaking and Peacemaking* (Chicago: Chicago University Press, 1990), 46 for a similar approach to the Icelandic sagas: "Fictionalizing dialogue, fictionalizing events, inventing characters and their psychologies might unnerve the political historian, but they need not upset the social historian at all. Even these fictions are constrained by the ranges of the possible in the culture and hence have useful social information to reveal."

⁸ Icelandic society around 1220 was not very different from that of Norway, even if it had no king. As has been argued convincingly by Jón Viðar Sigurðsson, Iceland experienced a development towards centralization in the High Middle Ages which was comparable to the Norwegian one: Jón Viðar Sigurðsson, *Det norrøne samfunnet* (Oslo: Pax Forlag, 2008), 102–16.

⁹ Ármann Jakobsson has argued that the allegedly skeptical attitude of *Morkinskinna*'s author to divided rule can be read as support of King Haakon's position favouring a strong monarchy, and as a manual to courtly behaviour, echoing the message of *Tristrams saga ok Ísönds*, which was probably translated into Old Norse at the king's initiative in 1226. See Ármann Jakobsson, *Staður i nýjum heimi*, as well as numerous articles. Theodore M. Andersson claims that the saga is far less monarchical in its approach and less influenced by courtly ideals than Ármann suggests: Theodore M. Andersson, "Five Saga Books for a New Century: A Review Essay," *Journal of English and Germanic Philology* 103 (2004), 505–27.

*C. 1030–1160: Conflicts as Part of the Social Order**Rivalry between Equals*

Monarchy was established in Norway in the tenth century, but on a very weak basis of constant ambulation and alliances with local magnates. Before the middle of the twelfth century practical politics were relatively unaffected by formal institutions.¹⁰ Co-rulership was a distinct feature of the political set-up in the period between 1030 and 1160.¹¹ This practice was partly the result of an inheritance norm whereby all royal sons had equal rights of inheritance after a deceased father, and partly a consequence of huge geographical distances, which made it impossible for one ruler to control it all by itineration.¹² Whereas the practice of joint rule technically can be viewed as a means of sharing power, in practice it meant that the co-rulers were rivals.¹³ This political culture was a distinctively open one with very few formal status markers in terms of institutions or honorary titles.

¹⁰ Before the middle of the twelfth century, the royal retinue was not much differentiated beyond forming a royal entourage/military troops, taxes were not introduced apart from dues for the maintenance of ambulating kings, and laws were dominated by local customs. The king had a naval fleet at his disposal, but he had to negotiate with magnates and peasants in order to gather it. See Knut Helle, *Norge blir en stat 1130–1319* (Bergen, Oslo, Tromsø: Universitetsforlaget, 1974) and Bagge, *From Viking Stronghold* on the basics of state formation; Geir Atle Geir Atle Ersland and Terje H. Holm, *Norsk forsvarshistorie I* (Bergen: Eide, 2000) on the naval levy.

¹¹ Magnus the Good co-ruled with Harald Hardruler in 1046–47, Olav and Magnus Haraldssons from 1066 to 1069, Olav's son Magnus and his cousin Haakon Magnusson in 1093–94, and the three sons of Magnus after their father's death in 1103: Olav (d. 1115), Øystein (d. 1123) and Sigurd (d. 1130). Joint rule was moreover practiced between Sigurd's son Magnus and his alleged uncle Harald Gille (1130–34), and later among the three sons of Harald Gille (1136–58).

¹² The vast region of Norway has a coastline stretching about 2500 kilometers (ten times as long if the fiords are included). Still, these coastal areas have formed the core of the Norwegian realm far beyond the Middle Ages. Many parts of the inland area were difficult to access, and a sign of its lesser integration comes from its far lower taxes in the Middle Ages.

¹³ Norwegian historians before c. 1970 considered joint rule as a disruptive political arrangement. In 1970, Narve Bjørge stated that joint rule was functional because it would have been very difficult for one king to govern this large territory alone: Bjørge, "Samkongedømme." Sverre Bagge agreed with Bjørge that joint rule was a flexible arrangement, but criticized Bjørge's functional assumptions, arguing that it was rather an ad-hoc solution to a power struggle between different aristocratic factions. Thereby he downgraded Bjørge's view of the arrangement as a fairly stable one. Sverre Bagge, "Samkongedømme og enekongedømme," (*Norsk Historisk tidsskrift* 54 (1970).

Morkinskinna gives a vivid picture of this open political culture, in which conflict was always in the air, and was not limited to specific instances or periods. Even in “friendly” contexts such as feasts, rivalry and posturing were endemic. Tensions sometimes escalated into situations characterized by a high level of threatening and aggressive behaviour. Kings—as well as other people—were constantly measured and judged by others. The unsettled situation of constant rivalry never gave the actors any relief. The co-rule of Magnus the Good and Harald Hardruler (1046–47) offers a good opportunity to discuss these issues, because it is described in some detail in the saga. When Harald first arrives in Norway after a career in the Byzantine army, Magnus is reluctant to share power with him, and it is not until Harald has strengthened his position that Magnus is willing to accept him as a co-ruler. This is marked by a formal agreement. However, this arrangement does not put an end to rivalry. After the kings have settled, Magnus issues invitations to splendid feasts. Harald follows up, and the saga tells that he “held feasts in competition with king Magnus” (veitir nú af kappi Magnúsi konung, 16).¹⁴ Even though he knows he has the upper hand in this game of generosity, as he has a fund of riches from Byzantium, Harald cannot resist using his advantage for what it is worth. After having given lavish presents to Magnus, he asks him: “where is the gold that you can reciprocate this goblet with?” (hva er nú þat gull er þú reiðr nú hér í gegn þessum knapphöfda, 16). Magnus then gives him a ring, which he says is his last piece of gold. Harald replies that the ring had belonged to his own father, and that Magnus’s father, St Olav, had appropriated it: “It was not easy for the petty kings when your father was at his mightiest” (ekki var þá gott smákonungum í landuni er faðir þinn var sem ríkastr, 16). The affront and challenge are unmistakable, even if they do not result in open enmity.

The formal agreement between Magnus and Harald specifies that the two kings should rule together, but not on an altogether equal basis, as Magnus is to have the first seat at table and the best harbouring conditions. Shortly afterwards, Harald arrives first in a harbour and occupies the best place, and when Magnus arrives later and finds that the best position has been taken, he immediately interprets this as an insult (15). The conflict has evolved out of differing interpretations of the stipulations in the treaty. Magnus’s side argues that Harald has broken the agreement, whereas Harald holds that the stipulations do not apply in

¹⁴ All English translations are from Andersson and Gade.

this case because he arrived beforehand. Now large-scale fighting is brewing. Magnus's men urge him to take action, arguing that if he concedes to this infringement, a series of ever-growing insults will result, eventually undermining his power altogether. This episode shows a "snowball-effect" reasoning that brings out the most antagonistic potential of the mode of thinking focused on vengeance and honour, and attests to the extreme touchiness of the actors in the game, as well as to the high level of threats and aggression. In this society, there was much uncertainty as to whether a conflict would result in violence or not, and even a minor incident could be sufficient to set the whole train of insults and counter-attacks in motion. It is nearsighted to characterize it as governed by diffuse norms and arbitrary behaviour, and to interpret the combination of fluid power relations, allegedly scant respect for formal agreements, and easily ignitable escalation of conflicts as a confirmation that the practice of joint rule was an unstable arrangement.

If we look at the results of this tense encounter, this conclusion must be modified. Confronted with Magnus's hostility, Harald ends up giving in to what he terms his co-ruler's "childish act" (*æskubragð*, 16). The justification is definitely a face-saving maneuver, which is not considered valid among all men, not even all of his own men. Still the alternative could be worse. An important reason for Harald's withdrawal is probably that he does not consider himself strong enough to compete with Magnus on this occasion. Instead of choosing a prolonged confrontation with an uncertain outcome, it could be better to terminate the conflict rapidly, and camouflage the loss of honour by trying to ignore it, a strategy that some anthropologists call "lumping" the case.¹⁵ Thus, the episode shows the flexibility with which conflicts could be terminated before they grew to large-scale encounters.¹⁶ It was possible to argue for moderation rather

¹⁵ On lumping, see Laura Nader and Harry Todd Jr. (eds.), *The Disputing process. Law in Ten Societies* (New York: Colombia University Press, 1978), 9. On the opposite strategy, terminating a conflict because the opponent is considered an unworthy one, see, for example, King Øystein Magnusson's reaction to the magnate Ingemar after the latter insults him by referring to Øystein's failing to avenge his father: he "paid no heed to these foolish words. He let kindness and wisdom be in charge, as he normally did." ("gefr at øngan gaum fílskuorðum þeim er hann mælti; lét þá enn ríkri verða gæzku sína ok vit, sem hann gærði jafnan," 75)

¹⁶ See Miller, *Bloodtaking* 244–47, 273–76, on the necessity for both parties in a conflict to be motivated for combat in order to have a feud. If only one party wanted conflict, the result would most likely be a quick resolution. Bagge identifies the same social mechanism in *Heimskringla*, which delimited conflict and gave parties an opportunity to withdraw: Bagge, *Society and Politics*, 121–23. Likewise, Jón Viðar Sigurðsson points out that a great

than the aggressive pursuit of honour in a case, because norms usually did not point unambiguously in one direction. There were often several norms which could be applied in a situation. This kind of rivalry hardly threatened the societal stability. The relationship between Magnus and Harald is a good example of how power contests could go on within the confines of a political culture focused on hostile, but rather limited, displays of power and posturing.¹⁷

This combination of a high level of threats and hostility on the one hand, and a limited amount of outright fighting on the other, is not peculiar to this situation. In fact, it is something of a structuring principle in *Morkinskinna*. The saga makes no secret of the strained relationships between co-rulers. To the contrary, such enmities are spelled out in detail, and seem to be a distinguishing feature of the political game. Most characteristic is the *mannjafnaðr* (comparison)—between the brothers Sigurd Jorsalfar and Øystein Magnusson, who ruled together for twenty years (1103–1123). The clash originates at a feast where Øystein, bored by his brother's silence, suggests that they compare virtues and vices in order to cheer up the party. Soon the contest turns into a competition in delivering insults to each other, and the brothers part greatly upset (78).¹⁸ One cannot but wonder that the allegedly wise King Øystein initiated such a risky contest. One reason may be that he was discontented with the status quo. The saga hints that Sigurd was considered the leading king of the two, and this may have triggered Øystein's sustained effort to equalize the relationship, and possibly surpass him.¹⁹ Another cause for behaving so challengingly would have been that the real risk of its resulting in large-scale fighting or unacceptable enmity was fairly low; lower than the saga described it as being. In spite of several clashes and challenges, Sigurd and Øystein keep their peace, and no large-scale encounter is reported. Similar tensions can be found in each instance of co-rule in *Morkinskinna*.²⁰

majority of cases in Freestate Iceland were solved by settlement: Jón Viðar Sigurðsson, *Chieftains and Power in the Icelandic Commonwealth* (Odense: Odense University Press, 1999).

¹⁷ On the role of ritual in circumscribing open enmity, see Hans Jacob Orning, "Rituals and Social Order in a Society without a State" (forthcoming).

¹⁸ *Morkinskinna* relates one more encounter between the brothers before Øystein's death, and here King Sigurd likewise challenges his brother, by turning up too late for an appointment (80).

¹⁹ Indications that Sigurd was considered the main king emerge in particular in the so-called *Tingasaga* (77), as well as the Borghild episode in *Heimskringla*.

²⁰ During the co-rulership between Harald Hardruler's sons Olav Kyrre and Magnus II no conflicts are reported, probably because Magnus soon fell ill and died (55). In

Rivalry characterizes the relationship between kings in *Morkinskinna*, but kings cannot a priori be isolated as a separate category of political players. Horizontal rivalry could also at times operate between kings and leading magnates. Often the real power differential separating kings from leading magnates could be small, especially if the king was young and inexperienced. This was the case in the period of the long minority of Harald Gille's children beginning in 1136, which has often been considered a turning point leading to increased violence and "civil war." However, this situation was no novelty. When Magnus the Good became king in 1035, Einar Tambarskjelve was the king's foster-father and the real governor of the country. This made him ill-at-ease when Harald Hardruler came to Norway in 1046, because Harald's arrival threatened his dominant position. As *Morkinskinna* tells the story, tensions increased when Einar, immediately after Magnus died, refused to accompany Harald in a plunder expedition, justifying this by his overriding obligation to look after the deceased king's affairs (29). Later, two cases bring the conflict to a head: Einar's protection of a thief so that the king is unable to execute him (36), and his appropriation of a treasure which the king claims as his own (37).

Is this conflict an intolerable one, breaking the boundaries of social stability? On the one hand, both parties seem to have taken the conflict too far. The saga author is explicit about the reason why conflict arose: "Einar wanted to compete with the king in honour in the whole of Trøndelag" (Einar vildi jafnask við konung í ríkdóm allt í þrændalögum, 36), and he terms magnates who search out the Danish king in order to oppose King Harald "immoderate" (*ofkátir*, variant *óstýrilátir*, 39). King Harald's eventual slaughter of Einar and his son is not described as a glorious act (39). On the other hand, tensions like this one are not necessarily very aggravating or disruptive. Einar certainly acknowledges Harald as his king, and

the next generation, tensions soon emerge between the cousins Magnus Bareleg and Haakon Magnusson. Magnus is angry when Haakon gives substantial legal reliefs to the peasants, arguing that Haakon has given away legal rights which also belonged to him. Maybe more importantly, Haakon's strategy results in an immense popularity which threatens to undermine Magnus's own position. This is revealed during a confrontation that almost ends in battle (59). Rivalry soon develops after the death of Magnus's son Sigurd Jorsalfar, when Harald Gille proclaims himself king in violation of his oath to Sigurd never to do this. Magnus and Harald spend a winter together in Nidaros. Here they almost end in fighting, which the saga attributes to their supporters (*Frissbók*, chs. 89 and 90). During the joint rule of the minor sons of Harald after 1136, rivalry evolves between the different factions, ending with Inge's men killing the two contenders in 1155 and 1157 (108). However, this conflict resembles a feud. See Bagge, *From Viking Stronghold*, 42–45.

he is eager not to get into trouble with him,²¹ although in such situations many men were ready to enter as mediators in the conflict (37).²² Moreover, Einar has a wide scope of action vis-à-vis the king. When Harald makes a test of loyalty by sending false letters allegedly from the Danish king, Einar distinguishes between his “private” sympathies for the Danish king, and his “official” duty to support Harald in protecting the country against enemies (38). Harald laments Einar’s reluctance, but he accepts his attitude, and even gives him an invitation afterwards, in order to confirm their friendship (38).

This kind of tension is not peculiar to Einar’s relationship to Harald, as it even develops with Magnus the Good, his own foster son.²³ Moreover, Trøndelag continues to be an area controlled by strong magnates after Einar’s death.²⁴ Finally, Trøndelag is not unique in being dominated by mighty magnates. When *Morkinskinna* occasionally turns to other areas, the same picture emerges. There certainly is a difference between royal and non-royal leaders, in that magnates are normally not expected to operate at the same level as kings.²⁵ It is intolerable for a magnate to fight

²¹ Cf. Einar Tambarskjelve’s reluctance to support the case of Þorsteinn Hallsson (22) discussed below. Another example is Gregorius Dagsson’s sustained efforts to avoid conflict with King Sigurd (106).

²² Mediators tried to appease King Magnus towards Sveinke (60). Mediators or arbitrators probably served in many other conflicts; witness, for example, King Magnus’s criticism that no-one asked for mercy for Steigar-Tore (59).

²³ King Magnus the Good is very critical of Einar Tambarskjelve’s protection of Þorsteinn Hallsson, although Einar is forced into this situation because his son has become a supporter of Þorsteinn’s. Three times Einar attempts to get the king’s mercy for Þorsteinn, but King Magnus refuses each time, referring to his wrath towards the man. After the third try Einar retributes by threatening to leave the king in anger, and finally the king gives in (22).

²⁴ Ottar Birthing seems to have enjoyed a somewhat similar position to Einar’s, although his kinship bonds are far more modest, as he is a peasant and is introduced into the retinue as a candle bearer—a typical position of young men who later attained more advanced offices (81). See Steinar Imsen, “Innledning,” *Hirdskræen* (Oslo: Riksarkivet, 2000). As a result of a brave, but highly dangerous act (rescuing the king’s book from the fire), Ottar is promoted to *lendman*—the highest position at court—by King Sigurd Jorsalfar (81). He is for a time a main councillor of King Sigurd Haraldsson, but through his marriage with the widow queen Ingerid he switches sides in support of her son, King Inge (102). King Sigurd Haraldsson, who is held responsible for killing him, has to promise to submit to an ordeal in order to free himself of the accusations from angry peasants (103).

²⁵ The difference is illustrated by what happens after King Haakon Torefostre dies, when his men choose another king and launch open opposition to King Magnus (59). To Magnus, this marks a transition from a normal rivalry to a dishonourable conflict, not because the conflict has grown in proportion, but because he does not consider their leader to be a legitimate king (59). Nevertheless, his will to condone this is demonstrated by his willingness to give mercy to Steigar-Tore—the leader of the group (59).

against the king, but only a stubborn king would override the wishes and needs of magnates if he wanted to obtain a foothold in an area. The solution is a symbolic sovereignty, whereby the magnates, in return for a symbolic and ritual submission to the king, in practice receive more or less free rein in their local governance.²⁶

Just as it can be difficult to make a distinction between national and regional leadership, the line between internal and external conflicts can be rather blurred in *Morkinskinna*. Danish kings sometimes played such an important part in conflicts in Norway that it would be misleading to classify them as external to the rivalry going on within the confines of the Norwegian realm (which were also unclear). *Morkinskinna* begins in the period of Danish hegemony in Norway under the rule of Svend Alfivason (1030–1035), but this hegemony came to an end as a result of Norwegian opposition in the aftermath of the death of Knud the Great in 1035. Thereafter, relations between Norway and Denmark became more equal for the whole period up to c. 1160.²⁷ The relationship was a tight one, marked by intense rivalry. This is demonstrated in *Morkinskinna* when Harald Hardruler comes to Norway from Miklagard and Gardariki in 1046. He first meets with Svend Estridsson, the Danish king who had formerly been an earl of King Magnus, to whom he is related through his wife.²⁸ Thereafter he goes to meet Magnus, and when the latter turns down Harald's proposal for joint rule, Harald returns to Svend and together they

²⁶ This is demonstrated in the case of the magnate Sveinke Steinarsson, who lives east in Viken and likewise had supported King Haakon against Magnus (60). When after Haakon's death Sveinke refuses to yield to Magnus, Magnus sends an embassy to oust Sveinke from his territories as punishment for his disobedience. However, it is only when the king comes to Viken with a fleet that Sveinke becomes less assertive. Haakon Ivarsson also acts as a rival to the king on a fairly equal basis. King Harald receives support from Haakon against the Danish king (46), and in return Harald promises him Magnus's sister and an earldom. Later the king refuses to make him earl, and the result is that Haakon openly opposes the king and joins forces with the Danish and Swedish kings against Harald (46; the story differs in *Heimskringla*, where Haakon is introduced as a relative of Einar Tamarskjelve's, with the prime responsibility for avenging Einar's death on Harald Hardruler). A final example of a magnate operating as almost equal to kings is Gregorius Dagsson from western Viken, who becomes embroiled in a conflict with King Sigurd (106). See Hans Jacob Orning, *Unpredictability and Presence: Norwegian Kingship in the High Middle Ages* (Leiden: Brill, 2008), on this type of symbolic authority.

²⁷ After a period of strife, peasants of both realms press on Hardeknud in Denmark and Magnus the Good in Norway to make peace in 1038 (3). After the death of Hardeknud, Magnus claims the overlordship of Denmark. Svend Ulfsson (Estridsson) is appointed earl by Magnus, but shortly afterwards he proclaims himself king of Denmark.

²⁸ Ellisif is the daughter of the king of Gardariki, whose wife was a cousin of Svend's (15). Harald acknowledges his bond to Svend, but he wants to meet with Magnus before he chose his strategy (15).

plan an attack on Magnus (16). This makes Magnus change his attitude to Harald, and after much to-ing and fro-ing Harald achieves an agreement with Magnus.²⁹ Thus, the first documented establishment of joint rule in Norway is shown to have taken place in a strategic situation involving Danish kings on an equal footing with Norwegian ones. Even if the Danes were not always present in the Norwegian context, rivalry was latent, and at irregular intervals it surfaced, resulting in open struggles.³⁰ However, it was not until after 1157, when Valdemar the Great acceded to power, that the Danes once again posed a serious threat to Norway.³¹

Morkinskinna gives no historically reliable image of Norwegian society in the period 1030–1160. Its author had limited access to information, in particular about the early period, and he furthermore had his own agenda in writing the way he did. Nevertheless, leaving bias and a shortage of information aside, the basic picture of society given in *Morkinskinna* looks

²⁹ King Magnus sends a secret letter to Harald asking for negotiations (16). Now Harald faces the difficult situation of how to find a pretext for changing sides “so that people should not consider him as unreliable.” (eigi virði honum þetta til lausungar, 16). His method is to pretend that the Danish have broken their truce and attacked him. This furnishes him with sufficient excuse to switch sides, although the Danes reproach him for his wavering (16). However, before Magnus will accept him as co-ruler, Harald has to push forward even further. He goes to his patrimonial lands in Opplanda, and is acclaimed king by Steigar-Tore, although most peasants are anxious not to provoke King Magnus. This, combined with Svend Ulfsson's opposition in Denmark, forces Magnus to yield, and he enters into negotiations with Harald (16).

³⁰ Later in Harald Hardruler's reign, he uses the relationship with the Danish king as a litmus test for Norwegian magnates. After having gotten hold of a Danish royal stamp, he fabricates letters to three magnates in order to find out whether they would support the Danish king. Two of them are willing to support the Danish king, albeit not directly against the Norwegian king, whereas the last one is utterly unwilling (38). The reality of such a scenario is demonstrated when the magnate Haakon Ivarsson travels to the Danish king after having been frustrated by King Harald (46). Here he has a base from which he can launch attacks and be in contact with his patrimonial lands for a long period of time. After Sigurd Slembe kills Harald Gille, the blinded king Magnus appeals to the Danes to conquer Norway, arguing that “it was free to take” (Nóregr myndi vera lauss), as it was without a king and able magnates (95). Both Magnus and his father, Sigurd, had been married to Danish princesses whom they had divorced (88, 90).

³¹ I shall return below to the Danish threat after 1157. England also plays an important role in *Morkinskinna* following the death of Knud as English king in 1035. Harald Hardruler falls in 1066 at the Battle of Stamford Bridge in an attempt to (re)gain the English throne (53–54). Olav Kyrre later must defend his decision not to take action after his father (57), whereas his son Magnus raids England as vengeance, which ends with a settlement and marriage (61). Finally, Øystein Haraldsson justifies raids in the British Isles as revenge in the mid-twelfth century (62). Swedish and Russian kings appear occasionally in *Morkinskinna*, and webs of interaction occasionally stretch even wider, as in the case of Harald's famous career in Miklagard, and when Magnus's sister becomes embroiled in proposals from the emperor Henry III and one of his dukes, Ordulf from Saxony, whom she married (6).

very similar to what other sagas tell about the period, and corresponds to how we can expect decentralized societies of this type to function.³² Rivalry at the top level of society was endemic in Norway in this period. It involved not only co-rulers competing for power and resources, but also mighty magnates and foreign kings. This attests to the fluid national borders, as well as to the precarious power of kings. Yet in spite of the constant presence of challenges and threats in *Morkinskinna*, they seldom evolve into serious, large-scale conflicts. The reasons are probably that the balance of power has made each contestant very careful about how to relate to others, and that there are normally more exits from difficult situations than the strict demands of honour implied. The next question is how the horizontal rivalry at the top level of society impinged on the needs of lesser men for protection. Did the rivalry create situations where clients became victims of irreconcilable demands, or was their support so valuable that leaders hesitated to put too-strict demands on them?

Leadership/Protection

In medieval society, peace was something that had to be established actively and on a personal basis, as pointed out by T.B. Lambert:

Our peace has become so familiar, so constant a part of our normal way of life that we have come to take it for granted [...] Peace and protection are so far from our everyday concerns that their conceptual links are far from obvious.³³

In the medieval face-to-face world, neutrality or indifference was rarely an option. This implied that people had to be constantly on the watch for what was happening, who entered into hostile relations, and who became friends. The ubiquity of rivalry made it crucial to establish bonds with effective patrons for protection. There was a constant search for what Lambert calls “protective power,” signifying “a guarantee that the recipient

³² The results from *Morkinskinna* are basically in accordance with Sverre Bagge's analysis of *Heimskringla* (Bagge, *Society and Politics*), as well as with analyses of Freestate Iceland (Miller, *Bloodtaking*; Jón Viðar Sigurðsson, *Chieftains and Power*). Moreover, they fit well with the studies done by Gerd Althoff in the Ottonian Empire: Gerd Althoff, *Family, Friends and Followers: Political and Social Bonds in Early Medieval Europe* (Cambridge: Cambridge University Press, 1994); Althoff, *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt: Primus, 1997).

³³ T.B. Lambert, “Introduction,” in *Peace and Protection in the Middle Ages*, ed. T.B. Lambert and David Rollason (Durham: Centre for Medieval and Renaissance Studies, 2009), 1.

will be left in peace, a guarantee whose efficacy depends on the ability of the protector to avenge any breach.”³⁴ Because conflict was so natural, protection was an equally urgent issue.³⁵

The most central protector in *Morkinskinna* is the king. The crucial importance of obtaining his support is illustrated by the situation of outsiders, who have scant social networks in Norway. For example Skule, son of the English earl Tostig is offered land in Norway by the king after his father's death at Stamford Bridge in 1066. He then asks the king for farms “in the vicinity of the town where you usually sit during Christmas.” (nær kaupstað þeim er þér eruð vanir at sitja ok taka jólaveizlur, 55) If Skule has property far away, he will risk its being confiscated. Near the king he can at least count on the king's protection.³⁶ Nor is acting as protector exclusively a royal privilege. The Icelander Þorsteinn Hallsson is made an outlaw because he has not obtained royal permission to leave the country.³⁷ When he returns to Norway, he offers some valuable horses to Einar Tamarskjelve, but the latter refuses to accept the gift, because “much lies in your case” (mikit liggir nú á þínu máli, 22). Þorsteinn has more success giving the horses to Einar's son Eindride, however. Although Einar is wary of Þorsteinn, he is certainly not opposed in principle to patronage. In the end he supports Þorsteinn's case because of his son's involvement. Patronage was a social institution permeating society at all social levels.³⁸

³⁴ Ibid., 3.

³⁵ Yet even if the mass of people did not participate directly in the power play, they were not completely cut off from political influence. The institution of goading shows that leaders needed to pay attention to the wishes of their followers. People of inferior status also occasionally played a role in this game at the summit of society. *Morkinskinna* contains a remarkable story about a slave rising to kingship, who is eventually put down, testifying to the flexibility, as well as to the limits, of the political hierarchy (41).

³⁶ A similar urgency to gain royal protection is demonstrated when Stúfr the Blind comes from Iceland. As a reward for entertaining the king, Stúfr first asks to have a royal letter confirming his rights in an inheritance case he has in the eastern part of country, and then to be admitted into the king's retinue (51). On the importance of presence and the king's support, cf. Harald Hardruler's confiscation of Haakon Ivarsson's properties, even though Haakon had already sold them (46).

³⁷ The king said the penalty “should deter others from breaking the law” (svá skulu leiða öðrum lagabrotit, 22).

³⁸ There are many more examples in *Morkinskinna* of magnates acting as patrons to protect men who offer their services in return, or who otherwise demonstrate their dependency. Ása-Þórður is an Icelander who enters into a relation with a rich woman and grows prosperous. However, Ása's relatives do not like the relationship and consider it dishonourable. When Ása's richest relative, Vidkun, comes to town, Þórður is advised to make a poem to him, because “in that way you may have his protection.” (kvæmisk svá í tryggð við hann, 75) Vidkun likes Þórður's poem and changes his mind about him. He offers him a ring, but Þórður says he prefers to have his friendship (75). The friendship soon proves

Sometimes the rivalry in *Morkinskinna* concerns the issue of protection, which could become an urgent matter of discord. *Tingasaga* is on the surface the story of a legal dispute between King Øystein and King Sigurd, but the core of the narrative is that after the magnate Sigurd Ranesson has incurred the wrath of King Sigurd, this activates all the mechanisms of seeking protectors and advocates. It is insupportable to have a royal enemy, and Sigurd Ranesson goes to extreme measures in order to gain the king's mercy (77).

Conflict associated with royal protection could extend all the way down to the local level, as exemplified by the story of a certain Trond from Opplanda. Trond has supported King Harald, because he is a relative of Kalv Arnesson, one of Olav Haraldsson's killers. When King Magnus travels to Opplanda to collect contributions in kind, he meets with Trond, who mentions his family's strained relationship with the royal family and then asks the king if he would be willing to exchange clothes and weapons with him. Magnus agrees, and so Trond becomes his man (20). King Harald is very discontented with this, and sends several expeditions to kill Trond, but Trond each time discovers these ploys, and Harald's men depart in disgrace (20). The episode illustrates that rival leaders could make protection a matter of combat, given the right circumstances. Yet this case is not typical of royal patronage on a local level. First, it concerns a change of loyalty, which is both risky and rather atypical. It is risky because Trond is a powerful man with a dominant say in his surroundings; and it is atypical because he has previously supported Harald staunchly. Second, the episode becomes enmeshed in the intense rivalry between the two kings. Through his course of action, Trond sends an unmistakable signal that he considers Magnus a better patron than Harald. As such, it is a provocation that begs for a response, and it gives Harald few other options than to try to counter Trond's defection.³⁹

its worth when Þórður gets into conflict with the *lendman* Ingemar. For other examples, cf. Sveinke (60), Øystein (26), Gregorius (106), Sigurd Ranesson (77). This kind of relationship could also involve supernatural patrons such as saints (6, 15).

³⁹ Harald ultimately succeeds in his efforts to rid himself of Trond. In the end Magnus declares that Trond will not be able to withstand Harald—thereby implying that he himself is unable to offer effective protection. He thereafter arranges for Trond to sail to Greenland (20). This serves to illustrate that in some cases a request for protection might be a miscalculation. Later, another magnate from Opplanda—Øyvind—tries to protect an Icelander (Hreiðarr the Ugly) from Harald's wrath. The king offers his friendship if Øyvind will hand over the man to him, but Øyvind refuses, and it is only the fearlessness of Hreiðarr which saves his life (26).

In cases where local protection did not activate power struggles at the top level, kings reacted otherwise. Kings knew all too well that, in order to govern, they had to make large concessions to intermediaries. If they ignored this, the shortsightedness of such behaviour would soon be revealed, as in the story of Sveinke Steinarsson from *Elv*. Magnus wants to outlaw Sveinke because of Sveinke's support for his rival king Haakon Torefostre, who has recently died. The other magnates living nearby know that this would be a foolish measure, and try to dissuade the king so that the area will not be left unprotected, but to no avail. Sveinke is outlawed, and during his absence the area is so troubled with plundering that the only viable option is to urge him to return (60). The explicit moral of the story is that King Magnus got his way, but the implicit message is that the area needed intermediaries, and that the king normally had little say in this.⁴⁰

Even in their immediate surroundings kings often behave curiously passively in *Morkinskinna*. Ása-Þórður is an Icelander who has formed a partnership with a rich woman and grown prosperous. At a large meeting of the royal retinue he runs into conflict with the *lendman* Ingemar, because he has caught one of Ingemar's men red-handed in his own tent (75). Þórður wants to have the man convicted in court, but Ingemar requires Þórður to deliver his man back to him, as "he could not convict one of his men to death" (*hann landi myndi eigi dæma men hans til dauða*, 75). Now a process of help-seeking starts on Þórður's side. He sends a message to his relative Vidkun, who comes "sooner than expected" (*ván bráðara*, 75). Vidkun in his turn sends an envoy to his fellow Sigurd Ranesson, with the stipulation that if he is unwilling to offer his support, he should be reminded of "who were most brave when the Lapps harried his farm" (*hverr honum dugði bezt þá er Finnar tóku bú hans*, 75). Sigurd Ranesson joins the case, and sends for King Øystein. However, the king is reluctant to involve himself in the conflict, arguing that both parties are powerful, and that the case should be solved by the parties involved.⁴¹

⁴⁰ Sveinke came from the border area near Sweden, which may have contributed in making conditions more insecure, but the role of the local leader in offering protection is hardly atypical in this case.

⁴¹ *Morkinskinna* also recounts other instances where the king acted remarkably passively on occasions of strife amongst magnates and retainers. Einar Flugá is a magnate who operates quite independently of royal demands. It is said in the saga that he never paid compensation when he had killed someone. Still, his friendship with the king is good, "even though it varied somewhat." (*þó at þat léki nökkvat á ýmsu*, 47) He is mentioned not because his course of action was considered atypical, but because it provides an occasion

It is not until Sigurd Ranesson reminds him about “who followed his father best in Ireland the last time” (75) that King Øystein yields to the request. In order to get the king’s support, it was crucial to appeal to his obligation to get involved. Such urging did not focus on the king’s responsibilities as supreme head of the realm, but on his personal duty to support his friends and followers, just as with any other magnate (like Sigurd Ranesson, above). Support did not come automatically, and in a difficult case the patron would often try to evade the proposal. Both Sigurd Ranesson and King Øystein become enmeshed in the conflict after initial attempts at backing out, due to the messengers’ insistence on their obligations.⁴²

Goadings was one of the primary ways in which inferiors could influence their leaders. The institution of goading has often been viewed as a mechanism increasing conflict in society, because it typically involved urging reluctant leaders to act according to the norms of honour, even in situations where the prospects for success were slight.⁴³ However, on

for the Icelandic skald Halli to show his wit by trying to make Einar pay compensation. The king plays a passive role in this, and only urges Einar to pay Halli, arguing that an insulting poem by Halli would do much more harm to Einar than compensating Halle would do (47). The king acts as advisor more than as a judge in this instance, as his advice seems to have been intended to alleviate tensions at court, not as a verdict concerning the legal matters in the case. Another example concerns the Icelander Oddr Úfeigsson, who has collected Finn tax without permission from the king. When he meets the king on his way back, he has a hard task to hide the goods he has appropriated, and so there evolves a proper trial of cunning between the king and Oddr’s clever friend Torstein. Oddr manages to get away, but the king’s suspicion clings to Torstein, whom he accuses of “appreciating Odd more than me” (meira virði þú nú þá Odd en mik, 52). When Oddr sends gifts to Torstein, the king obtains his ultimate proof of the connection, and he wants to kill Torstein. Although no one is willing to do this, Torstein is no longer a friend of the king (52). The episode illustrates the odd combination of mildness and severity in the king’s behaviour. His willingness to accept behaviour which runs contrary to the laws is almost incredible, but he will not tolerate being mocked or cheated. Kingship, and authority more generally, was more about morals than about rights.

⁴² The most typical example of goading an unwilling patron in *Morkinskinna* is the story of Gregorius Dagsson (106). Geirstein is a local magnate who woos his neighbour Gyda, and when Gyda turns him down, he damages her fields by turning his cattle onto them. Gyda, for her part, promises her support to a man in the household if he will kill Geirstein, which he does. The sons of Geirstein now obtain the support of King Sigurd, while Gyda urges Gregorius Dagsson, her sister’s son, to take the case. None of the patrons is initially very receptive towards the demands, and it requires heavy goading, including serious insults from Gregorius’s mother, before Gregorius accepts the case. The reason for the reluctance is easily understandable, as this makes the conflict part of the struggle between the royal brothers (106). See also Einar Tambarskjelve, who refuses Þorsteinn Hallsson, but ends up supporting him (22).

⁴³ The scholarly debate on the subject of goading has been intense. Some scholars have interpreted this institution as a purely literary one, expressing clerically influenced male misogyny, most vehemently Jenny M. Jochens, “The Medieval Icelandic Heroine: Fact

a more fundamental level goading contributed to the normative integration of society. First, it assured that norms of honour were adhered to by putting pressure on a leader to protect his supporters unconditionally. Second, the potential of goading to unleash an endless series of attacks and counter-attacks is overrated. As we have seen, most conflicts did actually end before a long sequence of vengeance and retribution was carried out. Finally, goading could also serve more peaceful purposes, such as encouraging settlement.⁴⁴

Protection is crucial in *Morkinskinna*, and it is closely connected to the issue of rivalry. At first sight, it seems as though the rivalry between kings puts clients in an intolerable situation, as serving two masters was indeed a complicated exercise. However, on closer inspection, protection only becomes an urgent issue in cases involving discord between kings, whereas normally it does not involve such underlying power struggles. In such cases, the king could adopt a more relaxed attitude, bordering on passivity. More generally, the kings mostly acted like great magnates, governing through the same means—patronage and protection—and residing in core areas where they had support.

The Problem: A Strong King

In the previous section, we have seen that rivalry usually does not pose any serious threat to the social order in *Morkinskinna*. Conflicts are perceived as a natural occurrence in society because they normally have limited consequences. The main threat in the society of *Morkinskinna* is not that conflicts should develop, but that a king should obtain so much power that he can behave at will—because if a king has no rivals, there is an overwhelming risk that he will take advantage of his power for all it is worth.

There are several examples in *Morkinskinna* of strong and unrivalled kings who use their power ruthlessly. After some time in the royal seat,

or Fiction?" *Viator* 17 (1986), 35–64. However, most scholars consider goading to reflect historical conditions, although not directly. See Preben Meulengracht Sørensen, *Fortælling og ære: Studier i islændingesagaerne* (Oslo: Universitetsforlaget, 1995), 238–48. For a similar perspective on Norwegian history see Kåre Lundén, "Sagakvinner og sosialviktorianarar: kvinnehistoriske observasjonar," in *Kjettarar, prestar og sagakvinner. Om historie og historieproduksjon* (Oslo: Samlaget, 1980).

⁴⁴ This function has received more attention during the last few decades, as part of discussions on the extensive overlapping loyalties created in cognatic kinship systems. See Lars Ivar Hansen, "Slektskap, eiendom og sosiale strategier i nordisk middelalder," *Collegium Medievale* 7 (1994), 103–54; Jón Viðar Sigurðsson, *Chieftains and Power*.

King Magnus Olavsson (later “the Good”) increases taxes, to the discontent of the people. Moreover, he begins persecuting the enemies of his deceased saintly father. The saga implies that this is unreasonable and unfortunate, not because St Olav does not deserve to be avenged, but because the interests of one faction come to dominate at the expense of other factions. This threatens to destroy the delicate balance of power between the groups, thereby opening up an opportunity for one faction to pursue large-scale exploitation of powerless factions. Arguing with the king on such matters is extremely hazardous,⁴⁵ and thus Magnus’s followers quarrel about who should tell the king about the people’s discontent. When the lot falls to Sigvat skald, he accomplishes his dangerous mission by making the poem “Bersöglisvísur” (literally, “verses with a clear message”) about the situation (4). Afterwards an assembly is arranged, at which the king “behaved well although he had strong sentiments” (stillti sik vel, þótt honum væri mikit í skapi, 4).⁴⁶ But after Magnus penalizes the peasants heavily, a peasant tells him that “my shoes shrink so that I cannot get anywhere” (Svá skorpnar skór á fæti mér at hvergi má ek ór stað komask, 4). The king realizes the threat inherent in these words, and the next day, men are amazed at the leniency of the king, as he forgives everyone. From then on, the saga concludes, people grew attached to Magnus and gave him his nickname “the Good” (4). Yet it was not until he was faced with rebellion that he yielded and became more lenient.

⁴⁵ At times men are so afraid to speak against the king that they dare not open their mouths. Steigar-Tore is executed because the king is furious with him and no one dares to ask for mercy. Only afterwards does the king admit that he would have forgiven Tore had someone pleaded for him (59).

⁴⁶ This does not necessarily mean that kings had a difficult time controlling their impulses. For example, King Harald Hardruler is well able to control his anger towards Oddr Úfeigsson in the episode referred to earlier concerning goods taken from Finnmark which belonged to the king. Harald has well-grounded suspicions about the ruse, but as long as his opponents manage to hide their findings, he does not give his anger free rein (52). On another occasion, when Eindride protects an outlaw, King Magnus is angry, but he is able to control his temper, and indeed Einar’s anger at not being forgiven for the relatively small infringement in question is the greater of the two responses (22). Reporting the king’s anger was not primarily a signal that his emotions were on the verge of explosion because of poor impulse control, but rather a way of indicating that the case in question was a very controversial one. In this view of emotions I side with the “constructivists” (see, for instance, Gerd Althoff and Stephen White’s articles in Barbara H. Rosenwein, ed., *Anger’s Past: The Social Uses of an Emotion in the Middle Ages* (Ithaca: Cornell University Press, 1998), as against the “civilizationalists” (Hyams in the same volume; more generally Norbert Elias, *The History of Manners, The Civilizing Process: Part One* (1939; repr., New York: Pantheon, 1978).

Sigurd Jorsalfar is the prime example of how unpredictably a king could act when he faces no opposition. This is demonstrated in a string of incidents happening after the death of Sigurd's brother Øystein in 1123. First, Ottar Birthing is almost killed for rescuing a book which the king has thrown at the fire. Sigurd, however, changes his mind at the last minute and not only forgives Ottar for his impertinence, but also raises him to high status (81). Later Sigurd is about to drown a man who is known for his swimming capabilities, and it is not until he is physically hindered that he stops (82). The man who has intervened runs away, and the king lets him wait in uncertainty before he finally decides to give him gifts and praise his behaviour (83).⁴⁷ On another occasion, King Sigurd wants to eat meat on a Friday, and no one dares to warn him against this until a little man called Aslak Hane does it. The king first pretends that he will kill Aslak for his words, only to change completely and thank him for the warning (84). The same pattern is repeated when Bishop Magne forbids the king to divorce his queen because it is against God's law. While saying this, the bishop is prepared to lose his life, because the king has such a "terrible temper" (*ógurligr*, 87). However, the king refrains, and even ends up paying a fine to the church as compensation for the divorce (87).⁴⁸

The reason why kings Magnus and Sigurd behave so arrogantly in these instances is closely connected to their power. Both are undisputed as monarchs in these situations, facing no other rivals: Harald has not yet appeared on the scene as a rival to Magnus, and Sigurd's brothers are all dead. When they are sharing power with co-rulers, neither Magnus nor Sigurd behaves with such immodesty.⁴⁹ One might expect that Magnus's co-ruler Harald would follow an opposite strategy of terrorizing people

⁴⁷ Meanwhile, Harald Gille has a quarrel with "a man of small lineage" named Lodin, and here too the king's decision is uncertain, not to say incomprehensible, as he supports Lodin although he is a lesser man and does not deserve it. He does, however, let Harald enter his retinue (83).

⁴⁸ The king's behaviour in these episodes cannot be treated as representative, as Sigurd Jorsalfar may have suffered from some depressive syndrome. His unsympathetic personality is somewhat reminiscent of John Lackland, probably the English king who was most unpredictable in his behaviour. See Robert Bartlett, *England under the Norman and Angevin Kings, 1075–1225* (Oxford: Oxford University Press, 2000), 49, 67. Cf. later on the contrast between Sigurd's and Erling Skakke's behaviour.

⁴⁹ During the joint rule with Harald, Magnus goes to great lengths in order to gain followers, and as we have seen, he is willing to exchange clothes and weapons with Trond if he will change sides (20). In Sigurd's conflicts with his brother Øystein, he manages his anger in quite another manner than after Øystein's death. For instance, in *Tingasaga* Sigurd's wrath for a long time is the decisive hindrance for settling the conflict, but in the end he gives in (77).

into obedience, judging from his nickname, “Hardruler.” However, Harald obtains his epithet only after King Magnus’s death and the departure of the regional leader Haakon Ivarsson. Now Harald for the first time is in a position where he can act relentlessly, which he certainly does by plundering eastern Norwegian farmsteads on a large scale (46). Yet most of the time in *Morkinskinna*, Harald does not live up to his nickname. He acts as a witty and wise king, allowing his subjects large concessions if necessary to keep them content. This is particularly the case in the *þættir* about Icelanders at court. These stories definitely give a too-flattering image of the ability of Icelanders to gain royal favours, but Harald’s largesse in many of the stories is not as atypical as it might sound.⁵⁰ The reason for this cooperativeness and sensitivity to the needs of his men is that he is faced with challengers most of the time: first Magnus, and later Haakon Ivarsson and the Danish king.⁵¹

The limits to royal power were not prescribed in laws, but were a matter of practical concern, which was disclosed if a king proceeded so far as to estrange himself from his men’s wishes. Such is the case with Magnus Sigurdsson (later “the Blind”), who after his father’s death is unwilling to accept Harald Gille as his co-ruler, and to accept advice from his men. The result of this double refusal is immediate and disastrous: Magnus is left by his advisors and captured by his enemy (*Frissbók*). Øystein Haraldsson, too, refuses to heed his men’s advice and wishes, and consequently suffers defeat (108). Yet it would be wrong to conclude that these kings have transgressed a norm of consulting magnates, because Magnus the Good and Sigurd Jorsalfar got away with much more uncompromising behaviour. The crucial aspect of Magnus Sigurdsson’s and Øystein Haraldsson’s situations is that they act immoderately when they are in a vulnerable situation. The proof of the pudding is in the eating. The king’s scope of action is extremely limited when he is threatened by rivals, and much broader in situations of unquestioned dominance. The society of *Morkinskinna* is

⁵⁰ Cf. the remarkable and definitely boastful stories of Halldórr Snorrason and Auðun from the West Fiords and their encounters with King Harald Hardruler (32, 40). *Morkinskinna* contains many other stories in this vein.

⁵¹ In a situation with several contenders for the throne, supporters had a particularly strong case in choosing whom to follow. For instance, King Harald treats the magnate Øyvind respectfully as long as he has a hope of winning him over to his side. However, even when conditions were more settled, questions of loyalty were not determined once and for all. King Olav Kyrre remarks that people’s willingness to pay dues and taxes vary from place to place (58). This is not told because it comes as a surprise, but as a natural thing. The point of the statement is to serve as introduction to the king’s meeting with an old man, whom he tests for his loyalty (58).

not regulated by formal checks on power. Rather, it is informal limitations which decide what scope of action a king will have for maneuver.

The primary threat to social stability in Norway was not that conflict should evolve. Conflicts were a natural mode of pursuing one's interests against opponents of roughly similar status, and a balance of power would normally ensure that leaders treated their own men with consideration, knowing that they could easily be deserted if they went too far in their demands. The biggest danger in this type of society was the emergence of strong and unchecked leaders who would use their powers for all they were worth. If a general rule can be abstracted from the power plays in *Morkinskinna*, it must be that the more power a king had and the more unrivalled he was, the greater the danger that he would use this power in his own interest. The fewer who could stand as equal opponents to the king, the more relentless he would be in using every opportunity to enrich himself. Could there be any exit from this condition that was not associated with increased greed and injustice?

Why Did Society Change after 1160?

The endemic rivalry between co-rulers that characterized much of the period c. 1030–1160 has usually been interpreted as an unstable arrangement. It is simple to conclude from the numerous encounters in the sagas that the balance of power between co-rulers was precarious, and that it was only a matter of time before hostilities would escalate into full-scale enmity: in short, that the tensions inherent in the arrangement of joint rule sooner or later had to explode.⁵² We also know that this is what happened around 1160 (or around 1130, according to earlier scholars), when large-scale fighting broke out, initiating the so-called civil wars. However, the reason why this happened just at this moment has been more difficult to explain. According to Andreas Holmsen, peasants had gradually lost their independence after the Viking Age ended (c. 1030), the result of population growth combined with a lack of opportunity for emigration. Norway was approaching a Malthusian crisis, and the peasants felt the pressure most urgently. In Holmsen's view, the civil wars must be regarded as the political process of adapting to this new economic situation. The internal fighting among the elite was thus a surface phenomenon, camouflaging

⁵² See the literature cited in note 2, above.

the real process going on during the civil wars: a massive transfer of political influence from the peasants to the elite.⁵³

Holmsen's Marxist-influenced theory was criticized by Sverre Bagge in 1986. Bagge agreed that there was a resource crisis in Norway after the Viking Age, but he held the primary victims of this change to be the magnates, not the peasants. When the possibility of conducting Viking raids came to an end around 1030, magnates lost a crucial source of wealth. Their condition was further aggravated by the kings' increasing practice of giving away property to the church, and not to the magnates, as in an earlier phase. The result of this resource crisis within the elite was increased fighting. In this view, the civil wars brought a solution to the problem through a combination of fewer magnates (because they killed one another) and a new attitude to monarchy, whereby the elite joined it instead of fighting it.⁵⁴

Bagge's explanation of the outbreak of the civil wars is preferable to Holmsen's in that it provides a closer link between the civil wars and the agents participating in it. True, the magnates did not foresee the consequences of their actions, but their behaviour is more readily understandable than in Holmsen's explanation, which can only be saved by a theory that posits economy as the basic factor in human history.⁵⁵ However, a major problem with both these explanations is that they presuppose that society was highly unstable. This carries two implications. First, society is perceived of as very susceptible to change—only a spark was needed in order to set the process in motion. As a result of this, the transition around 1160 has been viewed as inevitable, and not really as something requiring further discussion. From this perspective, the challenge was not to explain the change in 1160, but why it did not occur at an earlier stage.⁵⁶ Second, the search has been for internal, structural causes for the change, directing attention towards events more than a hundred years old (i.e., the end of Viking raids and emigration).

This way of reasoning frames the issue wrongly, in my opinion. A first objection is that there is no reason to assume that society in the period c. 1030–1160 was inherently unstable, and progressively more so. A previous

⁵³ Holmsen, *Norges historie*, 188–89, 219–27.

⁵⁴ Bagge, "Borgerkrig," 156–65; Bagge, *From Viking Stronghold*, 40–53.

⁵⁵ Both theories agree that as a result of the civil wars the elite were strengthened at the expense of the peasants, although they differ as to the degree and nature of this dominance.

⁵⁶ Bagge, *From Viking Stronghold*, 51–52.

generation of historians had a rather crude understanding of the early Norwegian society as a “kin society” governed by binding kinship obligations.⁵⁷ Rather, one speaks of a society in which personal bonds to friends, followers and allies play a crucial role.⁵⁸ In his 1991 analysis of *Heimskringla*, Sverre Bagge argued that this kind of society is marked by a high degree of stability even if it is not governed by a strong king (although he is rather reluctant in applying this image to Norwegian society before c. 1160).⁵⁹ This view of society is in correspondence with the one I have analysed in *Morkinskinna* in this article.

If Norwegian society was fairly stable in the period c. 1030–1160, a basic question is why it exploded into open fighting, as it did around 1160. I think that the underlying causes that Bagge posits for the intensified bitterness in the latter twelfth century—the crisis of the elite following the end of Viking raids and royal donations to the church—are highly debatable. The first explanatory factor, Viking raids, had certainly provided magnates with a valuable source of income. Yet their termination may not have been as detrimental to the aristocracy as Bagge and other Norwegian historians have claimed. It is true that the magnates lost a valuable source of income when Viking raids were no longer possible, but this was countered by another movement, as magnates turned increasingly to agriculture in order to profit from its surplus. In Sweden, the end of the Viking Age signalled what Thomas Lindkvist has termed a transition from external to internal exploitation.⁶⁰ This transition also happened elsewhere in Europe without being accompanied by a resource crisis in

⁵⁷ Historians utilizing the concept of “kin society” include Per Sveaas Andersen, *Samlingen av Norge og kristningen av landet* (Oslo: Universitetsforlaget, 1977), 185–201, 339–44; Erik Gunnes, *Rikssamling og kristning, ca. 800–1177* (Oslo: Cappelen 1976), 170–76; Arne Odd Johnsen, *Fra ættesamfunn til statssamfunn* (Oslo: Aschehoug, 1948).

⁵⁸ Critics of the notion of “kin society” have included, among others, Jón Viðar Sigurðsson, *Chieftains and Power*; Hansen, “Slektskap”; and Torben A. Vestergaard, “The System of Kinship in Early Norwegian Law,” *Mediaeval Scandinavia* 12 (1988), 160–93. The argument against it runs as follows: First, kinship was bilateral and therefore not a suitable mode of organizing clearly separated clans. Second, several other social bonds than kinship were important, such as horizontal and vertical friendship (the latter often termed patron-client-relationships). Third, people normally have choices in how to behave. Obligations may be strong, but they are seldom compelling. This tendency is in line with the main trends in research on Icelandic sagas referred to in note 32.

⁵⁹ Bagge, *Society and Politics*, 121–23, 140–45. Furthermore, there are no norms compelling people to behave in certain ways—hence the slogan “nothing succeeds like success” (*ibid.*, 96).

⁶⁰ Thomas Lindkvist, *Plundring, skatter och den feodala statens framväxt* (Uppsala: Den historiska institutionen, 1988), 26–33.

the elite. To the contrary, it inaugurated the feudal era, marked by a transition from plunder to agriculture as the economic basis of the aristocracy. As the aristocracy turned to agricultural production, the result was the spread of manors, which put increasing pressure on the peasants in terms of a growth in tenancy and land rents.⁶¹ The aristocracy achieved a more regular income, and probably a more secure material basis than previously. In Norway, manors hardly developed due to topographical limitations, and the scope of tenancy has been much debated. Nevertheless, it is beyond doubt that the importance of farming increased in this period, attested in that tenants became numerous than previously.⁶² This change is also manifested in the transfer of the political centre from the western part (close connections to Europe, poor agricultural conditions) to the more distant but fertile region of Trøndelag. Thus, Bagge exaggerates the importance of riches from Viking plunder as a source of income for the aristocracy, and correspondingly underrates the significance of the transition to agriculture.

The second cause that Bagge posits for the crisis within the elite in the century following Christianization c. 1030 concerns royal donations to the church. There is no doubt that Norwegian kings gave substantial amounts of land to the church (although the scope of donations is very uncertain), as was the case everywhere in Europe before the Investiture Contest. In this period with its system of proprietary churches, giving land to the church was favourable to the kings because clerics were more dependent upon the king than were lay magnates, who had a tendency to make fiefs heritable.⁶³ It is likely that the majority of ecclesiastical property, consisting of large estates, was donated by kings prior to 1152, when the Norwegian church was reformed according to Gregorian

⁶¹ Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century* (Ithaca, N.Y.: Cornell University Press, 1974). Orig. published as *Guerriers et Paysans: VII–XII^e Siècle: Premier Essor de l'économie Européenne* (Paris: Gallimard, 1974).

⁶² Traditionally, Norway was considered a fairly egalitarian society, and hence the transition to tenancy became a major issue, involving large-scale changes in the previous social structure which had fundamental political implications (see for instance Holmsen, *Norsk historie*). Other historians have doubted that the transition to tenancy was so profound and rapid, for instance Helle, *Norge blir en stat*. However, only recently has the view of early medieval Norway as a fairly egalitarian society given way to one underlining the importance of social hierarchy in terms of chieftain power. See Jón Viðar Sigurðsson, *Det norrøne samfunnet*.

⁶³ See Susan Wood, *The Proprietary Church in the Medieval West* (Oxford: Oxford University Press, 2006).

standards.⁶⁴ Nevertheless, it is dubious whether these royal donations to the church dealt such a devastating blow to magnates' power as Bagge claims. First, the scope of royal donations can be questioned. Recent studies have underlined that magnates played a much larger role in early church building and maintenance than was previously assumed.⁶⁵ A second objection is that royal donations to churches were actually favourable to magnates, because the latter probably controlled the majority of churches before the middle of the twelfth century, and maybe even later.⁶⁶

⁶⁴ Halvard Bjørkvik argued from retrospective methods that the church owned around 40 percent of the total land in Norway in the High Middle Ages. He separated this property into two types: portions of small farms given to the church by peasants in the High Middle Ages, and large estates owned exclusively by the church with the king as a likely donor, probably before 1152: Halvard Bjørkvik, "Det norske krongodset i mellomalderen," (*Norsk Historisk tidsskrift* 40 (1961), 201–31. The estimate has been criticised for overrating the amount of church property, but no one has yet offered an alternative calculation.

⁶⁵ The traditional way of explaining early church organization in Norway has been to distinguish between two types of churches: central churches and local churches, the former controlled by the king and the latter by local communities, of which the majority were built and maintained by peasants living in a locality, and a few—the so-called "private" *hægendis*-churches—by individual magnates. See Andersen, *Samlingen av Norge*, 301–10. Lately this view has been challenged, however, partly by historians working retrospectively with land cadasters, partly by archaeologists investigating the physical landscape around early churches. According to the historian Anders Emanuelsson, who has studied church property in Bishop Øystein's cadaster from c. 1400, 72 percent of the early churches in the eastern part of Norway were built and controlled by local magnates. See Anders Emanuelsson, "Kyrkjojorden och dess ursprung," Ph.D. diss. (Göteborg: University of Göteborg, 2005), 244–45. The archaeologist Jan Brendalsmo (*Kirkebygg og kirkebyggere: Byggherrer i Trøndelag ca. 1000–1600*) ([Oslo: Unipub, 2006]) has argued that 76 percent of the churches in Trøndelag were built by magnates.

⁶⁶ It is not controversial that the private church system was dominant in Norway before 1152. However, the implications of this for the power relationship between kings and aristocracy have been debated. Although there is agreement that the introduction of Christianity in the long run favoured kings over magnates, some historians have considered this to have struck an immediate blow to aristocratic power, arguing that the royal initiative in the conversion as well as the ideological implications of the new faith deprived the magnates of their dominant position in the local cult. A century ago Halvdan Koht opposed this view, claiming that magnates continued to hold a central position under the Christian faith, so that the conversion did not imply a watershed in the political landscape. See Andersen, *Samlingen av Norge*, 301–10 on this debate. Sverre Bagge sides with the former view, partly because he thinks the ideological issue is pivotal, partly because he interprets the lack of aristocratic resistance as a sign that their power in the old religion was limited (Bagge, "Borgerkrig," 165). Both arguments are debatable. As to the first one, it is doubtful whether the ideological implications were profound before the twelfth century. The second argument has been widely countered in recent research, where the central position of chieftains in early Norwegian society has been emphasized, including in religious matters. See Jón Viðar Sigurðsson, *Det norrøne samfunnet*, 18–34, 67–69 (although he is in agreement with Bagge on the importance of the conversion). The results of Emanuelsson and Brendalsmo lead in the same direction. The latter furthermore holds that apart from the tiny proportion of central churches built and maintained by the king or controlled by

So far I have discussed Sverre Bagge's arguments about the demise of Viking raids and the increasing royal donations to the church as causes of the civil wars from the later twelfth century onwards, and my conclusion is that they cannot be sustained because of the lack of empirical support. However, Bagge's hypothesis also carries problematic implications of a more methodological nature, in that his argument entails a time lag of more than a hundred years between cause and effect, from the end of plunder until the outbreak of violence. In this he is in line with historians before him, who have argued from the so-called spark-theory.⁶⁷ In Sverre Bagge's words in his recent book, "we still need a structural explanation for the long duration of the conflicts, and, above all, for a clear distinction between the period of the civil wars and the periods before and after."⁶⁸ This triggers the basic question: Why should not the consequences of the end of Viking raids have manifested themselves more instantly?

Bagge's (as well as Holmsen's) explanation operates from the premise that conditions were intolerable as a result of the practice of joint rule, and seeks to explain the change through internal factors around 1160. The search for internal, long-term explanations has since long been the preferred mode of historical explanation among Norwegian historians. This method was justified and explained in a famous article by Jens Arup Seip, where he distinguished between the "soil" (*jordsmonnet*) and the "seed" (*frøet*), positing the soil as the determining factor in human development: "investigate first the indigenous premises of an institution; thereby the decisive work is done."⁶⁹ In trying to explain the civil wars, this internalist view has often been combined with a teleological perspective on history

central ecclesiastical institutions and high clergy in the High Middle Ages, privately owned churches were widespread throughout the High Middle Ages, and that these were still in the hands of magnates. Brendalsmo, *Kirkebygg og kirkebyggere*.

⁶⁷ On this way of reasoning see Bagge, "Samkongedømme," 241–42, 271–72.

⁶⁸ Bagge, *From Viking Stronghold*, 51, cf. p. 47 on "deeper explanations."

⁶⁹ Jens Arup Seip, "Problemer og metode i norsk middelalderforskning," in *Problemer og metode i historieforskningen* (1940; repr., Oslo: Gyldendal, 1983), 36–37. The theory was introduced as part of an argument against attaching too much importance to external influence on the Law of Succession from 1163. Later Seip criticised Arne Odd Johnsen for explaining the state formation and civilizing process in Norway in the High Middle Ages as a result of the beneficial influence of the church in *Fra ættesamfunn til statssamfunn*. Whereas the latter criticism has been widely acclaimed, the first one has been refuted almost entirely by recent studies on the influence of Roman and canon law on legal development in Scandinavia, attested for instance by a number of papers from the Carlsberg Conferences on Legal History in Copenhagen (Proceedings of the Carlsberg Academy Conference series, DJØF Publishing).

(what we know to have happened was inevitable),⁷⁰ and a widespread tendency to praise the state for its civil virtues, neglecting its oppressive potential.⁷¹

I think it is time to reconsider this emphasis on internal factors. Medieval Scandinavian research from the last decades has rendered Jens Arup Seip's dictum about the priority of internal over external factors curiously outdated. In a multitude of fields, it has been demonstrated how Scandinavia was subject to a range of external influences, from commercial contacts and literary influences to the importation of ecclesiastical and political ideas.⁷² Moreover, the separation between internal and external aspects is in itself utterly problematic, for what shall in any case be classified as "internal factors" and what shall be relegated to "external factors"? For Seip and a previous generation of scholars, the national state provided the natural unit of study, elegantly formulated by Seip into two basic research questions for medieval scholars: How a Norwegian realm was established, and how it disintegrated.⁷³ However, considering that the state is but one of several ways of organizing society in the Middle Ages, providing an identity which was in many ways weaker than both local identities and the universal identity within Christendom, the division becomes more dubious and indeed spurious.

In my opinion, we should try to identify causes of the civil wars that can be linked more closely to the increased violence from c. 1160 onwards than previous explanations have been. If we abandon the hypothesis of the conflict-ridden society that just needs a spark in order to ignite, we do not have to search for decisive internal, long-term factors to explain this new development. As this analysis has revealed with respect to *Mor-kinskinna*, there are no strong arguments supporting the hypothesis of a

⁷⁰ Bagge writes about the resource crisis being postponed for a hundred years, but which inevitably had to surface (Bagge, *From Viking Stronghold*, 51–52). Thus, even if he states in the conclusion that civil wars need not lead to state formation (p. 65), his approach in reality contradicts this statement, at least in the Norwegian case.

⁷¹ Sverre Bagge has pointed to this "pacifist" tendency in a historiographical article: Sverre Bagge, "Utsikt og innhogg. 150 års forskning om eldre norsk historie," (*Norsk Historisk tidsskrift* 75 (1996), 37–77. However, he himself also put heavy emphasis on this aspect, contrary to, for instance, Kåre Lunden, *Norge under Sverreætten*.

⁷² This new tendency is visible in titles and themes of the most recent research projects in Bergen ("Periphery and Centre in Medieval Europe"), Oslo ("Translation, Transmission and Transformation: Old Norse Romantic Fiction and Scandinavian Vernacular Literacy 1200–1500"), and Trondheim ("The Realm of Norway and its Dependencies as a Political System"), focusing on Norway as part of a much larger world of external impulses.

⁷³ Seip, "Problemer og metode," 15.

growing discontent or imbalance in society. The elite were hostile and belligerent, and sometimes they even controlled the king, but this was no novelty around the middle of the twelfth century. Several kings in the previous century had been supported and indeed often led by mighty magnates (for instance the young Magnus the Good, and Haakon Torefostrer). This did not change the rules of the game, because differing factions still tended to balance one another. A situation like the one from 1136 on, when three young kings for a long time were dominated by respective groups of magnates, certainly contributed to making the political landscape more complex, but it did not alter it. It was primarily through the traditional mechanism of goading that they ended up fighting, and the child kings had no goal of exterminating one another. Rather their aim was to obtain the largest possible share of the resources, and to do their best in order to outmanoeuvre their rivals.⁷⁴ These rules of the game were not new. This had been the situation since Magnus the Good involuntarily agreed to share power with Harald Hardruler in 1046. Hence, the high level of threats and challenges should not be confused with a crisis of the system. To the contrary, society was held together by the presence of such pressures. If one chieftain or king grew strong enough to subdue such rivalry, a much worse scenario of power abuse and arbitrary behaviour was to be expected.

Sverre Bagge points to Erling Skakke's uncompromising attitude to his opponents around 1160 as the decisive change signalling the outbreak of the civil wars. Contrary to former practice, Erling did not content himself with reaching a settlement with his enemies, but aimed at eradicating them.⁷⁵ His goal was not to obtain a share of the resources in Norway. He wanted them all. Therefore he followed a much more ruthless strategy than his predecessors. He chased his opponents all around the country, seldom giving quarter to conquered enemies, the normal strategy in previous times, when outright killing of opponents was uncommon. Earlier, even if the rival was both powerful and unreliable, as Harald Gille experienced with Magnus Sigurdsson, he did not execute him when he got hold of him.⁷⁶

⁷⁴ Bagge, *From Viking Stronghold*, 42–45.

⁷⁵ *Ibid.*, 45, 50.

⁷⁶ His son Inge ended up killing his two brothers, but that was after heavy goading on the part of Inge's men, and the whole process leading up to their fall evolved as a gradually escalating feud (Bagge, *From Viking Stronghold*, 42–45).

Erling Skakke acted otherwise. He needed no goading in order to kill his opponents. On the contrary, Snorri makes the point that it was nearly impossible to tell whether Erling would be willing to compromise, or not. Much of Erling's power lay precisely in his unpredictable behaviour, which was outside the bounds of the usual standards of honourable conduct. Killing an opponent who had asked for mercy was no glorious deed, but it could be a strategically clever manoeuvre. For Erling, the latter aspect clearly outweighed the first one. But then one could ask: Was not this arbitrary behaviour exactly the same type of conduct that powerful kings without rivals had pursued earlier on, with Sigurd Jorsalfar in his later years as a good example, the principle being that without any checks on royal power, the scope of abuse widened? The answer is no. The difference between Erling and Sigurd lies in the goals behind their unpredictable behaviour. Sigurd's arbitrary behaviour was not directed towards any exterior goal of increasing his dominion; at least that is nowhere to be found in the account in *Morkinskinna*. He acted on his impulses and let his temper go because he did not need to contain himself for fear of being outmanoeuvred by a rival. The same is true of Magnus the Good, who before "Bersöglisvísur" gave free rein to his desire to have vengeance on his father's enemies. It was not until he was warned that people would not tolerate his harshness that he changed his mind and became more open to compromise. Facing a rival functioned as a reminder to keep emotions in check and to act reasonably towards rivals and supporters alike.⁷⁷ In contrast, Erling Skakke was not motivated by an urge for personal vengeance or by hatred. He demonstrated politically wise behaviour in an almost Machiavellian manner, in that the result counted more than the conduct leading to it. Thus, he embodied a new type of politician, one further from traditional norms, and above all with a goal of eliminating enemies, not finding a balance of *modus vivendi* with them.

What might be the cause for this radical shift of attitude towards opponents in the political field? Bagge argues that the bitterness of conflict made it impossible for Erling to forgive his opponents, and that it corresponds to a tendency towards the formation of more stable political

⁷⁷ Sigvat skald's "Bersöglisvísur" has been interpreted as an example of the *rex iustus* ideology, in that the king was held to have duties towards his people, which he had violated. However, Sigvat did not formulate his discontents as legal claims, and—more importantly—what he pleaded for was not justice, but that the king in his own interest should give more consideration to his men's wishes.

parties in this period.⁷⁸ More fundamentally, he regards the intensified struggle as a result of the long-brewing resource crisis in the aristocracy, now finally surfacing.⁷⁹ These explanations are not very satisfactory. The bitterness refers to a psychological interpretation for which it is difficult to find support in the sources. Erling hardly had any reason to be angrier at his opponents than previous leaders had. The formation of parties was just in the making in this period—Bagge traces it back to 1155.⁸⁰ The reason why the climate among contenders became more hostile, parties stiffened, and regional strongholds gradually evolved must primarily be viewed in connection with the intense struggles between King Sverre's arrival in 1177 and his death in 1202.⁸¹ As a *cause* for Erling's behaviour around 1160, personal bitterness seems like a less plausible factor.

Moreover, the hypothesis of a resource crisis as a cause of Erling's behaviour is difficult to confirm. Bagge draws the connection in the following way:

A decline in the kings' and the magnates' incomes may thus explain the ease with which generous kings could attract clients to their service, the clients' willingness to join them in struggles for the throne, and, above all, the crucial decision that was made in the 1150s and 1160s not to seek reconciliation despite the fact that the rules of succession would seem to indicate that both factions ought to be able to accept the same ruler.⁸²

A decline in magnates' income might explain the willingness to ally with the king, but to me it is not evident from this passage how this is related to the political tactic of not seeking reconciliation with enemies. I would rather interpret this situation of resource crisis as an impetus towards seeking broader alliances within the elite. With hindsight, that was what the civil wars resulted in, but still it cannot explain the new unyielding attitude of Erling Skakke and his faction. More fundamentally, I disagree on the hypothesis that social tensions were about to reach a level where they could not be contained any more.

If no underlying tension was building up towards an explosion that would transform the political landscape and rules of the game around the middle of the twelfth century, how then can this change be explained? Since internal factors provide no satisfactory clue to the answer, we have

⁷⁸ Bagge, *From Viking Stronghold*, 44 f.

⁷⁹ *Ibid.*, 50.

⁸⁰ *Ibid.*, 44 f.

⁸¹ Bagge, "Borgerkrig," 166–71.

⁸² Bagge, *From Viking Stronghold*, 52.

to consider external causes. In my opinion, we should seek the explanation for this transition in two external factors which were strongly present around 1160: the reformed church and the resurgent Danish monarchy. In 1152, an archbishopric was founded in Norway with its centre in Nidaros. Norway was divided into five bishoprics, and supplied with another six bishops in the western isles. Equally important, the ideas of the Gregorian Reform were implemented on this occasion. This is evidenced in the alliance between the Archbishop Øystein and Erling Skakke from 1163, resulting in the coronation of Erling's son Magnus, the first coronation ceremony in Scandinavia. In his coronation oath, Magnus promised that he would serve the church and that he would protect poor and rich alike, all in accordance with the *rex iustus* ideology of the church.⁸³ Norwegian historians have acknowledged the religious dimension of these statements, and Magnus has been cherished as the first king promulgating peace legislation, and for his good relationship to the church.⁸⁴ However, the political implications of this union have been underrated. More precisely, the contribution from the church in forming Erling Skakke's political aim of eliminating his rivals, thereby changing the political rules of the game, has not been accorded the importance it deserves. The church had an altogether different view of social order than the one in *Morkinskinna*, which was governed by a balance of power between rival magnates.

The new ecclesiastical order was centralized and pyramidal. Furthermore, it was divinely installed, and the king and the bishop were set to lead it. Magnus Erlingsson was crowned as God's vicar on earth, with the power to judge in secular matters, while leaving spiritual matters to the clerics. Clerics were not interested in entering into compromises with adversaries. In a letter to Archbishop Øystein, Pope Innocent III praised him for demonstrating "*constantia*" in facing his opponents.⁸⁵ A homily book from this period reiterates the necessity that people choose between God and the Devil, between good and evil. Those who might consider the option of abstaining from the choice altogether were warned that "the divine power is everywhere," even in the remote island of Iceland, as

⁸³ See the coronation oath in *Latinske dokument til norsk historie fram til år 1204*, ed. Eirik Vandvik (Oslo: Samlaget, 1959), 62–65.

⁸⁴ Torfinn Tobiassen, "Tronfølge og privilegiebrev," (*Norsk*) *Historisk tidsskrift* 43 (1964), 181–273; Erik Gunnes, *Kongens ære. Kongemakt og kirke i "En tale mot biskopene"* (Oslo: Gyldendal, 1971); Helle, *Norge blir en stat*, 57–73.

⁸⁵ *Diplomatarium Norvegicum* VI, 6, 1198.

the pope specified in a letter.⁸⁶ This implied that by not obeying God, one subordinated oneself to the Devil, from which followed exclusion from society and salvation. Erling Skakke's unscrupulous pursuit of his enemies fits this ecclesiastical image of society surprisingly well. Moreover, after the foundation of the archbishopric in Nidaros, the archbishop had become the most powerful man in Norway after the king. Now king and archbishop could aim for the same goal of cleansing the realm of enemies, and both attacked the traditional view of social order with unprecedented force, using temporal and spiritual weapons respectively. The gulf separating this ideological program from traditional conceptions became even more unbridgeable because Magnus lacked traditional legitimacy, in that he was not a king's son. This was a combat in which there existed few options for reaching a reciprocal settlement.

Another external impulse surfacing with new force around 1160 is the political pressure from Denmark. It is misleading to view state formation in the Middle Ages in a national context only.⁸⁷ Norwegian state formation should be studied in a Scandinavian context. In this area, Denmark was the richest realm, and also the realm most easily influenced by pressures from the south. We have seen in *Morkinskinna* that Danish kings were among the actors in the Norwegian political rivalry. In the period that *Morkinskinna* treats, from 1035 to 1157, Denmark was in a rather weak condition, allowing Norwegian kings to participate as equal and sometimes even dominating agents. This changed after 1157, when Valdemar the Great became sole king in Denmark. *Morkinskinna* finishes its account at this moment, but *Heimskringla* continues its narrative up to 1177. However, it is rather diffuse on the relationship between Valdemar and Erling, and it differs substantially from what Saxo has to tell about the matter. According to *Heimskringla*, Erling went to Valdemar in 1161 and received

⁸⁶ *Gamal norsk Homiliebok etter Cod. AM 619 4*, ed. Gustav Indrebø (Oslo: Universitetsforlaget, 1931), 141; *Diplomatarium Norvegicum* VI, 6, 1198.

⁸⁷ On the rarity of pristine states see Morton Fried, *The Evolution of Political Society* (New York: Random House, 1967). Yet the Norwegian civil wars have traditionally been studied within a national framework. Some historians have tried to adopt a more broadly Scandinavian context for these conflicts: Sverre Bagge, "The Structure of the Political Factions in the Internal Struggles of the Scandinavian Countries during the High Middle Ages," *Scandinavian Journal of History* 24 (1999), 299–320; Birgit Sawyer "The 'Civil Wars' revisited," (*Norsk*) *Historisk tidsskrift* 82 (2003), 43–73. Yet Bagge is unwilling to characterise the struggle as an inter-Nordic one (Bagge, *From Viking Stronghold*, 50), and Sawyer lists dynasties without interpreting the interconnections very much.

his assistance in winning Norway.⁸⁸ The relationship seems to have deteriorated during the 1160s, when Valdemar aided opponents to Erling and conducted several expeditions to Norway.⁸⁹ In 1170, the enmity was terminated with Erling swearing an oath of allegiance to Valdemar, becoming his earl.⁹⁰

This course of events in Denmark and Norway in the later twelfth century is very similar to the situation in the tenth. In both instances, Denmark had experienced a situation of pressure from the south, from which the alternatives were to resist or perish. In each case the result was a consolidated Danish kingdom, which put Norway under a similar pressure. Today it is generally acknowledged that the Norwegian unification in the tenth century was established under the auspices of a mighty Danish neighbour, which controlled Viken and maybe even larger territories in Norway.⁹¹ The reason why it has taken so long to accept this Danish dominance is that *Heimskringla* suppressed it by making Harald Fairhair a king from Viken, a pure historical construction.⁹² Snorri's need to make this historical deviation in 1230 attests to the reluctance to admit the Danish presence in his own time.

Why was this issue so tense as late as c. 1230? Had not Erling Skakke managed to resist Danish hegemony, and Sverre after him to liberate Norway from this claim altogether? This is doubtful. Erling must have persisted in serving as Danish earl, and his son probably was subordinate to King Valdemar in some way or another. The Danish presence did not disappear after Erling and Magnus perished in 1179 and 1184 respectively. The faction of Baglar that opposed Sverre from 1196 on repeatedly sailed to Denmark for support. In 1204, King Valdemar the Victorious of Denmark came to Norway to oversee the instalment of the new Baglar king,⁹³ and from 1221 to 1227 King Haakon experienced sustained problems in subduing a revolt in eastern Norway led by an alleged son of the Magnus

⁸⁸ Helle, *Norge blir en stat*, 57. *Heimskringla* points to the kinship between Valdemar and Magnus through their wives (Magnus Erlingssons saga, 1). Their alliance is not confirmed in Saxo.

⁸⁹ Helle, *Norge blir en stat*, 69. Cf. *Heimskringla* on the letters from Valdemar to magnates from Trøndelag (Magnus Erlingssons saga, 25–26).

⁹⁰ Helle, *Norge blir en stat*, 70–72.

⁹¹ Bagge, *From Viking Stronghold*, 34.

⁹² See Claus Krag, *Vikingtid og rikssamling 800–1130* (Oslo: Aschehoug, 1995).

⁹³ *Boglunga sögur* narrates this visit of Valdemar, and leaves no doubt that his presence was strongly felt. See *Soga om birkebeinar og baglar. Böglunga sögur. Del II*, ed. H. Magerøy (Oslo: Solum, 1988), 286–88.

line.⁹⁴ So although King Sverre had managed to liberate himself from the Danish yoke, his dynasty was far from firmly established around 1230, and the Danish claim was indeed not outdated, as it was closely linked to the opposing party.

However, it might be that the alliance and even subordination to the Danish king was less of a burden to Erling Skakke than it was to Snorri Sturluson, or to modern historians for that matter. For a long time, it had been a menace for Erling to see defeated opponents travel to Denmark just to gather new forces to oppose his rule.⁹⁵ It must have been a more favourable option to submit to the Danish king and in return receive his help (or non-interference) in eliminating rivals at home than to run the risk of facing a counter-alliance of internal rivals joined with the renewed Danish monarchy. This arrangement gave Erling free rein to pursue a harsh treatment of internal enemies, taking politics progressively further away from the principle of balance that had previously regulated it at the top level in society. With Erling Skakke, the premises for establishing a more effective central power had been laid down through the introduction of a Christian-monarchical concept of society and a clearer demarcation from Denmark, even if Norway was still far from being a state.

Conclusion

It is somewhat curious that whereas the beneficial effects of a principle of power-checks have been championed at an inter-state level as a central factor in explaining the industrial take-off in Europe in the late eighteenth century,⁹⁶ when applied on a smaller societal scale, the merits of a socio-political balance have hardly been admitted, and power struggles between chieftains have habitually been explained with recourse to a Hobbesian

⁹⁴ This is a main topic in Knut Arstad's forthcoming dissertation.

⁹⁵ This happened with Haakon Ivarsson, Magnus Blinde, and Harald Gille, just to mention the most important ones. The correspondence of the Danish kings in both the 1050s and the 1160s clearly shows that magnates had this as a viable option in times of less severe strife also.

⁹⁶ Eric Jones formulates succinctly why Europeans escaped "crippling exploitation of their own rulers" in *The European Miracle* (Cambridge: Cambridge University Press, 1987): "Political decentralization and competition did abridge the worst arbitrariness of European princes." (p. 233) The state system ensured that "best practice succeeded," so that kings ruling intolerantly and arbitrarily would lose support and eventually be overthrown in the inter-state power contest. The exceptional thing about Europe was not that it avoided pillage and plunder, but that kings eventually stopped pillaging their own people—in contrast to Asian empires, which continued to operate as "plunder machines."

image of society. The transition to a more centralized society in Norway around the middle of the twelfth century should not in my view be viewed as a leap from a chaos-ridden society in crisis towards a condition that was inherently better than the previous one. The analysis of *Morkinskinna* has shown that conflicts were a natural part of the social order, and that society was not on the brink of upheaval or in imminent danger of falling apart. The tensions within this society in the early twelfth century were no sign of a deeper crisis, but occurred within the boundaries of what was considered normal practice. The causes of the civil wars suggested by Norwegian historians seem to me partly too spurious to be valid, partly built on wrong premises. If society was not marked by crisis around the middle of the twelfth century, no long-term internal causes need apply, and we should rather search for more short-term external causes for the change. I have pointed to two such factors: the reformed church and increased Danish presence.

Many Norwegian historians have considered the formation of the high medieval state to be a self-evident development, because the king brought benefits to the people, and therefore it was only a matter of time before they understood that he represented the most viable solution.⁹⁷ But if a mighty king was foremost a potential plunder machine who would use his power for all it was worth (just like everyone else), as has been shown in this analysis, explaining the transition becomes much more of a problem, and the question arises: Why would people invest the king with such excessive power in the first place, if what they gained in return was pillaging camouflaged as the extraction of levies? One way of explaining this transition has been through Marxist theory. Then the *rex iustus* ideology is viewed as an ideological cover-up for an ever-increasing exploitation of the peasants, secured through the joining of forces of the propertied classes. The problem is that this process was hardly begun in the Middle Ages. The landed classes were far from united, and many tensions characterized the political system—tensions which cannot be reduced to

⁹⁷ No one would state that monarchs of the High Middle Ages embodied the *rex iustus* ideal without flaw, but a main strand of historians holds this to be an ideal that kings strove to accomplish and drew closer to in course of the period. See Seip, "Problemer og metode"; Helle, *Norge blir en stat*, elaborated in Helle, *Under kirke og kongemakt 1130–1150* (Oslo: Aschehoug, 1995). Andreas Holmsen underlined this in *Nye studier i gammel historie* (Oslo: Universitetsforlaget 1976), 185 (opposite to his previous view in *Norges historie*). For an international example of this approach, see Joseph Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970).

surface phenomena clouding the supposedly “real” community of interest among the upper classes.⁹⁸

The explanation offered here is that Norwegian state formation after c. 1160 was a result of external influences that transformed the “rules of the game” by justifying the elimination of enemies rather than settling with them. This view has the advantage that it explains state formation without presupposing that strong kings were inherently better than weak kings, or that they served the interests of elite or peasants. On the one hand, the development is fairly predictable when seen from a long-term, international perspective, whereby Norway followed the same path as other realms on the periphery of Europe. On the other hand, this explanation makes state formation into more of a coincidence, in that it did not develop from long-term, internal causes. There was no natural development towards a more centralized state.⁹⁹ Moreover, by drawing attention to how difficult the effort at centralizing power was, it also highlights one peculiarity in European state formation when viewed in a long-term perspective (well into the early modern period): the strength of the powers resisting the state, with the result that kings were persistently bothered both by external challenges from other states and by internal opposition in terms of reactions from nobility and clergy.

From this beginning around 1160, it is easier to explain the subsequent development. As soon as the cycle of ever-increasing violence and bitterness between opponents had been set in motion, it became a self-reinforcing process which grew at a progressively faster speed. Here Charles Tilly’s concept of “protection racket” may be instructive in explaining the change that accompanied the increase in large-scale fighting:

If protection rackets represent organised crime at its smoothest, then war risking and state making—quintessential protection rackets with the advantage of legitimacy—qualify as our largest examples of organized crime.¹⁰⁰

The increased level of violence called for a correspondingly heightened need for protection. The process whereby the need for protection rose

⁹⁸ See Holmsen; *Norges historie*; Lunden, *Norge under Sverre-ætten*.

⁹⁹ As in many other societies, there could be cyclical movements between numerous and fewer chieftains. Cf. Marshall D. Sahlins, “Poor Man, Rich Man, Big-Man, Chief: Political Types in Melanesia and Polynesia,” *Comparative Studies in Society and History* 5 (1963), 285–303.

¹⁰⁰ Charles Tilly, “War Making and State Making as Organized Crime,” in *Bringing the State Back In*, ed. Peter Evans, et al. (Cambridge: Cambridge University Press, 1985), 169–191.

as a result of increasing plunder/demands for contributions, eventually gained its own momentum and became self-reinforcing. Thereby the warrior classes could, so to speak, cultivate a social state in which the need for their services became more and more urgent. And the clerics could tell stories of how indispensable central power was if one were to avoid the unleashing of uncontrollable forces. Gradually this historically defined separation between legitimate and illegitimate violence would become self-evident and self-explanatory. Still, we should not lose sight of the fact that European monarchs “were never as absolute as they wished” when compared to other Eurasian kings.¹⁰¹ The power balance of pre-state society continued, albeit on another scale.

It is a strange coincidence that the two most tyrannical kings in *Morkinskinna*—Magnus the Good and Sigurd Jorsalfar—became the most cherished kings in posterity. Magnus achieved the epithet “the Good,” and Sigurd was considered the last “good” king of Norway before the civil wars broke out.¹⁰² This discrepancy between reputation and behaviour is a sign that the royal legitimation process was in the making in the early twelfth century, but by the same token it testifies to the limits of the process, as *Morkinskinna* was unable to remove the gloomy traces from these kings. This was going to change. Already a decade later, Snorri Sturluson passed over much of the ambiguity surrounding these two kings, although like *Morkinskinna*’s author he was unable or unwilling to silence all counter-voices to monarchy.

¹⁰¹ Jones, *The European Miracle*, 233.

¹⁰² This image of Sigurd as the last “good” king of Norway was firmly established by the time the author of *Morkinskinna* started his work, as it had been elaborated by clerical authors such as Theodoricus monachus.

KINGSHIP, WOMEN AND POLITICS IN *MORKINSKINNA*

Auður Magnúsdóttir

Introduction

In the year 1136 King Harald Gille of Norway was assassinated while lying in bed with his concubine, Tora. The relationship with the concubine was official and simultaneous with the king's marriage to the queen, Ingegerd, and both women were living at the king's court. In fact the evening before the king's death, two of his followers were making bets about which of the two women the king would "sleep with" the following night, the queen or the concubine, a wager witnessed by the king himself. Besides these two women, the king had five concubines we know of, in all seven women, and at least one child with each.¹ We will have to bear in mind that this form of cohabitation was not unusual amongst the higher social groups in contemporary Norway and the rest of Europe, even if it is doubtful that it was customary for all parties, wives, concubines and children, to live under the same roof—not even, as in this instance, just a wife and *one* concubine. The relationship with Tora probably already existed before the marriage to the queen, and although Tora was of lesser social standing than Ingrid, she was not of an insignificant origin.² However, the hierarchical order between the queen and concubine is confirmed by the events following the king's death. According to the thirteenth-century kings' saga *Morkinskinna*, it is Ingrid, the mother of Harald's only legitimate son, whom we now see as a political actor pursuing not only the cause of her one-year-old son Inge, but also that of her three-year-old stepson Sigurd, the illegitimate son of Tora and Harald, with the goal of having both of them accepted as kings (94). Much later we see Ingrid acting as a classical

¹ "Ættarskrár" IV; *Morkinskinna*, vol. 2, ed. Ármann Jakobsson and Þórður Ingi Guðjónsson, Íslenzk fornrit 24 (Reykjavík: Hið íslenska bókmenntafélag, 2011); translated into English by Theodore M. Andersson and Kari Ellen Gade as *Morkinskinna: The Earliest Icelandic Chronicle of the Norwegian Kings* (Ithaca: Cornell University Press, 2000). The Icelandic text is hereafter cited as *Morkinskinna* II; the English translation as Andersson and Gade. The Icelandic text is hereafter cited by chapter number; the English translation as Andersson and Gade.

² On kings and concubinage at the royal court in Norway see Sverre Bagge, *Mennesket i middelalderens Norge. Tanker, tro og holdninger 1000–1300* (Oslo: 1998), 124.

hetzerin (instigator), urging her adult son to avenge the death of one of his courtiers (108).

The author of *Morkinskinna* portrays Harald Gille as a weak and unwise king. This picture is reinforced when he, unaware of the plot leading to his assassination, reveals which of his two women he will be sleeping with (and thus his location) during the night to come. His death is unworthy of a king, and as Ármann Jakobsson points out in his preface to *Morkinskinna*, Harald died in much the same way as he had lived his life, insensible of his surroundings and his office.³ His son Sigurd, the fruit of the relationship with Tora, inherits his father's shortcomings and is eventually killed as his father was before him, when visiting his concubine (108). By highlighting the fact that both kings were killed while diverting themselves with women instead of taking care of their responsibilities, the author reinforces his interpretation of good and bad kingship. Intemperance could not be combined with decent chieftaincy, and influenced as he must have been by the ideology of his own time and his clerical learning, the author attributes extramarital sexuality and skirt-chasing to a lack of character.

Morkinskinna mentions proportionately few women, most of them only in passing. Women enter the scene as consorts and concubines, as daughters, widows, and mothers. Given the focus of kings' sagas as political portraits of men, it is primarily the political aspects of the relationship between men and women that are in focus here. True, one part of being a successful politician during the Middle Ages was the ability to arrange profitable marriages,⁴ and during the era in which *Morkinskinna* is set, having several women and many children and supporting all of them was still regarded as matter of status. By the time the work was actually written, however, this ideal of the virile chieftain had faded at the expense of monogamous marriage and legitimacy.⁵ Is there a trace of this change in *Morkinskinna*? Given the division between "good" and "bad" kings in *Morkinskinna*, my focus in the following will be twofold. On the one hand, I will examine the importance of marriage and cohabitation as reflected in *Morkinskinna*—or to put it more precisely, whether the saga's account of

³ *Morkinskinna*, vol 2, "Formáli," xv.

⁴ Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1999), 119–21; Auður Magnúsdóttir, "Women and Sexual Politics," in *The Viking World*, ed. Stefan Brink in collaboration with Neil Price (London: 2008), 40–48.

⁵ Auður Magnúsdóttir, *Frillor och fruar. Politik och samlevnad på Island 1120–1400*, Ph.D. diss. (Göteborg: University of Göteborg, 2001).

the use—and misuse—of women can be seen as a way of conveying information about the kings' capabilities as political leaders. Secondly, after giving a more general survey of marriage and politics in *Morkinskinna*, I will narrow my perspective to study one specific marriage and the turmoil it created. Here we will have reason to question rules of inheritance, illegitimacy, and lineage from the viewpoint of gender.

Morkinskinna, Women and Context

It is generally believed that *Morkinskinna* was composed during the period 1217–1220. Theodore M. Andersson goes as far as to suggest a writer from the north of Iceland, who, even if he remains anonymous, is supposed to have been a Benedictine monk from the monastery of Munkaþverá.⁶ The year 1220 or thereabouts has been seen as the beginning of a new political era in Iceland, the so-called Sturlung Age, which lasted until the Icelanders accepted Norse sovereignty in 1262/64. This was a turbulent period in which we witness not only a transformation in power-structures and forms of warfare and violence, but also changes in attitudes toward intimacy and marriage. *Morkinskinna's* setting in the period leading up to the transfer of power, generally dated to the years around the chieftain Sæmundur Jónsson's death (1222), is therefore of great interest for the analytical reader of the saga.

Andersson maintains that “the unknown author of *Morkinskinna* was politically engaged.” He points out that more than a little tension characterized political developments in Iceland and Norway at the time and that “In fact the period 1215–1220 saw what amounted to a trade war between Iceland and Norway.”⁷ The conflict Andersson refers to has been interpreted as being a question of national opposition to foreign (here Norse)

⁶ Theodore M. Andersson, “Snorri Sturluson and the Saga School at Munkaþverá,” in *Snorri Sturluson. Kolloquium anlässlich der 750. Wiederkehr seines Todestages*, ed. Alois Wolf (Tübingen: 1993), 9–25, and Andersson, “The Politics of Snorri Sturluson,” *JEGP* 93 (1994): 55–78 at 56. The monastery was a centre of learning and writing, housing authors such as Gunnlaugur Leifsson, Oddur Snorrason, and Karl Jónsson around the year 1200. On the origins of *Morkinskinna* see Ármann Jakobsson, *Staður í nýjum heimi. Konungasagan Morkinskinna*, (Reykjavík: 2002), 30–59; and his “Formáli” to *Morkinskinna*, vol. 1, ed. Ármann Jakobsson and Þórður Ingi Guðjónsson, *Íslensk fornrit* 23 (Reykjavík: Hið íslenska bókmenntafélag, 2011), xiv–xix. Hereafter cited as *Morkinskinna* I.

⁷ Andersson, “Politics,” 56. Calling this conflict a “trade war” is an overstatement in my view, although the consequences were quite serious. Jón Jóhannesson, among others, deals with this encounter in *Íslendingasaga I, Þjóðveldisöld* (Reykjavík: 1956), 283ff.

interference in Iceland. Andersson emphasizes that the trade conflict originated in the southern part of Iceland, but asserts that “there is evidence of traditional opposition to foreign intrusion in Northern Iceland as well.”⁸ The political resistance against foreign interference in this part of the country also becomes evident from other written material. This is precisely the area in which the saga is supposed to have been written. Thus, it is “consequently understandable if we detect in *Morkinskinna* a deep-seated apprehension about Norwegian foreign policy.”⁹

Andersson has divided the kings in *Morkinskinna* into two types, “the foreign adventurer” type and the “builder and lawmaker” type, as a way of ascertaining the author of *Morkinskinna*’s views on ideal kingship. How the kings are characterized, what they say, how they behave, and how the supposed prosperity of their reign influenced their subjects are all of importance when interpreting the author’s inclinations. In *Morkinskinna*, according to Andersson’s analysis, there is an obvious preference for the “builder and lawmaker” king, the type who concentrates more on domestic affairs and less on foreign expansion. Given the political situation—and tension—between Icelandic chieftains and Norway at the time of writing, this preference becomes all the more interesting. Besides giving information about the kings of Norway, *Morkinskinna* thus reveals contemporary ideas of kingship as well as local politics. However, the focus upon these two “stereotypes” tends to highlight those actions of kings and magnates which we would define as public, thus obscuring a vital part of medieval politics: marriage, cohabitation, and inheritance.

During the composition of *Morkinskinna* and long thereafter, marriage and cohabitation was of great political importance in Iceland, as elsewhere. The attempts to implement the idea of monogamous and unbreakable marriage had certainly caused tension between church authorities and the chieftains, but very few of the latter were willing to give up the advantages of the old “system.”¹⁰ Obviously the idea that there was only one valid form of cohabitation—marriage—had, however, taken hold amongst learned churchmen, including the authors and compilers of the sagas. Thus a great difference can be seen between the way in which relations between women and men are depicted in family sagas and their

⁸ Ibid., 57. Duke Skule Bårdsson prepared a military invasion to Iceland to regain Norse control over trade and prices, but Snorri Sturluson was able to prevent this. See Jón Jóhannesson, *Íslendingasaga I*, 285.

⁹ Andersson, “Politics,” 57.

¹⁰ See Auður Magnúsdóttir, *Frillor och fruar* and “Women and Sexual Politics.”

depiction in contemporary sagas, the former genre being—as the Icelandic scholar Einar Ólafur Sveinsson puts it—“in spirit the most monogamous literature in the world,” while the latter showed things as they “really” were.¹¹ The family sagas idealised the heroes of the past by making them loyal and monogamous husbands, whereas the authors of the contemporary sagas could not lie when describing a society and characters with which their audience was familiar.¹²

In his thesis on *Morkinskinna* Ármann Jakobsson approaches the compilation mainly from three perspectives, addressing the *samfélagsmyndir* (images of society), the *mannamyndir* (images of men), and *Morkinskinna*'s characteristics as a *listaverkið* (work of art). All three categories have several subcategories, the one of main interest for my analyses being his approach to *Morkinskinna* as a history of private life (*einkalífssaga*).¹³ Here Ármann focuses on the kings' relations with women, whether sexual or not (the latter form of association being less frequent). Ármann rightly points out that *Morkinskinna* is a history of men, in which women play a less distinctive role than in the family sagas, but he concludes: “*Morkinskinna* is a history of private life, but that story is public, since politics belong to private life and private life is politics.”¹⁴ Obviously women play an important role in the compilation as producers of heirs, and we do get glimpses of women taking political decisions, or at least decisions that might lead to political consequences, but the focus on women in *Morkinskinna*, as in other kings' sagas, is often limited to their function as “high-lighters” of the king's character. However, women in *Morkinskinna* are neither encountered frequently enough nor are they sufficiently important for the story as a whole for them to find a place in Ármann's discussions of “images of society” or “images of men.”

Clearly this is related to the purpose of the saga in shedding light upon Norwegian history in the period c. 1030–1160, including the considerable attention paid to defining an ideal king by describing the various kings'

¹¹ Einar Ólafur Sveinsson, *Sturlungaöld, Drög um íslenska menningu á þrettánda öld* (Reykjavík: 1940), 142.

¹² See amongst others, Helgi Þorláksson, “Snorri Sturluson og Oddaverjar,” in *Snorri. Átta alda minning*, ed. Gunnar Karlsson and Helgi Þorláksson (Reykjavík: 1979), 53–88; Jesse Byock, *Medieval Iceland* (Berkeley: 1988), 34; William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: 1991), 51; Gunnar Karlsson, *Inngangur að miðöldum. Handbók í íslenskri miðaldasögu I* (Reykjavík: 2007), 203ff. For a detailed study of *Sturlunga saga*'s reliability and rhetorical style see Úlfar Bragason, *Ætt og saga. Um frásagnarfræði Sturlungu eða Íslendingasögu hinnar miklu* (Reykjavík: 2010).

¹³ Ármann Jakobsson, *Staður í nýjum heimi*. 148ff.

¹⁴ *Ibid.*, 159: My translation.

capabilities in politics and warfare. But as we have seen, at the time *Morkinskinna* was written down the ideology of monogamous marriage as one of the cornerstones of Christian society was well known in Iceland.¹⁵ If one of the purposes of *Morkinskinna* was to outline what attributes were necessary for a successful and good king, would it then not be logical that the ideal of monogamous marriage should be one of the distinctive attributes of this ideal ruler? Here the author faced a seemingly insurmountable problem. Given his ambition of painting a trustworthy picture of twelfth-century Norway, he was unable to hide the fact that every king's death was followed by several claims to the throne, the supposed heirs being both legitimate and illegitimate sons or brothers of the deceased. Most of the kings in *Morkinskinna* had several women and illegitimate children, Magnus the Good being the striking exception. The author's strategy for dealing with this problem was to draw attention to the polygyny and disrespect for Christian marriage of some kings and gloss over the same qualities in other kings, thus emphasising their character unfavourably or favourably. However, as we shall see, the author is not always consistent in his position towards marriage and legitimacy. Given the circumstances, this ambiguity is quite understandable.

Women and the King's Character

In the year 1180, or approximately forty years before *Morkinskinna* was written, Archbishop Øystein Erlendsson of Nidaros sent a letter to the bishop of Skálholt in Iceland, Thorlákur Thórhallsson. In the letter he directly addressed five well-known chieftains—among them two of the most powerful men in Iceland at that time, Jón Loftsson and Gizur Hallsson—chastising them for their unchristian and immoral way of living:

But nothing seems to me more severe than your depravity and womanizing [...] surely I do not have to explain any further [...] [Y]ou, the best of men, behave like animals, you show no respect for marriage, the holy bond that cannot be broken. And so, as you chieftains continue this way of living we cannot expect anything else from the common people. Therefore everything will remain unchanged.¹⁶

¹⁵ Obviously the author was well acquainted with the rules of incest, as can be seen in the account of King Magnus's encounter with Margret Trondsdottir: *Morkinskinna* I, 150 and n. 2.

¹⁶ *Diplomatarium Islandicum: Íslenzkt fornbréfasafn, sem hefir inni að halda bréf og gjörninga, dóma og máldaga og aðrar skrár, er snerta Ísland eða íslenzka menn, I. 834–1264*, ed. Jón Sigurðsson (Copenhagen: 1857–1876), 262–63. Cited hereafter as *DI I*. My translation.

It is generally believed that the archbishop wrote this letter at the request of Bishop Thorlákur, whose sister was Jón Loftsson's concubine.¹⁷ Like Øystein, Thorlákur fought for the "*libertas ecclesiae*" in his bishopric; if he were to stand a chance against the representatives of worldly power, he needed support from his superior. The letter can be seen as a follow-up to the archbishop's previous attempts to deal with "Icelandic" immorality, of which we find a trace in a letter from 1173. Here the archbishop specifies his accusations, writing that "some of you have abandoned your wives and taken whores instead, some of you have both under the same roof, and thus commit such shameful offence that leads all men to sin."¹⁸

Although the efforts of Øystein and Thorlákur to impose monogamous marriage and clerical celibacy in Iceland were not particularly successful, their work was not completely without effect. By the end of the twelfth and during the thirteenth century concubinage had become more unusual among married men. We see a shift towards choosing *either* concubinage *or* marriage, something we might call an adjustment to the idea of Christian marriage.¹⁹ Thus, even if we cannot speak of an immediate transformation in marriage customs, the sources indicate common consciousness of the new ideals of intimacy. From now polygyny (or perhaps more correctly, polycoity) was no longer to be seen as a social or political advantage, but rather as a lack of character. An awareness of this "new" ideology can be traced in the sources.

In the allegorical story *Rauðúlfs þáttr* there is a short episode in which the king, St Olav, pays a visit to the farmer Rauðúlfur and his two sons. All three are in possession of supernatural gifts. Rauðúlfur can see into the future, Sigurður can read the moon and the stars, and Dagur is able to discern a man's character by looking deeply into his eyes. St Olav asks Dagur to make an analysis of him:

"What bad quality do you see in me?"

"I cannot see that, my lord," he said, "and even though I babble things about ordinary men, that is a different matter, but for this I have neither the

¹⁷ See Sveinbjörn Rafnsson, "Þorláksskriftir og hjúskapur á 12. og 13. öld," *Saga* 20 (1982): 114–29; Auður Magnúsdóttir, *Frillor och fruar*, 170.

¹⁸ *DI* I, 221. My translation.

¹⁹ Thus the chieftain Sæmundur Jónsson (b. 1154), son of Jón Loftsson, had several concubines and chose not to marry, as did his brother Ormur (b. 1160). Sturla Sighvatsson (b. 1199) got himself a concubine when he was eighteen, but in contrast to what had been common during the twelfth century, he sent her back to her family when he got married in 1223. His brother Þórður kakali only had one concubine that we know of, as did another relative, Þorgils skarði. See Auður Magnúsdóttir, *Frillor och fruar*.

intelligence nor the understanding, and anyway in my opinion there is not much fault to find in your character."

"Speak now," said the king, "it is no good trying to get out of it now."

Dagr replied: "This, then, my lord, which afflicts most people, that is the love of women."

"You are right," said the king, "and your family is far superior to most other men I know of in intelligence and understanding."²⁰

We are to understand that Dagur is embarrassed and is reluctant to inform the king of his imperfection. It is thus noteworthy that Snorri Sturluson chooses to exclude this part of *Rauðúlfs þátr* from his saga of St Olav.²¹ A similar, even clearer example can be found in the saga of Guðmundur dýri in the *Sturlunga saga* collection. Although Guðmundur is a highly respected and influential chieftain, the author of the saga obviously feels compelled to unmask Guðmundur's failure of character, or as he calls it, "*skaplöstr*," and thus states that the chieftain had the compulsion to love "more than one woman at a time."²²

Although the author of *Morkinskinna* does not allow himself to make any direct comments such as these, he is far from neutral in his narration. Magnus the Good, Olav Kyrre, and Øystein Magnusson are all examples of Andersson's above-mentioned "builder and lawmaker" kings. Peaceful and predominantly concerned with domestic affairs, these kings are primarily interested in the well-being of their subjects and are highly esteemed, at least by the author. On the other hand we have "adventurer" kings such as Harald Hardruler, Magnus Barefoot, and Sigurd Jorsalfar ("the Crusader"), who are mainly interested in warfare and "colonisation" abroad, less so in internal affairs, and who are presented unfavourably on the whole.²³

²⁰ *Rauðúlfs þátr*, edited with translation and notes by Anthony Faulkes (London: 2011), 17 (<http://www.vsnrweb-publications.org.uk/Raudulfs%20thattr.%20text.pdf>). *Rauðúlfs þátr*'s origin has been a matter of debate, but Anthony Faulkes narrows the date of composition to the second and third decades of the thirteenth century. The *þátr* is preserved in several manuscripts, of which the oldest dates to about 1300. See Anthony Faulkes, "Rauðúlfs þátr: A Study," in *Studia Islandica* 25 (1966): 68f and 77f. (<http://vsnrweb-publications.org.uk/Raudulfs%20thattr.pdf>).

²¹ See Bjørn Bandlien, *Å finne den rette. Kjærlighet, individ og samfunn i norrøn middelalder*, (Oslo: 2001), 127.

²² *Sturlunga saga*, ed Jón Jóhannesson, Magnús Finnbogason, and Kristján Eldjárn, vol. 1 (Reykjavík: 1946), 175–76. *Guðmundar saga dýra* is only preserved as a part of the *Sturlunga* compilation, but the date of the original saga is estimated as 1200–1225, which makes it contemporary with *Morkinskinna*. See Guðrún Nordal, "Sagnarit um innlend efni—Sturlunga saga," in *Íslensk bókmenntasaga* 1, ed. Vésteinn Ólason (Reykjavík: 1992), 309–344.

²³ Possibly Andersson simplifies the picture given of Harald Hardruler. As Ármann Jakobsson has pointed out, Harald's character is far more complex than Andersson maintains. See Ármann Jakobsson, *Morkinskinna* II, "Formáli," xix.

True, Sigurd Jorsalfar is not an entirely unsympathetic person. Nonetheless, the categorisation is helpful when analysing the relationship between men, power, and women. All three of the highly esteemed “builder and lawmaker” kings are remarkably abstemious when it comes to women. Despite *Morkinskinna*’s comprehensive coverage of Magnus the Good, very little is said about his relations with women. Indeed, not until Magnus’s death does the author reveal that “His death was a grievous loss to everyone, especially since he was survived by only one daughter. She was then no more than a child, and her name was Ragnhild.”²⁴ Even then we are not enlightened about the mother, or told of any other liaisons the king may have been involved in. In fact, we have only one direct indication of Magnus’s interest in women and intimacy, and contrary to what might be assumed, even this story is used to illustrate his greatness and his ties to his father, St Olav.

The story begins at the farm of the “distinguished district chieftain Trond. He had a daughter named Margret. She was a highly intelligent woman, and very beautiful. Word of her outstanding qualities spread far and wide.” Further, the author states, Trond used to “consult his daughter on practically all matters.” (25)²⁵ The portrayal of Margret of course underlines the point that the king’s desire would not be aroused unless the object of his desire were worthy and equal.²⁶ This is followed by the account of the king’s visit to Trond. Once he has laid eyes on the woman, Magnus’s intentions become clear: “She must certainly be well bred, and she is a beautiful woman to boot. I wish to spend the night with her.” Margret, on the other hand, is reluctant. Yet despite Trond’s attempt to thwart the king’s plan by telling him that “such a thing does not befit your honour,” the king gets his way.²⁷ A bed is prepared for their lovemaking, and Margret is ordered to await the king’s entrance. In comes a man, wearing a hood, asking if anybody is there. Receiving no answer, the man takes hold of Margret and asks whether she feels herself to be in a difficult

²⁴ Andersson and Gade, 184.

²⁵ “Hann átti dóttur er hét Margrét. [Hún var kvenna] vitrust og vænst, ok gørdisk mikít orð á um þat víða hennar vaskleik”: *Morkinskinna* I, 148. Andersson and Gade translate *vaskleikr* as “outstanding qualities,” noting also that *vaskleikr* generally refers to male valour (n. 2 to chap. 23).

²⁶ She is not only beautiful but wise as well.

²⁷ Andersson and Gade, 169. Presumably, Margret is not opposed in principle to having an affair with the king. Her opposition here stems from the fact that their liaison is not intended to be a long-lasting one, but merely a one-night stand: “I know,” she says, “that the king only has in mind what is contrary to my wishes, and it is difficult to love him first and then lose him immediately.” (Ibid.)

position regarding the king, whereupon she answers, "It's certainly not to my liking." After this mysterious man offers to help Margret, they agree that when the king lies down next to her she is to say that she "has been" with his kinsman Sigurd and, says the man, "let us see how that affects him. I will see to it that nothing more is needed." After that the man puts his hand on Margret's breast, and then goes away. Soon after, the king arrives and Margret reacts as she has been instructed. Not unexpectedly Magnus responds with anger, jumping out of the bed and declaring, "Then it is not fitting that I should lie in this bed." The alleged lover, Sigurd, is summoned to the farm for inquiry and even Margret herself is interrogated. Sigurd claims that he has barely spoken to Margret, let alone slept with her; and when Margret has given the details of the unknown man's visit and shown the mark on her breast, the mystery is solved:

Then the king spoke. "It turns out," he said, "that my father does not wish me to lie with this woman. The man who visited her was my father. I reacted so strongly and resolved the matter so quickly because God and Saint Ólafr were opposed. And now, Sigurðr, you shall have this match, and my friendship with it."²⁸

What is the reader supposed to conclude from this story? As the author's model for a good king, Magnus is kind, solicitous, brave, and generous, and thus beloved. He is the son of a saint, and the later portrayal of his own death has a hagiographic aspect. Would a taste for women damage the image of the role-model king, a worthy heir of his father and of the crown?²⁹ The episode is intended to illustrate something more than Olav's opposition to his son's amorous intentions. Firstly, Magnus seems well aware of the Christian definition of incest, which is why he jumps out of Margret's bed. St Olav's own opposition to his son's relationship with Margret stems from the fact that she is unhappy with the arrangement (the matter of her consent not having been respected) and that Magnus has no intention of marrying her. Through St Olav's intervention Magnus is prevented from committing a sin; he passes a test; and once again he becomes a better man.³⁰

²⁸ Ibid., 169–70.

²⁹ Snorri Sturluson does not mention this episode in *Heimskringla*.

³⁰ On the theory and implementation of consent in Old Norse literature, law, and society see Jenny Jochens, "Consent in Marriage: Old Norse Law, Life, and Literature," *Scandinavian Studies* 5 (1986): 142–76; Jochens, "Með jákvæði hennar sjálfrar": Consent as Signifier in the Old Norse World," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington D.C.: 1993), 271–89; Bandler,

Olav Kyrre ruled for a period of twenty-seven years (1066–1093), a reign of which we are informed in just thirteen pages.³¹ Unlike his father, Harald, Olav is not a complex person; on the contrary, he is all goodness. The few pages allotted to him are dedicated to depicting the flourishing and prosperous times of his reign. Inevitably the author has to reveal Olav's extramarital affair with the concubine Tora Árnadóttir, as she was the mother of the future king Magnus Barefoot, who is said to have been extremely handsome, surpassed only by his own father (57). But good looks seem to have been the only resemblance between the two. Magnus Barefoot fathered no fewer than five kings. All were illegitimate, and only one of them can be considered a successful king according to the author's criteria: the oldest son, Øystein.³² The contrast between the steady and the unstable types of king is most evident in the case of Øystein (d. 1123) and his half-brother Sigurd Jorsalfar (d. 1130), who ruled simultaneously from 1103 until Øystein's death. Although Sigurd is portrayed as a hero and warrior during and after his travels to Jerusalem, the account of his mental illness overshadows his virtues.³³ And of course one of his frailties concerns women. While *Morkinskinna* is succinct in its account of Sigurd's relationship with women, we nevertheless get hints as to its political importance. According to *Morkinskinna*, King Malcolm of Scotland sent his daughter to Sigurd's father, King Magnus, as a sign of reconciliation (*"til sættar við hann"*), whereupon the author comments: "But king Magnus gave her to his son Sigurd, who was nine years old and the girl was five." (62). Erroneous though this information may be, it nevertheless illustrates the political aspects of marriage. But it says nothing about Sigurd as king, or as a person. If anything, it enhances the reputation of his

Å finne den rette, 138ff; and Auður Magnúsdóttir, *Frillor och fruar*, 176–9. Jochens deals with the "Margret-episode" in "The Politics of Reproduction: Medieval Norwegian Kingship," *American Historical Review* 92, no. 2 (1987): 327–49 at 338.

³¹ By contrast, fifty-four pages are devoted to his son Magnus Barefoot's ten-year reign.

³² Magnus Barefoot had no legitimate children. In view of the positive picture of Øystein, one may speculate as to whether the author deliberately puts him forward as the only "legitimate" heir, based on his status as oldest son.

³³ The author's description of Sigurd's mental illness and its symptoms is exceptionally interesting, as is the account of how his brother Øystein tries to help him through one of the episodes through conversation, not unlike the modern "talking cure." Snorri Sturluson omits several of these stories, which can be related to his sympathetic attitude towards royal power. By contrast, the author of *Morkinskinna* is considered to be more critical of kingship.

father as a skilled warrior who is powerful enough to secure a favourable marriage alliance.³⁴

As can be concluded from *Morkinskinna's* portrayal of Harald Hardruler, the author is remarkably interested in personalities and how personalities interact.³⁵ Just as Harald is continuously compared to Magnus the Good,³⁶ the interaction of two different personalities is also used to highlight the differences between Øystein and Sigurd. Therefore we have the *mann-jafnaðr* (competition) between the two, and similarly, *Morkinskinna's* vivid and extensive description of Sigurd's mental illness. Characteristic of Sigurd's disorder is his repeated renunciation of Christian ideology, preferably on Christian feast days. On a Friday he orders meat for dinner, and repeats this "sinful" demand on Christmas (84, 85). On Whitsun he disgraces the religion by throwing his Bible into the fire and slapping his wife in public (81). Finally, his disability is illustrated by his plans to abandon his queen ("*láta eina drottningu*") and marry another woman, named Cecilia, who is described as the "daughter of a powerful man." Of course the representatives of the church interrupt his plan, but Sigurd persists, marries the woman, and soon "love[s] her greatly."³⁷ But this is a sinful behaviour, for which the king is destined to pay a price. At his deathbed, Sigurd's friends urge him to renounce his new wife, who also wishes to leave him. And here the author illuminates the consequences of Sigurd's frailties:

As he lay ill, she asked to be released because that would serve them both best. The king said: 'It never occurred to me that you would abandon me like the others.' He turned from her and flushed red as blood. She departed, and his illness advanced until it became the cause of his death.³⁸

³⁴ According to *Ágrip* and *Heimskringla*, Sigurd was married/engaged to the daughter of Mýrkjartan, king of Ireland. Cf. *Ágrip af Nóregskonunga sögum, Fagrskinna—Nóregskonunga tal*, ed. Bjarni Einarsson, Íslenzk fornrit 29 (Reykjavík: 1985), 47; and *Heimskringla*, vol. 3, ed. Bjarni Aðalbjarnarson, Íslenzk fornrit 28 (Reykjavík: 1979), 224–25.

³⁵ Andersson, "Snorri Sturluson and the Saga School," 13.

³⁶ This comparison even occurs after Magnus's death, as we will have reason to return to.

³⁷ Andersson and Gade, 357–58. The episode describing Sigurd's dealings with the two bishops who interfere is worth its own analysis for its explicit positioning with respect to "correct and true" Christendom, i.e., how to live according to theory. Hence it can be read as the author's critical commentary on corruption within the church.

³⁸ *Ibid.*, 358. The king's first wife, Malmfrid, survived her husband and was married to Erik II of Denmark.

In contrast to Sigurd's unstable and egoistic figure stands his brother, King Øystein. This king builds churches and expands the kingdom "by communicating with the wise men of Jämtland" and thus gaining their friendship. He wins Jämtland "with prudent counsel rather than with hostility and aggression, like some of his ancestors." He renews—and knows—the law; he speaks in his subjects' interest; he is intelligent, handsome, eloquent, and "outstandingly liberal"; he is cheerful and verbal. "Of all kings he was the most beloved by his men."³⁹ And of course Øystein is monogamous. Øystein's concern for his friends and subjects is shown through his interaction with them, as in the case of the lovesick Icelander, Ívar, whom Øystein cures through intimate conversation and care.⁴⁰ He is depicted as a sensitive person, who through reason is able to keep Sigurd's temper and depression within limits. It is thus after Øystein's death that Sigurd finally loses control over his behaviour.

We can conclude somewhat predictably that womanizing, as it is portrayed in *Morkinskinna*, is used as a means to additionally highlight a king's weakness of character and his incapacity. On the whole Old Norse literature is consistent when it comes to men, love, and obsession. Court-ing women or even womanizing is acceptable as long as it strengthens the warrior; love as obsession, on the other hand, is bound to weaken him, distract him, and certainly interfere with his duties.⁴¹ This can be seen not only with Sigurd Jorsalfar, but also with Magnus Barefoot, even if it is conveyed more obliquely in the latter case. In a saga so concentrated on men, their capabilities, their appearance, doings and duties, women are used to draw attention to the principal actors. As might be expected, given the time and place of *Morkinskinna*'s origin, to show a king submitting to the power of women and sexuality is a way of showing his inability to hold the position of royal power. Thus, women play a comparatively subordinate role in *Morkinskinna*. However, there are, as we have seen, exceptions. Furthermore, in the making of political alliances women of course played an important role as future wives and mothers. Given the political significance of marriage, it understandably was expected to be arranged between two socially equal persons. For the men who arranged the marriage, the parties' social position was politically important. For the future wife, the social standing of her husband-to-be could be a matter

³⁹ Ibid., 326.

⁴⁰ Ibid., 326–28.

⁴¹ See Bandlien, *Å finne den rette*, 120f.

of honour: it was discreditable for a woman to be married to a man of lower social standing. In *Morkinskinna* we have a very interesting case of that kind of marriage and its consequences. Before we examine that story we shall look more generally at marriage and politics as portrayed in *Morkinskinna*.

Marriage and Politics

The character of the Icelandic sagas, whether kings' sagas or other genres, limits our possibilities to study women's actual political, economical and cultural position. For instance, extremely few of the kings' concubines are mentioned by name, which distinguishes *Morkinskinna* from, for example, *Sturlunga saga*. The absence of active and powerful women is of course symptomatic. In medieval society women were defined in accordance with their closest male relative's social and economic position. Women held a different type of honour from men but were nonetheless guardians of the family honour in their role as inciters.⁴² They were supposed to be sexually restrained *before* marriage and monogamous *in* marriage. They reproduced heirs; and their personal qualities, character, and looks were considered important for their future role as mothers.⁴³ The sagas were written after the introduction of Christianity and consolidation of the church by men of Christian learning who were well aware of—to take one example—the necessity of consent for a valid marriage. Thus, stories of proposals and how women react to them, in addition to how they manage their role as wives, cast a light on women's social position and the contemporary perception of male—female relationships. But no less importantly, they give us essential information about the political (and economic) importance of marriage.⁴⁴

⁴² Jenny Jochens, "The Female Inciter in the Kings' Sagas," *Arkiv för Nordisk filologi* 102 (1987): 100–121; Preben Meulengracht Sørensen, *Fortælling og ære. Studier i islændingesagaerne* (Oslo: 1995), 212–46; Auður Magnúsdóttir, "Kvinnor i fejd. Ära, kön och konflikt i det nordiska medeltidssamhället," in *Fejder og fred i nordisk middelalder*, ed. Erik Opsahl (Oslo: 2007), 73–84.

⁴³ Hence, it is interesting that women's looks are rarely mentioned in the kings' sagas, in contrast to the long and expressive descriptions of men.

⁴⁴ Nonetheless, in my opinion the concentration on marriage and biological kinship has meant that the social and political functions of other forms of relationships have been neglected, which recent research on friendship and concubinage has been able to illuminate. On friendship see Gerd Althoff's pioneering work *Vervandte, Freunde und Getruue. Zum politischen Stellenwert der Gruppenbindungen im früheren Mittelalter* (Darmstadt: 1999). Regarding Scandinavia see, amongst others, Jón Viðar Sigurðsson, "Friendship in

The historian Jenny M. Jochens has studied the political aspects of concubinage, marriage, and reproduction in the kings' sagas. As she points out, it could be seen as an advantage to have a sexual liaison with the king, or as she puts it: "A daughter's success in producing a male child for a king could result in social advancement for the whole kin group, lasting several generations."⁴⁵ Given the sparse information about the royal bedmates, it is of course difficult to draw credible conclusions about the nature of these relationships, such as determining whether they were of a long-lasting character or short romances. However, it appears that these liaisons followed the same pattern as in comparable societies without strong central authority.⁴⁶ Therefore I assume, in the case of concubines who can be identified by name and parentage as being of significant birth, that the relationship was long-lasting and politically valuable to both parties, the king as well as the woman's kin-group.⁴⁷ Through these relationships the king strengthened his position locally, at the same time that he ensured the continuation of his lineage.⁴⁸ On the other hand, in contrast to marriage proposals, with concubinage we seldom obtain any information about the circumstances or the agreement.⁴⁹ One explanation for this may be that concubinage did not include economic transactions between the two families. Another may be that because she was of lower social status than the man/king, the woman in question did not have the option of opposing the association that was available to a wife-to-be.⁵⁰ For its part, the political importance of marriage becomes clear only from looking at the genealogy of the Norwegian kings as presented in *Morkinskinna* as well as in other kings' sagas. In a few cases the kings' sagas (*Heimskringla*, *Ágrip*, *Fagrskinna* and *Morkinskinna*) contradict each other, even regarding

the Icelandic Commonwealth," in *From Sagas to Society: Comparative Approaches to Early Iceland*, ed. Gísli Pálsson (Enfield Lock: 1992), 205–15; Lars Hermanson, *Släkt, vänner och makt: en studie av elitens politiska kultur i 1100-talets Danmark* (Göteborg: 2000); and Auður Magnúsdóttir, *Frillor och fruar*.

⁴⁵ Jochens, "Politics of Reproduction," 335.

⁴⁶ Margaret Clunies Ross, "Concubinage in Anglo-Saxon England," *Past and Present* 108 (1985): 2–34; Auður Magnúsdóttir, *Frillor och fruar*.

⁴⁷ *Morkinskinna* II, gives us several examples of women of significant birth who become concubines of kings, such as Tora, daughter of Árni lágr, 9, Borghildr, daughter of Olav in Dalur, 105–106, and the sisters Tora and Sigrid, daughters of Saxi i Vík (*Ættaskrá* III).

⁴⁸ Jochens, "Politics of Reproduction," 335.

⁴⁹ This is common for all genres in Old Norse literature.

⁵⁰ In other words, the arrangement did not make a "good story," at least not in comparison to those of the obstinate daughters of kings and chieftains we learn of in the family sagas.

such things as the names of spouses. These differences are of minor interest for the present study, however.

Generally *Morkinskinna* is not especially loquacious about the negotiations that preceded marriage. Comments on whether the arrangement, more specifically the marriage, was a happy one are not to be found, whereas such remarks are made almost without exception in the family- and contemporary sagas. Here the marriage between Ulfhild Olavsdatter, the daughter of St Olav, and Otto of Saxony is a striking exception. Otto is supposed to have been a kinsman, foster son, and close friend of the emperor Henry III, and it is he who initiates the marriage in question.⁵¹ The narration of the circumstances surrounding the proposal and marriage has a profound ideological, rather than political, bearing on the story. Ulfhild is a remarkably able woman. She is beautiful and extraordinarily wise (*forvitri*), so sought-after that rumours about her qualities have reached Saxony.⁵² On being asked for her hand in marriage, her brother and guardian, King Magnus the Good, replies,

saying that an equal match would be long in coming, and that it was uncertain whether her marriage could wait that long. "But if the court and my mother agree, the proposal is worth considering, for we have heard many excellent and noteworthy things about you."⁵³

The king does everything "by the book." He regards the match as equal, but of course promises nothing until he has made himself sure of the court's consent and his mother's approval.⁵⁴ The story is as much a confirmation of St. Olav's superiority as of his progeny's. Even if the marriage is politically advantageous for both parties, the emphasis as well as the point of the story is to highlight the abilities and legitimacy of the royal kindred of St. Olav.⁵⁵

The Norwegian kings in *Morkinskinna* use marriage to confirm reconciliations and strengthen the ties between kingdoms. This is evident from the account of the meeting between Olav Kyrre and the Danish king

⁵¹ *Morkinskinna's* depiction of the marriage differs from that of Adam of Bremen, as also from information in the Icelandic annals. According to Adam, Magnus's sister, Wulfhild, was betrothed to Duke Bernhard's son, named Ordulf. The annals record the death of the Duke of Brunswick, who had been married to the daughter of St Olav, named Ulfhild. See Andersson and Gade, 423, note 2.

⁵² Here we have a striking resemblance to the description of Margret Trondsdottir.

⁵³ Andersson and Gade, 117.

⁵⁴ Thus, it is surprising that he does not mention his sister's consent as well.

⁵⁵ We will have reason to come back to this below, when discussing the marriage between Ragnhild Magnúsdóttir, daughter of Magnus the Good, and Haakon Ivarsson.

Svend Ulfsson. In order to consolidate peace between the two kingdoms, the kings made a settlement that included the marriage of Olav with Svend's daughter, Ingrid. As an additional guarantee Olav's sister was married to Svend's son (57). Likewise, Magnus Barefoot and the Swedish king Inge Stenkilsson confirmed their reconciliation by arranging a marriage between Magnus and Inge's daughter, Margret. Here we are informed of the conditions as well: "King Ingi betrothed his daughter Margréta to King Magnús, and she received as her dowry those lands in Gautland which they had disputed."⁵⁶ Later Magnus's son Sigurd Jorsalfar was to marry Malmfrid, the daughter of King Harald Valdemarsson from Novgorod and his wife, Kristin, sister of the Swedish king Inge Stenkilsson. Further bonds were created by the marriage between Ingibjörg, Malmfrid's sister, and Prince Knud Lavard of Denmark (73). The political significance of the marriage between Øystein Magnusson and Ingebjörg, the granddaughter of Steigar-Tore, whom Magnus had assassinated, can be anticipated.

Perhaps because of the relatively short duration of the marriage between King Magnus Barefoot and Margret (the result of Magnus's premature death), *Morkinskinna's* author is not primarily interested in the connection as such. At least, this can be concluded from the story that immediately follows the relatively short account of the arrangement. After stating that the kings were content and that each "returned to his realm in perfect concord," the author turns his attention to several love-stanzas attributed to Magnus, commenting that "it is alleged that he composed it for the emperor's daughter, with whom he was much smitten and with whom he had exchanged messages. Her name was Matilda."⁵⁷

As has been emphasized by Theodore M. Andersson, *Morkinskinna* reveals "a powerful interest in the dynamics of human relations, both political and domestic. It is preoccupied with personalities [...] and derives history from a study of how these personalities interact."⁵⁸ Snorri did not judge the story or the stanzas to be of interest, and they are thus omitted in *Heimskringla*. The question left unanswered is why and in what way the cleric from Munkaþverá Abbey considered them to be worth revealing.

⁵⁶ Ibid., 60; Andersson and Gade, 307. This was at a meeting between the kings of Norway, Sweden, and Denmark. Margret was given the nickname "friðkolla" (peace-girl). After Magnus's death she married Niels Svensson of Denmark.

⁵⁷ Andersson and Gade, 307. Both Andersson/Gade and Ármann Jakobsson point out that Matilda would have been the daughter of the emperor Henry IV, although Henry's *Vita* makes no mention of her. See Andersson and Gade 450, n. 10; and *Morkinskinna* II, 60 and n. 5.

⁵⁸ Andersson, "Snorri Sturluson and the Saga School," 13.

This is a question to keep in mind when analysing one of the most remarkable stories of marriage and politics recounted in *Morkinskinna*.

Legitimacy, Gender, and Inheritance

Hákonar þáttur Ívarssonar, incorporated in *Morkinskinna*, tells us about a certain Haakon Ivarsson and his dealings with King Harald Hardruler, which result in Haakon's marriage to Ragnhild Magnúsdóttir, daughter of King Magnus the Good.⁵⁹ While the *þættir* are mainly stories of Icelanders and their dealings with the king, Haakon is a Norwegian—of good birth, although non-noble.⁶⁰ He is also known from both *Orkneyingasaga* and *Heimskringla*, and at one time there was also an independent “saga of Haakon Ivarson,” of which only a few sheets have survived. Although the relatively long *þáttur* of Haakon differs from the other *þættir* in *Morkinskinna*, in the sense that the main character is not an Icelandic but a Norwegian, the purpose of all of these episodes is similar, namely to highlight the king's character. Here, an important part of this task includes revealing Harald's unjust treatment of Magnus the Good's daughter, Ragnhild. In the context of the author's genuine admiration for King Magnus and the importance of preserving the legacy of his father, St Olav, the *þáttur* exposes a complex attitude towards female inheritance. While the author is keen on drawing attention to Haakon's many abilities, his prominent role in the *þáttur* cannot be fully interpreted without taking his marriage to St Olav's granddaughter into consideration.

⁵⁹ The *þættir* play an important role in *Morkinskinna*. From the beginning of the twentieth century onwards, their presence in the saga as a whole has sparked a serious debate among scholars as to whether they are of the same quality as the other parts of the saga. Often they have been looked upon as additions or interpolations by a bad editor or compiler. Furthermore, their information often seems to contradict that found in the so-called main text. Here we have not time to go further into this rather complicated discussion. For an overview see Andersson and Gade's introduction to the English translation of *Morkinskinna*. In line with Ármann Jakobsson I regard *Morkinskinna*—including the *þættir*—as a whole, and in my approach to the saga as historical source I presuppose that the *þættir* play the important role—for author and public—of intensifying and widening our perception of the king's character. In many ways the *þættir* can be defined as *exempla*, which in turn makes them all the more important to analyse. This would of course lead the historian to the classic question of for what purpose each and every one of the *þættir* are integrated, and what lesson—or conclusion—the reader is supposed to achieve from it. See *Morkinskinna* I, xlff.

⁶⁰ He belonged to the family of the Hlaðajarlar.

In *Morkinskinna* Haakon is said to be very handsome and accomplished.⁶¹ He is a Viking and has performed many bold deeds. As a participant in one of Harald's battles against Svend, king of Denmark, Haakon distinguishes himself, or as *Morkinskinna* puts it:

Haakon . . . had great success. He had placed his ship next to the king's ship, and no one was bolder than he. His prowess was much praised, and he earned great honor and distinction because he was eager for fame.⁶²

As proof of his gratitude, King Harald invites Haakon to the court "at Christmastime, saying that he might then expect to receive reward for his support." As it appears, the prize that King Harald intends to give Haakon is the opportunity of noble marriage. After having inquired about Haakon's plans for the future (the answer being to continue his Viking raids), the king asks:

"Why don't you marry?"

"Because, sire," said Haakon, "I know that the daughters of noble men will not hold me in much esteem, and I do not want to marry just any chieftain's daughter."

The king said: "It might come about that I reward you for your support with the best match in Norway, and that is King Magnus's daughter Ragnhildr." [...]

"Do not mock me sire," he said. "You are aiming too high. You should rather marry me to a jarl's daughter who is your kinswoman and will bring me wealth, because I will be in great need of money if I cannot acquire it by harrying and am forced to give up the practice."⁶³

Haakon sees the inappropriateness of marrying the princess, but nevertheless, the king convinces him to go through with it. The king's next step is to speak to Ragnhild herself. Of course Harald promotes Haakon's admirable qualities, but Ragnhild is not easily convinced. Significantly, she is the only (known) child of King Magnus the Good and is, according to the description in *Morkinskinna*, "the fairest and wisest of women." She is strong-willed, and her talents and accomplishments resemble those ascribed to her father. Her main argument against the proposed alliance is—not surprisingly—the fact that Haakon is of lower social status, and as she states, her father "would not have imagined that I would be married to a man of nonnoble birth." In the end, a compromise is reached. Ragnhild

⁶¹ Andersson and Gade, 226.

⁶² Ibid., 233.

⁶³ Ibid., 234.

will indeed marry Haakon, but only after being promised that the king will make him *jarl* (earl).⁶⁴ She now becomes betrothed to Haakon. After this the marriage is celebrated and Haakon returns to his estates with his wife. However, Harald's promise proves to be false: he has never intended to give Haakon the title of *jarl*. The story that follows is one of the battle of two (or perhaps more correctly, three) strong wills, the king's and the offended couple's.

Morkinskinna gives us a very impressive portrait of Haakon, even after he comes into conflict with King Harald. Haakon is a man who takes revenge; a man who knows what he wants and who is prepared to fight for it. When, betrayed by Harald, he starts harrying in Norway, the purpose of course is to harm the king's interests and/or estates. And he stops at nothing. When the king confiscates Haakon's farm, he burns it down rather than surrendering it. In time, when the conflicts intensify, Haakon takes refuge in Denmark. Able as he is, the Danish king Svend betrothed him with an impossible task, which Haakon also solves. He is rewarded with a title, becoming earl over the Danish province of Halland. His warrior skills are further highlighted by accounts of how he gives aid to the Swedish king Stenkil, who is involved in conflict with Harald Hardruler. Though the Swedes are defeated, Haakon continues his own war against his enemy, the king, causing the death of many of his men. The author uses a variety of ways to make the reader aware of the characteristics of the two men. But at the same time, Haakon's struggle and stubbornness is closely related to his and his wife's unequal social positions. He is not only fighting for his own honour, but also for the honour of Ragnhild, her father, and grandfather as well as for his and Ragnhild's progeny.

In interpreting the underlying meaning of the *páttur*, the relationship between the couple has to be considered. Although it is a fairly common practice in Old Norse literature, the fact that Haakon seeks advice from his wife has a specific significance in this case. Here Ragnhild's ancestry and the inequity in the spouses' social status have to be taken into account. Haakon's "war" against Harald is not a conflict between two men. It is a conflict involving three individuals, of whom Ragnhild holds the highest social rank. This is well illustrated in the *páttur*. When asked to assist the Swedish king in his conflict with Harald, *Morkinskinna* informs us, Haakon turns to his wife for her counsel and consent. One should note here that this will be the first time Haakon is to participate in organized

⁶⁴ Ibid., 234–35.

warfare against his own king. From his wife he not only receives approval, but also her father's standard. "It is a standard that King Harald would like to have," she says, "though he has not gotten his hands on it yet". It was all embroidered with gold.⁶⁵ King Harald gets hold of the standard, and has it carried before him as soon as it is captured; and "he called it a great victory that he had won it."⁶⁶ While the procession is going through the forest, however, a man runs out of the woods and across the path and seizes the standard with one hand, while thrusting his spear at the man carrying it with the other. He then escapes into the forest. After declaring that this must have been Haakon, as "not many men could have made such a stroke," Harald continues:

It is certain that he will think this coup no less a victory than my victory in the battle. But I would seriously underestimate my kinswoman Ragnhild's temper if I supposed that it would be easy for him to get into her bed if he had lost the standard, but as things stand, they will make their peace.⁶⁷

The king accepts Haakon's physical, mental, and intellectual strength, but Haakon nonetheless is the inferior of the two in social standing. He can never challenge the king in power; only cause him more or less harm. If we are to compare the two, we of course must take it into consideration that the author sympathises with Haakon, and that he has endowed Haakon with characteristics that in many ways are superior to the king's. This is not the essence of the story, however. Although the author is somewhat economical in depicting Ragnhild's influence, her position becomes clear. It is she who gives Haakon the standard that she would never have given into Harald's keeping—and indeed, Harald lacks the ability to keep it. Ragnhild has been deceived and deprived of not only her social status, but also the possibility to claim the throne on behalf of her progeny. Her—and Haakon's—real revenge is that they eventually achieve an influential position, despite Harald's actions. In due time their children were to marry into powerful families, and their great-grandson Erik Lam became king of Denmark. The author is keen to share this information with his readers.

We now must return to the essence of the *páttur* and its underlying meaning. It is easy to read the story as a further illustration of the strength and talents of capable men. Given the position of St Olav, the character

⁶⁵ Andersson and Gade, 239.

⁶⁶ *Ibid.*, 242.

⁶⁷ *Ibid.*

of his son, Magnus the Good, their qualities and abilities, it is obvious that the *páttur* of Haakon illustrates more than Harald's and Haakon's struggle. It shows an ambivalent—but clear—perception that daughters could claim inheritance, even inheritance to the throne. There are a few examples of medieval women claiming the right to rule in their own right. Two of the best-known are Matilda, daughter of Henry I of England, and Melisende, daughter of Baldwin II of Jerusalem. In her article on female succession, which focuses on these two cases, Lois L. Honeycutt examines how a female claim to the throne is dealt with in two twelfth-century chronicles, both written by clerics. As she convincingly shows, succession to power, in twelfth-century clerical rhetoric, was related less to gender than to lineage.⁶⁸ It is from this perspective that I would interpret the essence of *Hákonar páttir Ivarssonar*. What the *páttur* illustrates is that Harald's competition with Magnus the Good, and in a broader sense with the legacy of St Olav, continues after Magnus' death. Here Ragnhild represents a threat to the position Harald had so obstinately struggled for—an unquestioned right to the throne. In this connection it is worth remembering how and when Ragnhild is introduced in *Morkinskinna*. As mentioned above, she appears in the context of Magnus' death, as a child and his only survivor.⁶⁹

Let us try to interpret the significance of *Hákonar páttir Ivarssonar*. Firstly, Harald, being the king, knows that his decision to marry Ragnhild to Haakon is morally wrong. However, it is politically important to do so. One might argue that by marrying her off to a man of lower social standing, Harald was eliminating the threat that Ragnhild's offspring would claim the throne after him, in which case they would presumably come into conflict with his two sons, eleven and twelve years old at the time of the marriage. This reading could be rejected on the grounds that offspring of royal daughters seldom took similar steps towards power, and Jenny Jochens⁷⁰ states that power was not inherited through women/daughters. Still, every situation has to be put into context. Ragnhild is depicted as a woman of great character, endowed with the qualities of her father, King Magnus, who in turn is said to be loved by all men; and of course, both

⁶⁸ Lois L. Honeycutt, "Female Succession and the Language of Power in the Writings of Twelfth-Century Churchmen," in *Medieval Queenship*, ed. John Carmi Parsons (Gloucestershire: 1994), 189–201.

⁶⁹ Andersson and Gade, 184.

⁷⁰ Jenny M. Jochens, "The Politics of Reproduction. Medieval Norwegian Kinghip", *The American Historical Review*, Vol. 92:2, (Apr. 1987) 327–349, 335.

are descended from St Olav. In other words, Ragnhild belongs to a more popular branch of the family than Harald. Could she have claimed the throne in her own right? In light of her heritage, that is a possibility that must be considered. By marrying her off to a man of lower social standing rather than to a king, as would have been the most natural thing to do, Harald is able to prevent this from happening. By doing so he not only betrays Ragnhild; he betrays his predecessor, King Magnus.

Obviously, however, Harald has not taken Ragnhild's outstanding qualities and lucid mind into account. He does not foresee the consequences of his actions and of the marriage. Not only does he underestimate her, but he underestimates Haakon as well, calculating that he will submit to him and not revolt against him. Harald underestimates the couple's strengths: their intellectual power and strong will. Eventually they also obtain the status to which they are entitled, and of course their progeny rise even higher.

Gender, Lineage and Inheritance

During *Morkinskinna's* time of writing, Icelandic chieftains were slowly adapting to the Christian ideal of marriage. Concubinage was becoming more unusual among married men; instead we witness a change towards choosing *either* concubinage *or* marriage. The church more or less tolerated intimacy between unmarried couples, and a distinction was made between children born of such relationships and the illegitimate children of couples in which one or both parents were married (to someone else). Although the Christian idea of monogamous marriage and the privileging of legitimate children was one thing in theory and another in practice, it is the ideology and the author's use of it that is of importance here.

By submitting to pleasures of the flesh instead of taking care of his office, the "bad" king, according to *Morkinskinna's* author, proved his incompetence. The author chooses to depict the sexual appetite of some kings, while he neglects to inform readers of the sexual encounters of others. Because King Magnus the Good is one of the latter, the identity of Ragnhild's mother is unknown and perhaps, to the author, unimportant. But both Harald Hardruler and Ragnhild are aware of her heritage. Ragnhild is the only child of her father. She has indeed been born out of wedlock, but she is not without rights of inheritance. Given her social status, her heritage as daughter of Magnus the Good, and granddaughter of St Olav, it is more than likely that *Morkinskinna's* author wanted to draw

attention to Ragnhild's and her offspring's entitlement to the throne. The story of Haakon and Ragnhild certainly serves the purpose of delineating Harald Hardruler's character, but not in his favour. Instead we are meant to understand that by arranging this marriage of unequals, he violates the memory and legacy of two great kings and the privileges of their legitimate heir, Ragnhild Magnusdottir. That woman could claim the throne in their own right cannot have been unknown to *Morkinskinna's* author. Perhaps he even acknowledged that succession to power was less related to gender than to lineage?

HOW TO LEGITIMATE REBELLION AND CONDEMN USURPATION
OF THE CROWN: DISCOURSES OF FIDELITY AND TREASON IN THE
GESTA DANORUM OF SAXO GRAMMATICUS

Lars Hermanson

The Danish historian Saxo Grammaticus's voluminous work *Gesta Danorum*, composed c. 1190–1210, tells the story of the Danish people from pre-historic times until Knud VI's conquest of Pomerania in 1185. Here I will deal with the period c. 1146–1178, in which Saxo tells how Duke Valdemar gained the throne and how he later had to defend his position against his kinsmen who tried to usurp the crown.

Saxo Grammaticus and the Historical Background

Ever since the assassination of Valdemar's father Knud Lavard in 1131, Denmark had been a country torn by civil wars, as different branches of the royal family vied for the kingship. The Scandinavian bilateral system of kinship implied that the combatants' hereditary claims were more or less equal. They were all descendants of King Svend Estridsen, who during the later part of the eleventh century had restored and enlarged the royal patrimony (see Figure 1: *Descendants of Svend Estridsen*). In order to gain the upper hand over their opponents, the contenders each created action groups composed of hand-picked kinsmen and allies from among the leading magnates of the realm.¹ During the 1140s and 1150s the most powerful aristocratic network was the Trund clan, first and foremost represented by the renowned Archbishop Eskil. The "Trunds" possessed large estates and occupied high offices within the church and the royal administration.

Between 1146 and 1157 a fierce war was fought between kings Svend Grathe (Erik Svendsen's lineage) and Knud Magnussen (Niels Svendsen's lineage). For a long time Svend Grathe was the stronger, partly due to his support from the Trund and Hvide clans. The descendants of Skjalm

¹ On "kin-based action groups," see Heather J. Tanner, *Families, Friends, and Allies. Boulogne and Politics in Northern France and England, c. 879–1160* (Leiden: Brill, 2004), 9.

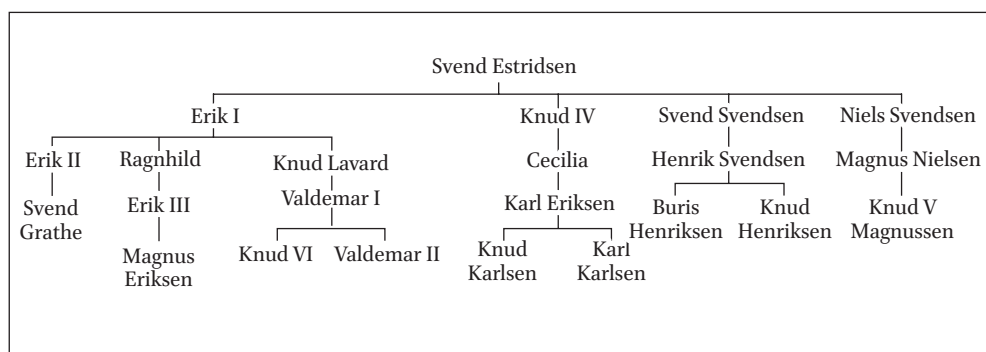


Fig. 1: Descendants of Svend Estridsen

Hvide were a group of aspiring magnates who had made their careers as military leaders.² Svend also had a close ally in the young duke Valdemar, who had been fostered by a family belonging to the Hvide clan. Success, however, did not depend only on the ability to mobilise social and military resources. The crucial point was to maintain one's allies' fidelity. During the civil wars, constant loyalty was not always the most lucrative strategy, and side-switching therefore became a part of the political game. It was a hazardous move, implying that one put one's honour at stake, but if the new lord was successful the reward was often generous. In 1152 Duke Valdemar, together with the most prominent members of the Hvide clan, decided to join Svend's enemy Knud Magnussen. This turned Svend's fortunes. Knud Magnussen was later assassinated at a banquet in 1157, but soon afterwards Valdemar and his allies took vengeance when they managed to defeat Svend's forces at the Battle of Grathe Moor.

After that great victory Valdemar became sole king of Denmark. Nevertheless, his position was precarious, and during his reign he constantly had to face the problem of disloyalty. The major threat was from royal kinsmen such as the duke Buris Henriksen, the princes Karl and Knud Karlsen, and Magnus Eriksen, the son of the former king Erik III (see Figure 1). Valdemar used three basic strategies to strengthen the Valdemarine kingship. 1) He tried to create a *stirps regia* by having his father canonized. 2) He strove to establish hereditary monarchy by securing the succession for his son Knud VI, who in accordance with contemporary

² Danish historians used to call them *Hviderne*, after their ancestor Skjalm Hvide (Skjalm the White). Here I use the concept "clan" not in the strict anthropological sense of the word (i.e. agnatic family) but rather as designating a wide (mainly horizontal) social network constituted of cognates, affines, and friends.

European customs was crowned during the king's reign. 3) He worked actively to retreat from his dependence on the Trund clan and the powerful Archbishop Eskil. Instead he decided to invite members of the Hvide clan to his inner circle. Thus Valdemar's foster-brother Absalon and his cognates became the king's most intimate friends and counsellors.

Valdemar's reign (1157–1182) was, however, marked by several conflicts. In 1162 an open war broke out between the king and the archbishop. In 1167 Duke Buris Henriksen was accused of forming a plot together with his Norwegian kinsmen, and during the years 1176–1178 Magnus Eriksen, along with Karl and Knud Karlsen and members of the Trund clan, was charged with conspiring against the king. Thanks largely to eager support from the Hvide clan, Valdemar managed to subdue the archbishop. Buris Henriksen was imprisoned, and the leaders of the alleged plot in 1176–1178 were punished. Valdemar's pervasive purges were successful. The trial against the conspirators in 1177 severely diminished the threat from the competing royal branches, and simultaneously the members of the Trund clan lost their position in the political arena. Archbishop Eskil later abdicated his see and left Denmark. The high offices within the royal administration and the church were mainly taken over by members of the Hvide group. Valdemar's foster-brother Bishop Absalon was appointed Eskil's successor, and thereby the foundation of the so-called Valdemarine era of greatness was laid. During the reigns of Valdemar I and his sons Knud VI (1182–1202) and Valdemar II (1202–1241), the Danish kingdom expanded to become an important northern European power. The history of Valdemar's rise to power and his consolidation of the kingdom relies heavily upon Saxo Grammaticus's *Gesta Danorum*, although the broad outline of the developments can also be found in the charters. Saxo's contemporary colleague, Svend Aggesen, who was a member of the Trund clan, renders in his *Brevis Historia* a favourable portrait of Valdemar, but the king's rule is also said to have been unnecessary harsh.³ No sources representing his opponents' views of the political conditions have been preserved for posterity.

Very little is known about Saxo, but we can safely assume that he was an aristocrat belonging to the circle surrounding the above-mentioned Archbishop Absalon of Lund (archbishop 1178–1201). He was familiar with

³ Sven Aggesen, "A Short History of the Kings of Denmark," in *The Works of Sven Aggesen Twelfth-Century Danish Historian*, trans. Eric Christiansen (Birmingham: Viking Society for Northern Research, vol. 9, 1992), 73.

both the intellectual world of the ecclesiastical elite and the secular culture that characterised warrior society and the royal court. *Gesta Danorum* is written in Silver Age Latin; the author's classical diction suggests that he was educated abroad, probably in the schools of northern France. Thus, he was very well qualified to serve in the court of Archbishop Absalon, who commissioned him to write the history of the Danes. Absalon was not only the initiator of the work but also one of Saxo's main sources. The *Gesta Danorum* has been considered by historians as a work of royal propaganda, but in book 14, which will be dealt with here, Saxo's depiction could first and foremost be interpreted as a justification of the members of the Hvide clan's prominent positions close to the Valdemarine kings. Saxo was part of the textual community that had been created in the archbishopric of Lund.⁴ Here Scandinavian and European culture came together, which suggests that Saxo's history was created by a cross-fertilisation of Nordic oral tradition and European literary culture. He was probably influenced by contemporary German and Anglo-Norman chroniclers such as Helmold of Bosau, Geoffrey of Monmouth, and Orderic Vitalis. Thus Saxo is a representative of the twelfth-century renaissance, but a distinguishing mark is his remarkable classicism. Roman authors such as Valerius Maximus, Livy, and Justin, and poets such as Vergil and Horace served as his principal models for style and composition. Saxo portrays Denmark as though it were the Roman Empire, and his unswerving heroes display classical Ciceronian virtues, while the treacherous villains represent vices such as cowardice, hubris, greed, and excess.

The author's consistent classicism inevitably raises the question of the extent to which his work can provide information about the norms, values, and ideals that characterised Danish society during the twelfth century. In brief: how can we decide what we should interpret as literary construction, theory, or ideology—and what was well-established practice? How reliable is *Gesta Danorum* as a guide to contemporary norms and values in Danish society? An English translator and interpreter of the source, Eric Christiansen, has stated that "even when Saxo deals with recent history in detail, the effect of his diction is not merely to convey what happened. His language reflects the aims of its models: to convince, to praise, to condemn, to impress and to excite."⁵ Hence *Gesta Danorum* is an unreliable

⁴ Karsten Friis-Jensen, "Was Saxo Grammaticus a Canon of Lund?," *Cahiers de l'Institut du Moyen Âge grec et latin* 59 (1989): 331–57.

⁵ Eric Christiansen, introduction to book 14 by Saxo Grammaticus, *Danorum Regum Heroumque Historia*, Books 10–16, trans. Eric Christiansen, BAR International Series 84 (Oxford: 1980), 687. Hereafter cited as Saxo.

source for information about the actual political conditions. We must also take into consideration the possibility that Saxo merely reflects European classical ideals, unrelated to Scandinavian political culture. In that case, we should regard him as first and foremost a representative of a European academic philosophy, rather than of Nordic political culture. It is impossible to give a complete answer to this, but in order “to convince, to praise, to condemn, to impress and to excite,” Saxo had to use a discourse that was accessible to both the internal Danish elite and scholarly European circles. Saxo was skilled in the Nordic oral tradition, which he combined with classical and feudal discourses in order to create a synthesis of ancient European and Scandinavian culture. Presumably the intention was to promulgate the story of the great achievements of the Danes to a European intellectual elite. But it was not until the sixteenth century that the book came to attract international attention and eventually to inspire writers such as William Shakespeare.

Saxo's Dilemma and the Mastery of Code-Switching

Here I will primarily analyse the authorial intentions which lie behind the depiction of Valdemar I's rise to power and the king's dealings with his rivals. Thus the focus is on Saxo's political discourse. How does he proceed in order to convince his audience that the Valdemarine regime was legitimate? The author utilises a complex method by writing on different levels, and making use of contrast, thesis and antithesis, and parallelisms.⁶ My aim is to show how Saxo made use of a rhetorical (and sometimes dialectical) scheme marked by “code-switching,” thereby appealing to diverse circles of readers.⁷ Depending on the political context, the assumed audience, and varying purposes, he alternates between different discourses in

⁶ Kurt Johannesson, *Saxo Grammaticus: Komposition och världsbild i Gesta Danorum* (Uppsala: Almqvist & Wiksell International, 1978), 20–29; Birgit Sawyer, “Valdemar, Absalon, and Saxo: Historiography and Politics in Medieval Denmark,” *Revue Belge de Philologie et d'Histoire* 63 (1985): 685–705.

⁷ The concept of “code-switching” is used by linguists to explain the mastery of moving easily between one linguistic code to another within a conversation, an utterance, or a text. Many scholars have associated this skill with Pierre Bourdieu's notion of “symbolic power”: Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, MA: Harvard University Press, 1991). Parallels could also be drawn with his interpretation of the symbols of ritual. Bourdieu writes that “Among the forms which a basic opposition may take, there are always some which function as “switchers,” concretely establishing the relationship between the universes of practice [...]” Pierre Bourdieu, *Outline of A Theory of Practice*, trans. Richard Nice (London: Cambridge University Press, 1977), 123.

his ambition to convince the reader (or listener) that the new regime created by Valdemar I and his aristocratic advisors was a gift from above.

Saxo's depictions are multifunctional in the sense that he appeals to diverse "textual communities." This notion has been used by Brian Stock to elucidate how different groups in medieval society were focused on certain texts that affected their mentality, identity, and attitudes towards the surrounding world. According to Stock these texts could "act as an intermediary between group interests and their ideological expression."⁸ Stanley Fish has claimed that texts have no autonomous inherent meanings; rather, the substance is dependent on a set of cultural assumptions held by the group interpreting them. Fish designates these kinds of groups as "interpretative communities."⁹ Because these communities use different code systems, even if the symbols are the same they can represent dissimilar meanings. Saxo was obviously well aware of the fact that his depictions were likely to be read differently by different groups. Notwithstanding the fact that he utilizes multiple discourses, they often revolve round the dichotomy between *fidelity* and *treason*. I will elucidate how Saxo uses this contradiction in his rhetorical models designed for justification and persuasion. My hope is that the analysis will throw some light on prevailing norms in high medieval society and the literary techniques which were used in the service of political propaganda.

Saxo's task of justifying the Valdemarine dynasty's rise to power and its harsh government was an arduous one. On the one hand Valdemar had withdrawn his allegiance to the former king, Svend Grathe, and joined the usurper Knud Magnussen's forces. This conduct could be viewed as an act of treachery. On the other hand, as king, he severely punished the royal kinsmen who conspired against the crown in the 1160s and the 1170s. The plotters were all severely punished. Some of them were forced into exile, while others were imprisoned and disinherited. Thus Valdemar ran the risk not solely of being accused of committing treason against the crown himself, but also, once enthroned, of being seen as a traitor to his own rebellious kin. The aim of this essay is to discuss how the author tried to solve these dilemmas.

⁸ Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1983) 88–92.

⁹ Stanley Fish, *Is There a Text in This Class: The Authority of Interpretative Communities* (Cambridge, MA: Harvard University Press, 1980).

In his account of Valdemar's political conduct Saxo performs a balancing act between conceptions of the *rex iustus* and the *rex tyrannus*. The author was obliged to observe not only the traditional norms connected to the rules of the feud and to honour-based society, but also decrees in canon law that condemned vendettas among blood-relatives.¹⁰ In addition he was compelled to warrant new Christian and Romanist ideas concerning royal sovereignty and the king's authority to act as supreme judge. Saxo uses different discourses depending on the political context. Valdemar's and his allies' revolt against the ruling king, Svend Grathe, is legitimated through the use of a discourse of lordship, fidelity, and gift-exchange based on a bilateral framework. Valdemar's pruning of the royal tree after his accession to the throne is justified through a unilateral discourse of defiance and treason against the *potestas* deriving from a constituted order. Thus, Saxo varies the underlying meaning of the concept of treason according to political circumstances. Svend Grathe is proclaimed a traitor who could legitimately be challenged because he did not fulfill his obligations towards his *fidelis* and the Danish people. The princes who attempt to depose King Valdemar commit treachery, not solely against the king in person, but also against the *patria* and the *maiestas*.

Here I will focus on episodes wherein the author employs the theme of the traitor in order to legitimize or delegitimize the actions of kings and pretenders to the throne. Saxo's literary constructions of the traitor bear close resemblance to many other contemporary European narratives. He bases his discourses upon well-known topoi in both medieval and in classical Roman literature. Nevertheless, Saxo's depictions of treason can also throw light upon political strategies and the art of government prevalent in the Danish society during the late twelfth century. To begin, I will analyse how Saxo uses a discourse of lordship, fidelity, and gift-exchange in order to legitimize Valdemar's revolt against the ruling king Svend Grathe during the years 1146–1157.

¹⁰ Concerning how the canon law was adjusted to the problem of feuding and vengeance, see Greta Austin, "Vengeance and Law in Eleventh-Century Worms: Burchard and the Canon Law of Feuds," in *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, D.C.: The Catholic University of America Press, 2006), 66–76.

A Legitimate Rebellion against Bad Lordship

After the death of the Danish king Erik III ("the Lamb") in 1146, a fierce war of succession started between two pretenders to the throne, Svend Grathe and Knud Magnussen, who were representing two competing branches of the royal family. Svend soon succeeded in acquiring the throne, but Knud tried repeatedly to usurp power by force. Svend Grathe, however, defeated his opponent in battle after battle. Saxo attributes Svend's victories in 1147–1151 to his extensive system of alliances constituted of royal kinsmen and friends among the magnate families of the realm, such as Absalon and his cousin Sune Ebbesen, who were members of the powerful Hvide clan. One of Svend Grathe's most important allies was his cousin, Duke Valdemar. Valdemar belonged to the king's *familia*, and probably regarded Knud Magnussen as a sworn enemy because Knud's father, Magnus Nielsen, had killed Valdemar's father, Knud Lavard.

Svend Grathe was at the height of his power in 1151. According to Saxo he had many friends among Denmark's leading magnate families. But friendship was not free, since these ties had to be constantly maintained by means of honours, gifts, and rewards. The author says this was why in 1151 Svend began a big military campaign against the Swedish kingdom. The expedition is described as a sign that the king had been struck by the deadly sin of pride (*superbia*). This is shown by the fact that before the operation Svend distributes campaign honours and fiefs in Sweden, as if victory has already been won. But the expedition ends in catastrophe, and the king loses most of his former prestige.¹¹ One by one Svend Grathe's powerful friends begin to desert their lord and join his enemy Knud Magnussen. Saxo maintains that Svend had himself to blame. He states that the king did not display the noble virtue of self-discipline (*temperantia*). Honour is acquired by overcoming temptation, but the king did not pass the test. Saxo declares that Svend Grathe abandoned the traditional bilateral lordship based on ties of friendship with the high aristocracy and tried to shape a new form of governance built on vertical relations with lowborn people. In doing this he broke the rules which governed the alliances between kings and magnates. With great disgust Saxo relates that the king "recruited a household of effeminate dastards."¹² His court is characterised by excessive luxury and foreign customs.

¹¹ Saxo, 14.12.6.

¹² Ibid., 14.9.1.

Subsequently this negative depiction of Svend Grathe's reign forms a background to the decision of Valdemar and his allies to desert their lord. In 1152 Svend's former allies—such as Duke Valdemar and the members of the Hvide group—enter the service of his rival, Knud Magnussen.¹³ In 1154, Knud and Valdemar proclaim themselves kings. This forces Svend to go to war against the usurpers. Yet he cannot, in a twinkling, order his army to fight for his cause. First Svend is compelled to gather his warriors to make sure that they support him. With their hands laid on a reliquary, they one by one must swear an oath of fealty to the king. At this event one of the king's most prominent allies—Absalon's cousin Sune Ebbesen—decides to join the enemy. He refuses to swear a renewed oath of allegiance to Svend, on the grounds that the king has confiscated his ancestral estate. Saxo explains that, besides pride, Svend Grathe also displayed the classic vice of greed, because he appropriated manors and estates of deceased liegemen, leaving their children disinherited. The king promises to redress Sune's wrongs, but valiantly and proudly, observing the customary forms and ceremonies, Sune attaches himself to Valdemar instead. To legitimize this changeover, the author defends Sune's conduct by referring to the old ties of friendship that had long connected Valdemar's and Sune's families.¹⁴ Saxo is anxious to call attention to the fact that Sune has retracted his promise of fidelity to his lord in public, which he presents as evidence of Sune's sense of fair play. Shortly afterwards, in a demonstration of the domino effect, the majority of Svend's men go over to the opposing camp.

Furthermore, Saxo condemns the king for breaking faith with his comrades-in-arms. Svend decides "to his great shame" to flee the country when his once-powerful network had been demolished, thereby leaving his retainers (who are still willing to fight) in the lurch. In doing this he is not a model lord, because he has betrayed his *fides* to his warriors. Thus Saxo presents Svend Grathe as the personification of unjust rule. He has forfeited his right to the throne by falling victim to classic vices such as hubris, excess, lack of judgement, and avarice. He is also portrayed as a treacherous villain, in accordance with the Nordic concept of *niðingr*.¹⁵ Friendship represents an ideal of justice. The Danish magnates no longer owe loyalty to the king, since he has not discharged the reciprocal

¹³ Ibid., 14.14.2.

¹⁴ Ibid., 14.16.5.

¹⁵ The concept was used as a strong social condemnation of persons who had lost their honour on account of e.g., villainy, deceit, cowardice or simply lucklessness.

duties that go with bonds of friendship. He has merely shown them his ingratitude by his avarice (*avaritia*) and lack of generosity (*liberalitas*). Valdemar and the members of the Hvide clan can therefore, without dishonour, abandon their lord. The hated King Svend is contrasted with Valdemar, with his renown and energy, and Sune Ebbesen's insistence on the strength of old ties of friendship.

Saxo emphasises the bilateral ideal of equality, with the king's rule resting on an informal agreement in which each party has chosen the other. Gifts and rewards must constantly confirm this mutual understanding. The king's arrogance, greed, and meanness are the reasons why he loses the friendship of a major group. In this context, the defections to the camp represented by Knud Magnussen are not acts of treason. Saxo is thus also able to mark the status of the high nobility and its freedom of action. Their friendship is by no means unconditional. They are not subjects, but friends, who only choose to subordinate themselves to kings under particular conditions. The final proof of Svend Grathe's perfidious character is given in 1157, when he makes a peace agreement with Valdemar and Knud Magnussen. Under the cloak of friendship Svend invites his previous antagonists to a feast in Roskilde. But at the banquet his men kill Knud Magnussen, while Valdemar manages to escape. With this Saxo adds the finishing touch, as Svend violates the feast (*convivium*), the best-known friendship ritual of the Middle Ages.

After this heinous crime Valdemar plays the role of the righteous avenger while Svend is portrayed as a guileful assassin who uses trickery for personal gain. The king has devolved into a dehumanized traitor, becoming a *homo sacer* whom the people have judged on account of his crime. Valdemar's conduct is quite the contrary. His rebellion and later revenge are described as justified violence, because he wages war openly and he is not involved in plotting.¹⁶ Finally Valdemar's forces confront Svend Grathe's army at Grathe Moor in 1157. Retaliation has now become the main theme. Saxo recounts that, just before the armies were about to clash, "a minstrel rode between the ranks, rehearsing Sveno's murderous treachery in a famous song, and he excited the warriors of Waldemar to

¹⁶ On the distinction between justified violence and plotting, see Stephen D. White, "Alternative Constructions of Treason in the Angevin Political World: *Traïson* in the *History of William Marshal*," *e-Spania: Revue interdisciplinaire d'études hispaniques médiévales et modernes: La parole des rois. Pratiques politiques* 4 (2007): 3, 14, 18, accessed December 21, 2011, <http://e-spania.revues.org/2233?&id=2233> 2007; Robert Bartlett, *England under the Norman and Angevin Kings, 1075–1225* (Oxford: Clarendon Press, 2000), 60–61.

battle by appealing to them loudly for revenge."¹⁷ While Valdemar wins a glorious victory, Svend meets a disgraceful death worthy of a tyrant. His final degradation is sealed when he is captured and slain by a group of loot-seeking peasants. Saxo tells that he was not buried with "honour and princely magnificence, but was consigned to an ignoble grave."¹⁸

Discourses of Lordship and Gift-giving

Saxo's legitimization of Valdemar's and the Hvide clan's side-switching through the use of a discourse of lordship, fidelity, and gift-exchange is by no means unique to Scandinavia. The regression from virtuous to tyrannical kingship is a recurring theme in medieval historiography. Twelfth-century writers such as Giraldus Cambrensis and John of Salisbury often cite the two great examples of Saul and Alexander as a warning to modern rulers.¹⁹ The medieval discourse of bad lordship has also been treated by scholars such as Ralph Turner, Stephen D. White, and Richard Barton.²⁰ Parallels can be drawn between the French literary images of good and bad fief-giving discussed by White and the strategies used by Saxo Grammaticus. White has shown that the lord Alexander the Great in the vulgate *Roman d'Alexandre* represents a good style of gift-giving. He donates fiefs to his men as rewards or as counter gifts for their military support on his war campaigns. Without calculation Alexander is generously giving away what he has conquered, and he does not demand any service in return. He "gives fiefs in return for *past* services, not *future* ones."²¹ Accordingly, the gift-exchange is honourable for both giver and recipient. The Persian lord Darius functions as Alexander's antithesis. He represents the avaricious lord who does not have enough land to reward his followers and therefore buys political support with gifts and promises of fiefs, where the gifts stand

¹⁷ Saxo, 14.19.13.

¹⁸ A tyrant's shameful death and simple funeral is a recurring theme in medieval historiography. See Gábor Klaniczay, "Representations of the Evil Ruler in the Middle Ages," in *European Monarchy: Its Evolution and Practice from Roman Antiquity to Modern Times*, ed. H. Durchhardt, et al. (Stuttgart: Steiner, 1992), 78.

¹⁹ Christiansen, *Danorum Regum Heroumque*, 674.

²⁰ Ralph V. Turner, *Men Raised from the Dust: Administrative Service and Upward Mobility in Angevin England* (Philadelphia: University of Pennsylvania Press, 1988); Stephen D. White, "Giving Fiefs and Honor: Largesse, Avarice, and the Problem of 'Feudalism' in Alexander's Testament," in *The Medieval French Alexander*, ed. Donald Maddox and Sara Sturm-Maddox (Albany, NY: State University of New York Press, 2002); Richard E. Barton, *Lordship in the County of Maine* (Woodbridge: The Boydell Press, 2004).

²¹ White, "Giving Fiefs and Honor," 133.

out as bribes. Saxo's episode about the disastrous expedition to Sweden touches upon the same theme, wherein the arrogant King Svend promises his men fiefs and honours as though he already has victory in hand. White also calls attention to the fact that Darius gives honours to lowborn men "who oppress his serfs, burghers, and poor knights and shame the nobles." Thus the nobles refuse to support a lord who "has disinherited and abased them in order to raise their inferiors above them."²² Again we can draw parallels to Saxo and his story about Svend's household of "effeminate dastards."

Richard Barton has dealt with literary constructions of bad lordship in the honour-based French society. The lords' honour and prestige were dependent on victories on the battlefields and the ability to defend their duchies. Barton states that in this feudal discourse bad lords are often feminized as passive lovers of excess and debauchery.²³ Saxo uses the same technique in his depiction of the immoderate Svend Grathe and his louche subordinates, whose lowborn origins and weak qualities mirror the king's degenerate charisma. Hence, Svend's relationships to his men lack a reciprocal exchange of honour. The rendering of the magnate Sune Ebbesen's honourable withdrawal of his allegiance from King Svend resembles a European feudal discourse of inheritance. A nobleman who had lost his fief was, according to White, dishonoured and therefore had to rehabilitate his honour through retaliation in order to prevent shame.²⁴ Moreover, if a lord enriched lowborn men at the expense of disinherited noble retainers who had shown constant fidelity to him, it was the retainers' duty to leave him. Otherwise the established social order was threatened. It does not matter if Svend promised Sune compensation for his loss. He had already suffered humiliation when the king refused to let him inherit his ancestral land. According to feudal norms this meant disrespect of the fief-holder's personal status.²⁵ Because Svend Grathe did not fulfill his reciprocal obligations to his loyal magnates, he represents a bad form of gift-giving.

²² Ibid., 136; White, "Service for Fiefs or Fiefs for Service: the Politics of Reciprocity," in *Negotiating the Gift: Pre-Modern Figurations of Exchange*, ed. Gadi Algazi, et al. (Göttingen: Vandenhoeck and Ruprecht, 2003), 83–86. See also Turner, *Men Raised from the Dust*.

²³ Barton, *Lordship in the County*, 84.

²⁴ Stephen D. White, "The Discourses of Inheritance in Twelfth-Century France: Alternative Models of the Fief in 'Raoul de Cambrai'," in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, ed. George Garnett and John G. Hudson (Cambridge: Cambridge University Press, 1994), 185.

²⁵ Barton, *Lordship in the County*, 81.

However, not all noblemen are shown to act in as straightforward and proud a fashion as Sune Ebbesen when they decide to leave Svend Grathe to join Valdemar's and Knud Magnussen's faction. Saxo portrays Archbishop Eskil's side-switching in sharp contrast to Sune's spontaneous and valiant conduct. It is not honour that guides the archbishop's political manoeuvres. He is depicted as a calculating person guided by self-interest and clandestine behaviour. Eskil goes behind the back of Svend Grathe when he establishes a secret pact with the enemy.²⁶ Svend discovers Eskil's disloyalty and has him arrested, but later on the king is forced to release the archbishop to avoid excommunication. Thereafter Svend strives to regain Eskil's support through generous gifts, which the archbishop willingly receives, although he never backs the king with military assistance on the battlefield.²⁷ The connection between Svend and Eskil exemplifies a disgraceful relationship based on bad gift-giving, calculation, and miscalculations. True friendship is totally absent, and the king's gifts are described as bribes. He never gains any sincere fidelity in return for his efforts. Thus Svend and Eskil are both tarred with the same brush.

As depicted by Saxo, Svend commits treason because he deserts the kingdom, his army, and his people. There are equivalents to be found in legal texts from Angevin England, such as *Glanvill* (1188), and "Bracton," *De Legibus et Consuetudinibus Angliae* (c. 1230). A man who conspired against the king or betrayed the realm or the army was, according to these texts, guilty of *lèse-majesté*.²⁸ Although seemingly Svend was a ruling king, he conspired against the self-appointed kings Knud and Valdemar and he did not fulfill the duties associated with his royal office. Obviously Saxo could not accuse Svend of *lèse-majesté*, but his crimes nevertheless suggest the English legal discourse on *lèse-majesté* and also John of Salisbury's depictions of the *rex tyrannus*.²⁹ In addition, there are similarities between Saxo's justification of Valdemar's and the Hvide group's side-switches and prevalent noble ideals in English or Anglo-Norman narrative sources.

²⁶ To medieval authors such as Saxo Grammaticus, Dudo of St-Quentin, and Galbert of Bruges, secret pacts were entirely associated with treachery. See Lars Hermanson, "Holy Unbreakable Bonds: Oaths and Friendship in Western and Nordic European Societies, c. 900–1200," in *Friendship and Social Networks in Scandinavia c. 1000–1800*, ed. Jon Viðar Sigurðsson & Thomas Småberg (Turnhout: Brepols, 2013).

²⁷ Saxo, 14.3.4.

²⁸ White, "Alternative Constructions," 3.

²⁹ John of Salisbury, however, maintained that the English kings frequently abused the laws on *lèse-majesté* in order to get rid of awkward criticism.

Stephen D. White has analysed *The History of William Marshal* and reached the conclusion that princes, vassals, and magnates who had been treated badly by their lords not only had acceptable reasons to change sides; it was also their duty to abandon an infamous and greedy master. If they performed the right conduct, signified by an honourable and public withdrawal of their allegiance to a lord, they could not be condemned as traitors. Accordingly, there were “good” and “bad” changes of allegiance, with “bad” changes being distinguished by trickery, lies, and clandestine behaviour. These kinds of dishonourable side-switches were to be judged as treason.³⁰

Aftermath of War—Pardon or Punishment?

After the glorious victory at the Battle of Grathe Moor, King Valdemar had to deal with the surviving followers of his defeated opponent. Saxo reports that Valdemar showed an amazing clemency towards the enemy. However, some were severely punished, such as Svend’s counsellor, Detlev of the Ditmarsh, who was dismembered and beheaded, probably because—unlike Valdemar’s Danish adversaries—he lacked interconnected ties between the two factions.³¹ Among those who received the king’s *clementia* was Magnus Eriksen, who was the son of the former king Erik III and Valdemar’s first cousin once removed. Saxo declares that “[Magnus] had been a keener partisan of Svend than he should have been.” In astonishment he further writes that Valdemar:

not only granted him his life, out of respect for their kinship, but also promoted him in power and dignity: to have conceded impunity would have been enough, but Valdemar was liberal to boot, rather than appear to give rein to vengeance and attach greater weight to anger than to

³⁰ White, “Alternative Constructions,” 1–32.

³¹ Lars Hermanson, *Släkt, vänner och makt. En studie av elitens politiska kultur i 1100-talets Danmark / Kindred, Friends, and Power. A Study of the Élite’s Political Culture in Twelfth-Century Denmark* (Göteborg: Avhandlingar från Historiska institutionen i Göteborg, 24, 2000), 227. According to Robert Bartlett a foreigner had no identity in legal terms because juristic standing depended on ties of kinship, lordship, and ethnic territorial identity. Robert Bartlett, *Trial by Fire and Water. The Medieval Judicial Ordeal* (1986; repr. Oxford: Clarendon Press 1990), 32. This seems also applicable to the rules of war. On the role of “aristocratic pressure groups” and “non-legal pressures” (e.g., custom, social status, and social ties), see the discussion of Bartlett and Strickland in Karen Bosnos, “Treason and Politics in Anglo-Norman Histories,” in *Feud, Violence and Practice. Essays in Medieval Studies in Honor of Stephen D. White*, ed. Belle S. Tuten and Tracey L. Billado (Farnham: 2010), 297–302.

family ties. Although punishment was owing to him for the wrong he had done, he was spared because he was kin. Valdemar thus respected affinity in an adversary, no less than loyal service in his supporters, and rewarded friends and enemies alike.³²

Previous Danish kings admired by Saxo, such as Valdemar's uncle Erik II ("the Unforgettable"), had not hesitated to execute their relatives. Violent struggles between kinsmen were a common practice, not just among the Scandinavian elites, but also in the rest of Europe. Saxo's statement that Valdemar spared Magnus's life because he was kin seems therefore a bit suspect. Not only Erik II but also Valdemar's father, Duke Knud Lavard, are depicted as lords who acted in accordance with the ideal of the *rex iustus*, and they freely punished friends and kinsmen. Perhaps Saxo's description of the conqueror's noble conduct more closely corresponds to the moral ideal of the *rex dei* who respected the canon law that condemned bloodshed between kin and bloodthirsty avengers acting in line with the rules of the feud.

We must also pay attention to the fact that the merciful conqueror showing *clementia* and *mansuetudo* is a common literary construction in both ancient Greco-Roman literature and medieval historiography.³³ These kinds of socio-political dramas probably had paradigmatic functions which exposed the deepest values, both of the honour-based culture and the clerical communities. Yet it was not merely a literary topos. The manifestation of *clementia* was a ritualised strategy used by lords to create an honourable charisma that outshone the defeated enemy and prevented future acts of vengeance. This was a widespread policy all over Europe. Parallels could be drawn, for instance, to England, Wales, and Norway.³⁴

³² Saxo, 14.19.17.

³³ On encounter-stories, ritual defeats (*hiketeia*), and the role of the "fief" (*doreai*) in the Greek culture of fidelity, see Gabriel Herman, *Ritualised Friendship and the Greek City* (Cambridge: Cambridge University Press, 1987), 47, 57, 108. For a comparison between the Greek concept of *doreai* and Stephen D. White's interpretation of the fief, see Herman, "Holy Unbreakable Bonds". On *mansuetudo* and chivalrous codes of honour see John Gillingham, "Thegns and Knights in Eleventh-Century England: Who Was Then the Gentleman?" in *Transactions of the Royal Historical Society* 5 (London: Royal Historical Society, 1995) 148–52; White, "Alternative Constructions," 6.

³⁴ The Norwegian king Sverre was known to treat his enemies with mildness and give *grið*: warranty to go free. According to Sverre Bagge *grið* had a similar function as the gift, i.e. that the giver created a relation of dependence in which the receiver was under an obligation to the giver. Sverre Bagge, *Society and Politics in Snorri Sturluson's Heimskringla* (Berkeley: University of California Press, 1991), 166, 292, n. 37.

In twelfth-century Wales the victor often took over the warriors of the defeated enemy and thereby reshaped his rival's network into his own.³⁵

Magnus Eriksen must have been rather young when he was granted pardon, perhaps in his early teens. Magnus's role as an ally of Svend Grathe is unknown before the Battle of Grathe Moor. In light of this, it is remarkable that Saxo suddenly pays him so much attention; and it is possible that he exaggerates Magnus's function as a keen supporter of Svend. Although young, Magnus was the son of a king and a conceivable claimant for the throne. It is probable that he had at his disposal a group of noblemen who had sworn him fidelity. These kinds of groupings occur for instance in the Danish, Norse-Icelandic, and Norman sources. Dudo of St-Quentin writes that the Norman duke Richard I already as a child had men attached to him through oaths of fidelity sworn by a religious ritual. He tells that Richard's men "made their oath on the holiest relics to obey and serve and fight, and promised and vowed to be faithful to him in all things."³⁶

Hence, one of many practical reasons why Valdemar decided to pardon Prince Magnus could have been to neutralize a future royal claimant and simultaneously acquire a group of sworn knights into the bargain. The statement that the king granted Magnus *honores* implies that from now on Magnus's personal honour was to be connected to Valdemar in person, and consequently Valdemar's reputation would also be reflected onto Magnus's followers. The king's pardon was also a generous gift, including both material and social resources. The material element consisted of Valdemar's grant of a fief (*praefectura*), possibly on the island of Funen. It was probably part of Magnus's ancestral inheritance, but because he was totally in the hands of his conqueror he could not make any claims on it. Instead Saxo portrays Valdemar as a lord who generously donates fiefs from the royal patrimony. The social element is represented by the honourable relationship. The act of pardon implies that Valdemar established an amicable relationship by forging a pact of friendship. It was a special favour, wherein the bond of friendship was considered as a gift from above and an expression of the lord's largesse. Thereby Magnus was

³⁵ Rees R. Davies, *The Age of Conquest: Wales, 1063–1415* (Oxford: Oxford University Press, 1991), 74.

³⁶ Dudo of St-Quentin, *History of the Normans*, trans. Eric Christiansen (Woodbridge: Boydell Press, 1998), 4.68.98. In *Gesta Danorum* and in Norse-Icelandic sources these kinds of groups often act as a juvenile lord's guardians on the battlefield. With all means available they were obliged to prevent their masters' being killed or captured.

incorporated into Valdemar's *familia*, which was founded on ties of kinship and supplemented by affective bonds.

Thus Valdemar's pardon and gifts were tokens of honour and friendship, but Magnus was put under a moral obligation to obey the king, which meant that the bond was vertical. Provided we accept the assumption that Magnus was a teenager in 1157 (Valdemar was then twenty-seven years old), it is also worth considering the possibility that Valdemar was taking on the responsibility of being his patron. Valdemar's actions suggest that from a juridical and a social point of view Magnus was being placed under the king's (or his allies') guardianship. Magnus was pardoned, but this also meant that he was fettered by obligations to his patron, and thereby his freedom of action was severely reduced.³⁷ Valdemar also strove to create strict vertical bonds within the royal *familia*. This could be a fruitful strategy for neutralizing future claimants to the throne, but it was also risky because it paved the way for discontentment among the royal descendants who felt that they were entrapped and their freedom restricted under the cloak of the king's protection. Most likely, Valdemar himself had previously had a similar relationship to Svend Grathe. Saxo tells that Svend was a patron and friend of the young Valdemar until 1152. Valdemar's father, Knud Lavard, died before his wife gave birth to his son. During Valdemar's upbringing his uncle Erik II and Erik's son, Svend Grathe, acted as his patrons. These kinds of warranties involved responsibilities for the patron, but also good opportunities to control the protégé and pinion a potential usurper. Svend's strategy, however, failed and further on we will be aware that history was to repeat itself when Magnus rebelled against the Valdemarine rule.

*Negotiating Fidelity—The Relationship between King Valdemar
and Buris Henriksen*

Valdemar had to form an ad hoc coalition to overthrow the power of Svend Grathe. It was a kin-based action group including cognates, affines, and friends belonging to aristocratic networks, such as the Hvides. In the aftermath of the Battle of Grathe Moor the rights of possession were in a

³⁷ These social strategies were also used by Valdemar to neutralize future potential rebels such as his illegitimate son Christopher, who was put under close guardianship by the king's aristocratic allies in order to prevent his coming under the influence of rebel groups. Hermanson, *Släkt, vänner och makt*, 153, n. 316.

mess. After Valdemar had been recognised as sole king he owed a debt of gratitude to his loyal kinsmen, whose great achievements on the battlefield had to be rewarded. Now they demanded their share of the conquered lands, and they probably had equal rights of inheritance to the royal patrimony. Among them were Valdemar's second cousins Buris and Knud Henriksen. They were not sons of a king, but that was also the case with Valdemar. Nevertheless, Saxo depicts them as greedy ungrateful vassals, constantly begging for favours and more land.

A recurring theme in *Gesta Danorum* is Saxo's accentuation of affective bonds of friendship at the expense of ties of kinship.³⁸ Yet the charters issued at the beginning of Valdemar's reign indicate that the king preferred to surround himself with royal kinsmen. Saxo tells that Valdemar after the battle rewarded Buris "with riches and honours" and that with equal generosity he promoted his brother Knud to the rank of prefect. However, he also writes that Buris and Knud were suspected of "uncertain loyalty," and that therefore Valdemar refrained from punishing a group of Svend's counsellors with outlawry because he feared that Buris and Knud would range the exiles in arms against him.

During the 1160s the king started a process to prune the royal tree. He tried to manipulate the bilateral rules of inheritance through a new order of succession and the creation of a *stirps regia*, legitimated by the canonization of his father. The first step was to secure the succession of his son Knud VI, by extracting from the nobility an oath of fealty to the heir. Valdemar was probably influenced by royal customs in Germany and France. His strategy also shows a striking resemblance to the new policy practised by his English colleague Henry II, who secured the transmission of the royal title to his eldest son during the same decade.³⁹ Buris had, however, earlier abstained from voting when Knud VI was to be recognized as co-regent. Valdemar then suspected him of desiring the crown, but Saxo has Buris declare that "his silence was an indication not of hatred, but of

³⁸ Lars Hermanson, *Bärande band. Vänskap, kärlek och brödraskap i det medeltida Nord-europa, ca. 1000–1200* / *The Most Solid Bond. Friendship, Love, and Brotherhood in Medieval Northern Europe, c. 1000–1200* (Lund: Nordic Academic Press, 2009), 81–108; Lars Hermanson, "Friendship and Politics in Saxo Grammaticus' *Gesta Danorum*," *Revue Belge de Philologie et D'Histoire* 83 (2005): 262–84.

³⁹ Anne J. Duggan, *Thomas Becket: Friends, Networks, Texts and Cult* (Aldershot: Ashgate/Variatorum, 2007), 165–70. Henry's son was crowned in Westminster Abbey in 1170. In the same year Knud VI was anointed and invested as king in Ringsted. Both in England and Denmark the coronations were preceded by oaths of fealty by the leading barons and magnates some years earlier.

love [...] since it was not recorded that the kingdom of Denmark had ever been amicably shared among several.”⁴⁰ Buris further alludes to many examples from antiquity of war arising between father and son.⁴¹

Later on, at an assembly in Roskilde, he refuses in public to be a vassal under Knud. Once again Saxo throws suspicion on Buris, depicting him as a cunning claimant for the throne. He tells that Buris defended his standpoint through “far-fetched arguments”; but if we read between the lines we must call attention to the fact that Buris’s speech for his defence is very well articulated. His arguments allude to Danish history and old traditions concerning ideals of fidelity. The author’s personal opinion concerning these matters is thus somewhat obscure. Buris declares that:

while that man lived to whom he owed his first allegiance as a warrior, he would not serve another man, and that he could not be persuaded to change his old obedience of his country as to common honesty; for it was not the practice among the Danes to owe double military service, and it was only their greed for wages which made the Saxons adopt this fashion. For if war should happen to break out between two who shared one man’s service, the warrior of both could not preserve his fealty to either by helping the other.⁴²

Here Saxo touches upon a classic feudal dilemma; and perhaps he wanted to illustrate a problem of immediate concern for contemporary readers. Buris’s eloquent speech is informed by the feudal discourse on the essence of fidelity, but he also accentuates his obligation to the fatherland and his dissociation from greedy foreign practices.⁴³ In *Gesta Danorum* German customs always represent something bad, which ought to be avoided. So why does Saxo place these words in the mouth of the otherwise treacherous Buris Henriksen? The answer is probably that Saxo was an upholder of the old system of succession based on election. This issue was to a

⁴⁰ Saxo, 14.33.2.

⁴¹ Perhaps Saxo was aware of the great revolt in England in 1173 (and again in 1183) in which Henry II was forced to fight against his crowned son, “Young Henry,” Henry’s brothers, and their mother, Eleanor. After the murder of Thomas Becket Henry was widely considered to be a *rex tyrannus*, and the later blood-feud within his own family did further damage to his reputation.

⁴² Saxo, 14.33.3. Buris’s conduct resembles Sune Ebbesen’s refusal to swear an oath of allegiance to Svend Grathe. Both Sune and Buris possess the courage to challenge the king’s authority and to defend their standpoints in public. On the Saxon practice of fiefs, see “Auctor Vetus de Beneficiis,” in *Monumenta Germaniae Historica. Fontes Iuris Germanici Antiqui*, n.s. 2, ed. Karl August Eckhardt (Hannover: Hahnsche Buchhandlung, 1964), i: 94, 88.

⁴³ This was a classical Ciceronian ideal.

large extent, however, a theoretical problem. In practice most vassals and members of action-sets had multiple loyalties, depending on context.

Notwithstanding that Buris's standpoint is based on a sound argument, Saxo portrays him in accordance with the image of the classical traitor. To avoid suspicion of treason Buris later proclaims that he will obey the king if Valdemar is willing to grant him more lands as a "perpetual right of inheritance." With the assistance of the mediator Bishop Absalon he receives patrimonial lands on Jutland in 1166, and then he finally agrees to be a vassal of Knud VI. According to Eric Christiansen Valdemar "bought him off," and by those means Buris forced the king's generosity.⁴⁴ Thus this affair was not honourable for either of them. In contemporary feudal discourse this kind of conditional service was associated with bribery and bad lordship.⁴⁵ After this disgraceful deal Saxo states that the affective bond between the two cognates was dissolved. He writes that Buris "hardly became firm friends with the king again. For the royal anger was so persistent that, once aroused, it could never be extinguished."⁴⁶ Thus Buris's cunning behaviour has stained Valdemar's reputation as a decent gift-giver who does not have to calculate in order to gain faithful followers.

A couple of months later the king receives letters from the Saxon duke Henry the Lion and from Norway, revealing that Buris together with his Norwegian kinsmen is planning to kill him. Buris is summoned to a court "with the other chief men of the kingdom," where the king accuses him of treason. Later on, more evidence confirms Buris's treachery and without trial he is arrested and kept in chains as guilty of high treason. After that he disappears from history, but German sources say that he was blinded and castrated.⁴⁷ By this action Valdemar succeeded in pruning the first unruly twig on the royal tree.

⁴⁴ Christiansen, *Danorum Regum Heroumque*, 823, n. 425.

⁴⁵ White, "Giving Fiefs and Honor," 134. On fiefs as negotiated gifts, see White, "Service for Fiefs," 286–91.

⁴⁶ Saxo, 14.33.4.

⁴⁷ According to the *Annals of Rūde* (c. 1250) he was blinded and castrated. The *Annales Stadeness* (c. 1250) tell a similar story. Christiansen, *Danorum Regum Heroumque*, 826, n. 440. These ritualized acts of violence was rather common in other parts of Europe such as Bohemia, Poland, Hungary, Iceland, France, and Ireland. Parallels could be drawn to the Norwegian King Magnus the Blind, who suffered the same fate.

The Construction of the Treason Trial against Magnus Eriksen

Magnus Eriksen was accused of conspiring against the king in 1176, and again in 1178. Saxo writes that he cooperated with princes such as Karl and Knud Karlsen, descendants of the royal saint Knud IV. Together with magnates who were members of the powerful Trund clan, and thereby related to Archbishop Eskil, they formed a *coniuratio* in order to assassinate the king. In 1176 Magnus was accused of high treason and had to face the possibility of undergoing an ordeal. He was, however, pardoned in exchange for a full confession of his guilt and on condition that he revealed the names of the plotters. The confession resulted in a devastating reversal of fortune for the Trund clan and its royal allies. The conspirators were exiled, and later Archbishop Eskil resigned from his office. His proposed successor and kinsman Asser was, according to Magnus's confession, aware of the plot. He was therefore considered a traitor and sentenced to exile. He forfeited his chances to become archbishop, and later on the head of the Hvide clan, Bishop Absalon, took charge of the office. The second plot was unmasked in 1178. Magnus's fund of trust was by then exhausted and he was judged a traitor and sentenced to be imprisoned in a dungeon at Söborg castle.

Saxo describes the judicial procedures during the years 1176–1178 in a rather detailed manner, unusual in *Gesta Danorum*. The case of Magnus Eriksen includes elements such as accusations of lèse-majesté and high treason. The defendant's final confession is extorted when he is confronted with undisputed proofs based on written and oral testimony. The process also contains religious dimensions in order to portray the accused subject as a repentant sinner. In a miraculous way the unsuspecting king escapes several failed attacks without ever knowing that he has been in danger. This is interpreted as a divine sign that Valdemar's life is protected by God's hand. The Lord in Heaven also acts as a spiritual judge when Magnus has to face the possibility of trial by ordeal. As to the procedure as a whole, it is highly doubtful that it is represented realistically. It is a sophisticated construction serving to legitimate Valdemar's harsh treatment of his royal opponents by showing their unpredictability and deceitful character. Yet an incontrovertible fact is that both Valdemar and Absalon had much to gain if they eliminated the network connected to Magnus and Archbishop Eskil. The trial of Magnus Eriksen and later his imprisonment dealt the death-blow to Valdemar's competitors. The purges led to a major transfer of power into the hands of the Valdemarine dynasty and the Hvide network.

Nevertheless, accusations of treason and treason trials could always be called into question. In this context Saxo diligently uses a discourse of fidelity, lordship, and gift-exchange and a counter-discourse of treachery and feud. These “non-legal” accounts are, however, supplemented by a legal framework corresponding to up-to-date Romanist and canonist ideas about treason trials. Here submission of evidence based on written and oral testimonies, trial juries, and confessions play a significant part. Saxo must have been well versed in modern jurisprudence and aware of the ongoing debate about the condemnation of ordeals and traditional legal customs, which later culminated with the prohibition of ordeals at the Fourth Lateran Council in 1215.⁴⁸

In his ambition to discredit Magnus the author repeatedly returns to Valdemar's generous pardon after the Battle of Grathe Moor. On no fewer than three occasions he stresses that the king not only spared Magnus's life, but also granted him “the enjoyment of his patronage and friendship as well, and [Magnus] had been promoted from a private station to a place of notable importance.”⁴⁹ Nonetheless, Magnus prepares a secret conspiracy against the king's life, thereby violating the traditional obligations and codes of honour that were associated with a retainer, a protégé, a noble friend, and a kinsman. Treachery could not be much worse! It is only through “the help of God's protection” that the plan does not succeed. The first plot is revealed through the testimony of a hermit who by coincidence has heard about the plan from Magnus's German retainers.⁵⁰ Yet Valdemar waits to accuse the conspirators in order to collect sufficient proofs. He has a difficult choice between not taking action against the plotters and thus running the risk of being murdered, or punishing them immediately without trial. The latter option, however, would raise the possibility of being blamed for acting too harshly against his cognates on “the strength of concocted evidence.” Saxo writes that Valdemar risked being accused of

⁴⁸ For this debate see Bartlett, *Trial by Fire*.

⁴⁹ Saxo, 14.54.1.

⁵⁰ Eric Christiansen calls it “a typical Hermit story”: Christiansen, *Danorum Regum Heroumque*, 870. n. 648. A hermit was considered the most reliable witness available in medieval society, owing to the fact that hermits lived in isolation and therefore had no connections with kin, friends, or any other actors on the political scene. Hermit-stories occur, for example, in French and German romances of chivalry. In the romance of Percival (Parzival) the hermit symbolizes confession and the revelation of truth. Wolfram von Eschenbach, *Parzival*, Swedish trans. Gottfried Grunewald (Stockholm: Brutus Östlings bokförlag Symposion, 1999), Parzival, IX, 453.

being driven on by the envy of their merits, to extirpate his whole family through varieties of incrimination, and he would be reputed the destroyer of his kindred and the bane of his relations. Tolerance would thus be dangerous and vengeance, if over-hasty, discreditable.⁵¹

Consequently the king's dilemma is a matter of acting in accordance with the rules of the feud, or in accordance with canon law and modern judicial procedure, which required concrete evidence and a public confession. Valdemar solves the problem by letting his counsellor Bishop Absalon decide "what was best for him." Absalon advises the king to wait and prepare to secure himself for the coming plot. The outcome is to be decided by the judgment of God, and in due course of time the truth will be revealed.

Later, indubitable proofs based on "authentic information from witnesses" turn up. Magnus flees to Henry the Lion in Saxony, and his allies Karl and Knud escape to Sweden. During his exile, Magnus tries to reach reconciliation through Henry's influence. Valdemar sends an embassy to Saxony, but Magnus proclaims his innocence and offers to prove it through trial by battle. Valdemar's envoy replies that "he had to transfer his case to the king's jurisdiction, and undertake his defence as ordained by his own country's laws," which stipulated purgation by hot iron. However, Magnus is not ready to undergo the test, and according to Saxo his reluctance makes the other men suspicious. When the envoy returns to Denmark, Valdemar sends a letter to Saxony. Magnus is summoned to a court in Denmark to defend himself against the accusations. He finally consents to this on the condition that Bishop Absalon be allowed to act as his patron and that he obtain a pledge of impunity. However, when he arrives in Denmark new letters have been discovered that reveal his guilt, which implies that Magnus should lose his impunity after all.

Accordingly, at this stage the process follows a rather traditional pattern. Magnus's first move is to solve the case through reconciliation, the most common way to settle cases of treason in medieval society.⁵² Another option to prove his innocence would have been to clear himself by an exculpatory oath. This alternative is, however, never mentioned by Saxo, perhaps because Magnus had already lost his good reputation and therefore was considered untrustworthy. Nor is compurgation brought up in the process. Magnus's second move is to offer a bilateral ordeal, but this

⁵¹ Saxo, 14.54.9.

⁵² Bosnos, "Treason and Politics," 300.

is rejected by Valdemar's envoy, who replies that the accused has to face the king's jurisdiction.⁵³ Valdemar's countermove is the unilateral ordeal, purgation by iron. Magnus is apprehensive about the ordeal and criticises it with arguments that suggest a canonist standpoint.⁵⁴ Robert Bartlett states that the right to hold ordeals was regalian and that it was often used by kings as an authoritative method of crushing their enemies, a fact which Magnus probably was very well aware of.⁵⁵ Bartlett further writes that "The biggest problem of criminal law enforcement in the Middle ages was not which mode of proof to use, but how to get the accused to court."⁵⁶ Considering the great risks, it seems a bit strange that Magnus actually decided to go to the court in Denmark. Maybe he still hoped for reconciliation through Bishop Absalon's influence. The bishop was a renowned mediator, who had good connections with the royal descendants and the noblest families of the realm, but simultaneously he was also Valdemar's closest ally. As stated above, Saxo does not mention compurgation, but it is not impossible that Magnus had it in mind when he sailed to Denmark. If so, he would have had to collect witnesses, and perhaps he thought that the powerful Absalon could be one of them.

At a public court in Viborg Magnus is accused of high treason. Here Valdemar acts as both accuser and judge. The crucial evidence is the letters sealed with Magnus's seal, which are displayed before the noble audience and inspected by the attending bishops. Confronted with these serious proofs, Magnus asks for a respite to consult his advisors, Bishop Absalon and another bishop named Tyge, who had been a close friend to his father. The defendant is not prepared to undergo an ordeal, and they reach the conclusion that the best alternative is to reveal the whole truth, hoping for the king's pardon. Yet Absalon cannot listen to his unmasking of the plot, "in case he should appear to be receiving it by virtue of his priestly office as a confession"; instead he advises Magnus to reveal the treachery to Absalon's kinsmen Sune and Esbern.⁵⁷ To them he enumerates all the plotters, including the most prominent members of the Trund clan, Eskil Assersen, Christiern Svendsen, and Asser the provost of Lund, who was aware of the conspiracy but refrained from revealing it to the king.

⁵³ Saxo was skeptical about the duel as juridical tool. He states that this custom ceased when the Danes were Christianized.

⁵⁴ Bartlett, *Trial by Fire*, 74–77.

⁵⁵ *Ibid.*, 16, 37.

⁵⁶ *Ibid.*, *Trial by Fire*, 66.

⁵⁷ Saxo, 14.54.31. If Magnus were to confess to Absalon, the bishop would be obliged to give him absolution, which would mean that he was freed from sin and thereby also absolved from guilt.

Afterwards Absalon confers with Valdemar and says that if Magnus is not condemned, this will lead many to infer his innocence, but if he confesses and is punished, this could serve as a warning to his allies to conceal their guilt. A voluntary public confession from Magnus is therefore to be preferred. Valdemar promises to pardon Magnus in return for a full confession. At court the next day Magnus finally admits his guilt and performs a supplication. Saxo says that "he threw himself at the king's knees, groaning with suppliant air." Valdemar reproaches him for his ingratitude, reminding him that he had been pardoned and rewarded after the Battle of Grathe Moor. The king declares that he will pardon him for his confession, but he will not restore him to his friendship, and he advises him not to repeat his offence, since by now he must have learned the lesson that "it was continually opposed by the power of God."⁵⁸ Thereafter the king charges Christiern Svendsen, who in exchange for a confession is given a mild sentence. He is compelled to suffer exile, but according to Saxo he "obtained both his life, and the safe possession of his goods." Saxo also says that the Provost Asser later underwent the same punishment.

Saxo concludes the story with an account of Archbishop Eskil's resignation, which serves the purpose of showing that no trickery from the king lay behind Eskil's decision to abdicate his archiepiscopal see. Simultaneously the author is very anxious to emphasise Bishop Absalon's great unwillingness to shoulder the responsibility of becoming the new archbishop. Saxo claims that Absalon, who displays the noble virtue of humility (*humilitas*), is violently forced to accept becoming the head of the archbishopric.⁵⁹ Eskil's resignation and his kinsmen's exile means that the Trund clan's power is seriously undermined. Nevertheless, the archbishop has large military resources at his disposal, since several noble commanders are bound to him by oaths. Eskil tries to persuade Absalon to succeed him by offering him his famous knights, who are willing to bind themselves to Absalon by the military oath, but this great honour is stubbornly refused by the bishop. Hence Saxo does his best to show that Absalon was not greedy for power and nor was he open to bribery.

The process finally ends when Magnus in 1178 once again is accused of plotting against the king. He is found guilty and he cannot be pardoned again. Magnus is arrested and imprisoned in Söborg castle, "as the king

⁵⁸ Ibid., 14.54.35.

⁵⁹ After the clerics' unanimous selection of Absalon as Eskil's successor he was, according to Saxo, dragged by force to the archbishop's seat; and during this wrestling-match Absalon "sent several of them headlong to the ground." Saxo, 14.55.12.

preferred to punish him with imprisonment rather than with death.”⁶⁰ At this stage Valdemar is no longer threatened by any aristocratic pressure groups, because the Trund clan was dethroned after the treason trial in 1176. He can therefore act with brute force. Magnus's allies Karl and Knud start a rebellion with help from their Swedish supporters, but it is suppressed. Knud is sent to prison in the same castle as Magnus, and Karl is killed by lowborn peasants. Saxo concludes the story with these words: “By securing their [Knud and Karl's] patrimony in accordance with the law which condemns traitors to the loss of all their possessions, Waldemar obtained unexpected increase of wealth.”⁶¹ By this conduct Valdemar succeeded in pruning the second threatening twig on the royal tree.

When Saxo paves the way for Valdemar's final conviction he exploits arguments and proofs that correspond to different norms and audiences. The construction of the judicial procedure presents a chain of proofs that alludes to the clerical elite, who are well-versed in canon law. By every means available he tries to exonerate the king from being accused of acting as a “destroyer of his kindred and the bane of his relations.” A prerequisite for this is Magnus's confession and Valdemar's decision not to have him executed. The spiritual dimension is reflected through circumstances such as the ordeal, and the portrayal of Magnus as a sinner whose illicit conduct is against God's will. The purgation by hot iron is a common literary construction in medieval historiography, serving the purpose of discrediting a defendant. However, the fact that Saxo gives prominence to written documents to reveal Magnus's guilt indicates that he wanted to present the case to a circle of readers belonging to textual communities including both canonists and Romanists. Yet he combines this framework with a traditional feudal discourse corresponding to norms of the honour-based community.

Fiefs as Cultural Resources

Valdemar is described as a lord who shows largesse both to his followers, such as Buris Henriksen, and to his defeated enemy Magnus Eriksen. Around 1176 his kinsman Karl Karlsen obviously did not belong to the

⁶⁰ Ibid., 14.56.3.

⁶¹ Ibid., 15.2. For this Treason Law see Thomas Riis, *Les institutions politiques centrales du Danemark 1100–1332* (Odense: Odense University Press, 1977), 52–57. For English laws on treason and the confiscation of property see White, “*Alternative Constructions*,” 1–2.

king's inner circle, but Saxo says that he turned to Bishop Absalon "on the strength of their kinship, to help him petition the king for the grant of a province." At this stage Valdemar knows about his betrayal, but he does not want to reveal it. Absalon presents the request to the king, who promises that a fee will be paid to Karl "until he should have an opportunity of granting him an honour." Later Karl repeats his request to Absalon, and finally Valdemar grants him a fief in Jutland. Saxo writes that Karl was delighted, not because of the gift, "but because of the parricide which was going to be committed, the king's careful dissimulation having increased his sense of security."⁶² Consequently he is portrayed as a classic traitor who acts in secrecy using trickery and manipulation.

Accordingly, Saxo describes the fiefs as cultural resources in a political patronage system.⁶³ The royal kinsmen's rights to inheritances are transformed into fiefs and *honores*, dependent on Valdemar's benevolence. The king acts in line with the obligations and norms connected to gift-giving. He always fulfills his promises and he even gives a fief to a kinsman whom he knows is planning to murder him. However, his greedy cognates do not live up to the ideals of gift-giving. Instead they express their gratitude through treachery. If we interpret Valdemar's conduct from Buris's and Karl's viewpoints, they probably regarded him as an avaricious lord refusing to share the royal inheritance with his loyal retainers who had risked their lives for his honour. The basic reason why they decided to wage war for Valdemar's sake was probably to appropriate their inheritance. Nevertheless, at the expense of his own kinsmen the king chose to incorporate members of different aristocratic networks into his inner circle, rewarding them with fiefs and prominent positions. This development is reflected in the royal diplomas. At the beginning of Valdemar's reign the witness lists

⁶² Saxo, 14.54.11. Saxo use the word *parricida* to emphasize the crime. The term was often used for persons guilty of high treason, but also for murderers who were closely related to the victim.

⁶³ On fiefs as "cultural resources" see White, "Service for Fiefs," 81. In his analysis of how the fief is represented in the poem *Raoul de Cambrai*. White presents three models: the "proprietary model," representing the fief as property to which a person can claim property right; "personal models of the fief," representing the fief as a gift forming a part of an exchange between a lord and a man; and the "symbolic model of the fief," representing the fief in symbolic terms, as an emblem of honour that a tenant, heir, or lord must control and defend in order to avoid dishonour and shame. White, "Discourses of Inheritance," 173–97. On the distinction between inheritance and acquisition, property and possession, seisin and right in twelfth-century England, see John Hudson, "Court Cases and Legal Arguments in England, c. 1066–1166," in *Transactions of the Royal Historical Society*, Sixth Series, Vol. 10 (London: Royal Historical Society, 2006): 99.

are dominated by his kinsmen. A few years later, they have been purged and replaced by aristocrats.⁶⁴ It is most likely that the magnates also had received fiefs originating from the royal patrimony. Saxo's depiction of the judicial procedures against Buris's and Magnus Eriksen's plots shows that the feudal discourse could be used in favour of kings who wanted to create a *stirps regia*. Valdemar had his father canonized and he established the so-called Valdemarine sacral kingdom, but in practice he could not legitimate the pruning of the royal tree through the use of Christian symbolic rituals.

After the first plot the confessor Magnus Eriksen is pardoned, and from a juridical point of view he escapes punishment, but according to feudal norms and the unwritten rules of the honour-based society he has been ruthlessly punished. Saxo writes that the king "would not restore him to his friendship," implying that Magnus was no longer part of the king's *familia*. His territorial possessions were still in his hand, but because he had lost Valdemar's friendship, his fief no longer manifested an honourable relationship with the king. Thus the affective bond associated with the fief was dissolved, though Magnus was still in possession of his gift. The gift had lost its "soul," since the receiver was deprived of the element of honour connected to the fief, and consequently Magnus's territorial possessions had lost their political and symbolic meaning. He still had access to considerable material resources, but he was left out in the cold, and his career had reached its end. If Magnus still wanted to be recognized as an actor on the political scene, the only alternative was usurpation, in order to get rid of the lord who monopolized the flow of *honores* and material resources.

Treason and Royal Public Justice

What Saxo actually meant by "high treason" is a debated issue. In English sources rebellion against the king was, according to Stephen D. White, legally defined as lèse-majesté (*crimen laesae majestatis*), and the terms used for treachery were *proditio*, *sedition*, or *infidelitas*.⁶⁵ The most common term used for treason and betrayal in *Gesta Danorum* is *infidelitas*, sometimes *perfidia*, while *proditio* is rare. Treason was a crime against

⁶⁴ Hermanson, *Släkt, vänner och makt*, 226.

⁶⁵ White, "Alternative Constructions," 1.

the king in person. High treason was a crime against the kingdom and the *maiestas*.

In *Gesta Danorum*'s previous books describing the reigns of the kings Erik III and Niels Svendsen there are passages which indicates that royal usurpers and disloyal high-ranking officials were accused of high treason. During the civil wars 1139–1141, Saxo tells that the prince Olav Haraldsen returned to Denmark from his exile in Norway in order to claim his patrimony by right of inheritance. The ruling king Erik III, however, refused to obey his demand “by invoking the ancient law decreeing that traitors to the country shall forfeit their possessions.”⁶⁶ The defending argument was that Olav's father had “employed foreign soldiers against his country.” Obviously treason, according to Saxo, also had devastating effects upon the traitor's offspring. Moreover, he writes that Olav then turned to “a contender for the whole kingdom rather than a suitor for a private inheritance.”⁶⁷ Hence Saxo constructs a dichotomy between litigants who become defenders of the kingdom and subversive usurpers. Going back as far as the reign of Erik III, he transforms feuds over private inheritances into a scenario of threat in which the kingdom is put in jeopardy. During the reign of King Niels (1104–1134) the author also states that Earl Eliv betrayed the Danish king when he was bribed by Niels's enemy, Henrik Gudskalksen. Eliv was judged a traitor and sentenced to lose his fiefs and all his landed property.⁶⁸ These stories show that Saxo occasionally uses a unilateral discourse on treason. By using *exempla* from the past he illustrates that usurpers of the crown were predestined to meet a disgraceful end. It is not inconceivable that Valdemar accused his rivals of high treason in order to secure his long-term interests. Saxo does his very best to show that the conflicts between the litigants were not simply an issue concerning private rights of inheritance. By using a judicial terminology involving terms such as “treason” and “high treason,” he situates disputes about inheritance in a public context, wherein the royal kinsmen's

⁶⁶ Saxo, 14.2.5.

⁶⁷ Ibid., 14.2.5. In book 5, Saxo mentions the ancient law-code of King Frode, which stipulates “ [...] whatsoever exiled Dane [...] bear[s] his shield in enmity against his fellow countrymen, shall suffer the penalty of losing his prosperity and life.” Saxo Grammaticus, *The History of the Danes: Books I–IX*, ed. Hilda Ellis Davidson, trans. Peter Fischer (Woodbridge: D.S. Brewer), Saxo, 5.5.5. Eric Christiansen states that Valdemar did not confiscate Karl and Knud Karlsen's property when their plot was revealed in 1176. According to Saxo the confiscation was made after Karl's death and Knud's imprisonment. Christiansen, *Danorum Regum Heroumque*, 890, n. 14.

⁶⁸ Saxo, 13.2.7.

demands are portrayed as offences against the realm and the king's personal honour.

Buris Henriksen and Magnus Eriksen are confronted with public authority, and they are judged by the king in person. A more common situation in *Gesta Danorum* is that evil lords representing "bad order" such as Svend Grathe or usurpers such as Karl Knudsen are judged and even killed by the people. They are often dehumanized and meet a disgraceful end. By contrast Buris and Magnus are not dehumanized. They are treacherous, but active participants in dispute processes where they get the opportunity to make their voices heard. As earlier stated, Buris's arguments as to why he does not want to recognize Valdemar's son as his feudal lord are actually quite well-founded. Saxo also seems anxious to show that Magnus Eriksen received a fair trial. However, the fact that he repeatedly breaks his promise and does not show genuine sincerity and penitence when he prostrates himself before the king implies that he has not lived up to the moral obligations connected to friendship, gifts, and fidelity. Perhaps Saxo wanted to show that Magnus had violated all the traditional rules concerning trust and therefore he had simply made himself impossible. Finally the only remaining alternative was public royal justice. This justice was "royal" not only in the sense that the king acted as a supreme judge, but also because of the accusation of high treason. Consequently, Saxo is able to show that Valdemar did the right thing when he arrested his blood-relative.

In his ambition to demonstrate the public aspects of the disputes Saxo utilizes an ancient Roman discourse to distinguish right from wrong. Valdemar (and Absalon) represent *potestas*, which is normative and legal and which springs from a constituted order. To defy *potestas* is a criminal act in accordance with treason. Simultaneously Valdemar symbolizes *auctoritas*. An offence against *auctoritas* is equal to treachery. Roman thinkers posited that *potestas* was a socially recognized power (referring to military power), while *auctoritas* was a socially recognized knowledge. In a medieval Romanist context *auctoritas* was usually identified with the pope and *potestas* with the emperor. However, Saxo was not a keen supporter of either of them. Drawing upon his classicism, he prefers to portray the righteous kings in Danish history as Roman emperors, which explains why Valdemar embodies both *potestas* and *auctoritas*.⁶⁹ Contrary to his

⁶⁹ For more on Saxo's fondness for classical terminology and his literary use of Ciceroian virtues and vices, see Hermanson, "Friendship and Politics," 262–84.

contemporary colleague, Svend Aggesen, who in his *Lex Castrensis* compares traitors with Judas, Saxo characterises traitors such as Magnus Erikssen as Brutus-like figures who betray their generous patrons.⁷⁰

Political, Legal and Social Conditions around the Year 1200

Saxo continued his history of the Danes until the year 1185, at which point Denmark was being ruled by Valdemar's son Knud VI. The work was probably completed around the years 1208–1210 and it was dedicated to Knud VI's brother Valdemar II, who succeeded him in 1202. During his reign the Valdemarine power was at its height. There were no competing aristocratic networks comparable to the Trund clan, and the church organization was in the hands of the loyal Hvide clan. Although Saxo describes the judicial processes during the 1160s and the 1170s as disputes with beginnings and clear-cut ends, the conflicts between the royal cognates went on even after 1178. There was still a third problematic twig on the royal tree, constituted by the offspring of Knud Magnussen. The most serious threat came from the king's cousin, Bishop Valdemar Knudsen. He entered his episcopal office in 1182, but for some obscure reason he is never mentioned by Saxo. In fact, the sons of Valdemar I had to face nearly the same problems as their father had. Bishop Valdemar tried to usurp the crown in 1192, but the rebellion was suppressed. Knud VI arrested him and he was imprisoned for fourteen years. During his captivity and after his release he caused many problems for the Valdemarine kings.⁷¹ The bishop had powerful allies in Norway, Sweden, and Saxony. Like their father, Knud VI and Valdemar II ran the risk of being accused of treason against their own kin; and the fact that they held a bishop imprisoned also made them a target of criticism among clerical circles. It is possible that these political tensions could have had an influence on Saxo's accounts of the treason trial of Magnus Eriksen and the punishment of Buris Henriksen. Perhaps they served as a warning to contemporary and future claimants to the throne. Saxo diligently uses the *exemplum*-technique in order to show

⁷⁰ Sven Aggesen, "The Law of the Retainers or of the Court," in *The Works of Sven Aggesen: Twelfth-Century Danish Historian*, trans. Eric Christiansen (London: Viking Society for Northern Research, University College London, 1992), 42.

⁷¹ Hermanson, *Släkt, vänner och makt*, 194.

that crime against the *maiestas* was illegal because it severely disturbed the constituted order.⁷²

Saxo's legitimization of the rebellion against Svend Grathe and his condemnation of the usurpers Buris and Magnus served the purpose of exonerating the Valdemarine dynasty from accusations of treason and harsh rule. He uses a feudal discourse based upon themes such as the "good lord" versus the "bad lord," and the "benevolent lord" versus the "ungrateful royal kinsman." Stephen D. White claims that norms of fief-giving

could be used and re-used as cultural resources in disputes by people enmeshed in a political patronage system in which fief-giving was, for lords, a potentially honorable method of maintaining political support and, for men, a potential source of wealth and honor.⁷³

Parallels could be drawn with William H. Sewell's theories on the concept of "culture." Sewell interprets "culture" as a performative term, which is to be associated with practice. Users of culture often create "semiotic communities." The members of these groupings are capable not only of observing declarations produced according to a symbolic code, but also of using the system by transforming it into practice.⁷⁴ As we have seen, moreover, to the literary theorist Stanley Fish, the interpretation of a text is dependent upon each reader's own subjective experience in one or more so-called interpretive communities.⁷⁵ Scholars have assumed that *Gesta Danorum* first and foremost was intended to be read by an international circle of readers, who were familiar with Saxo's classicism and feudal references.⁷⁶ Saxo's feudal discourse was, however, also employed in order to legitimate the Valdemarine dynasty to Danish power holders, who were part of a literate community. A prerequisite for this was that his Danish noble audience recognize the symbolic interaction between signs and relations. His renderings of the "good lord" versus the "bad lord" and the mechanisms of gift-giving were alluding to norms which by no means would have been unfamiliar to the presumed Danish addressees. Yet Saxo also had obligations to his clerical circle of readers. True, Valdemar was

⁷² Similar legal tools were used by contemporary English kings.

⁷³ White, "Service for Fiefs," 85.

⁷⁴ William H. Sewell Jr., "The Concept(s) of Culture," in *Practicing History. New Directions in Historical Writing after the Linguistic Turn*, ed. Gabrielle M. Spiegel (New York: Routledge, 2005), 76, 86–91.

⁷⁵ Fish, *Is There a Text?*

⁷⁶ Saxo was versed in the Anglo-Norman literature, and he makes references to, e.g., Dudo of St-Quentin.

the son of a saint; but these dignitaries could not accept a king who acted in line with the feud. In order to avoid painting Valdemar as a blood-thirsty avenger and a traitor to his own kin, Saxo depicts the king's pruning of the royal tree as a judicial process. Thus Valdemar's blood-relatives are portrayed as usurpers of the crown who commit treason against the kingdom and treachery against a king who has divine protection.

Saxo's mastery of code-switching is embodied by a skilled navigation through the diversity of norms and ideals prevalent among the elites of his age. The decades around 1200 were marked by legal reforms in many European kingdoms and principalities. Gratian's *Decretum* denounced trials by battle, and Pope Alexander III (1159–1181) strove to ban the custom. At the same time, the canonists were working diligently to condemn the blood-feud with arguments drawn from the Scriptures. According to the legal reformers ordeals ought to be replaced by inquests based on proof by written evidence and oral testimonies. In the subsequent trials the accused was supposed to confess when he was confronted with the submission of evidence. These legal procedures could also be used in cases involving participants in vendettas. Feuds between blood-relatives were against God's will, and their devastating effects on the surrounding society could be prevented through authoritative legal power. To the reformers only kings had the strength to put an end to the perpetual feuds.⁷⁷ However, a prerequisite for this was the fundamental axiom that the kings ought not to be involved in private feuds themselves.

In Saxo's portrayal of the proceedings against Magnus Eriksen all the above-mentioned elements play a part. The king threatens Magnus with ordeal, but the cleric Absalon advises him to use another legal strategy aimed at public confession, in correspondence with the new jurisprudence. However, in Magnus's case there were also weighty practical reasons for preferring a confession. It offered a chance to defeat multiple adversaries: the secular and clerical members of the Trund clan, and the awkward offspring descended from other twigs of the royal tree. Absalon's advice resulted in a great success when the entire plot was revealed by Magnus's confession. An ordeal would probably only have disclosed Magnus's personal guilt.

⁷⁷ This view was valid among the canonists whom the historians used to designate as "dualists." On "dualists" and "hierocrats" see, e.g., Brian Tierney, "Tria Quippe Distinguit Iudicia..." A Note on Innocent's Decretal *Per Venerabilem*, *Speculum* 37 (1962): 48–59.

Robert Bartlett has pointed out that “smaller and precociously centralized kingdoms in close relations with the papacy” such as England and Denmark were eager to obey the Canonists’ legal reforms.⁷⁸ Valdemar I had a close collaboration with the Pope Alexander III, and Denmark was probably the first kingdom which responded to the Lateran council’s decree. Valdemar II banned the ordeal by hot iron in 1216 (or shortly thereafter) in a charter which proclaimed that in all cases where ordeal by hot iron had been used in the past, the matter of guilt should thenceforth be decided by majority vote of twelve nominated men.⁷⁹ Thus, the Danish kings strove to uphold their good relations with the papacy. This could partially explain why Saxo makes such a vigorous effort to make the point that the modern *rex iustus* Valdemar I acted in correspondence with canonist and Romanist legal procedures.

Nevertheless, in both the rendering of Valdemar’s rise to royal power and the depiction of his firm regency, Saxo had to combine the legal framework with a feudal discourse on the essence of fidelity in order to exculpate the king from accusations of treason and harsh rule. Saxo certainly did his best to solve the Valdemarine dilemma by using a bricolage of codes and arguments appealing to different interpretive communities, but unfortunately no sources have survived that can tell the defendants’ stories. Thus Svend Grathe’s, Buris Henriksen’s, and Magnus Eriksen’s voices remain silent to posterity.

⁷⁸ Bartlett, *Trial by Fire*, 127.

⁷⁹ *Diplomatarium Danicum* R.1, Bd., 5., 1211–1223, ed. Niels Skyum-Nielsen (København: Reitzel, 1957), nr. 96, 137–43. For the dating discussion see, e.g., Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010), 65–67. Concerning groups of nominated men, see the concept of *nævninge* in Helle Vogt’s article p. 157 in this volume.

PART TWO

LOCAL DISPUTES: PROPERTY, JUSTICE,
AND SOCIAL TRANSACTION

INTRODUCTION TO PART TWO

Helle Vogt and Kim Esmark

While the first section of this volume deals with conflict in high politics, the chapters in the second section focus more narrowly on local disputes related to property, family, and micropolitical networks. In the opening chapter Helle Vogt presents a quantitative survey of all Danish charters from the thirteenth century, with the aim of mapping basic patterns of property disputes in this period. Who was disputing against whom? Who held the jurisdictional authority? And what were the outcomes of the disputes? Whereas Vogt's study provides a general overview, Kim Esmark takes a closer look at the records from one particular monastery, exploring the variety of strategies employed by litigants in cases of local dispute processing in thirteenth- and fourteenth-century Denmark. Catharina Andersson shows how Swedish magnates granted daughters as pious gifts to nunneries, and discusses how such gifts contributed to creating social bonds and symbolic capital that could be useful in dispute settlement and local power politics. The use of marriage and joint ownership as strategic means to control property and regulate conflict is the subject of the final chapter, in which Lars Ivar Hansen examines the unusually rich charter material from the late medieval peasant society of Telemark in central Norway. The following introduction serves to provide a background for these studies by presenting a very basic outline of social structures and property relations in the Scandinavian kingdoms, the legal foundation, and the nature of the source evidence employed in all four articles: charters.

Society and Property

While all Scandinavian societies in the twelfth and thirteenth centuries were marked by social stratification, in the following discussion Denmark will serve as the prime example, with conditions in Sweden and Norway being sketched out more briefly.¹ At the top level of Danish society there

¹ As Telemark was distinctive from both most parts of Norway and the rest of Scandinavia, specific discussion of this region will be deferred to Lars Ivar Hansen's chapter.

ruled a small elite of landowning magnates (or magnate kin-groups), who associated themselves with one another through bonds of kinship, friendship, fosterage, or marriage.² They were lords of castles and men, capable of organising private military expeditions and able to influence justice and politics both locally and across the kingdom. It was common among kings, bishops, and prominent magnates to “take men,” but oaths of homage and fealty did not imply land tenure. Although fiefs did play a role in relations between descendants of the royal family, land owned by members of the aristocratic class as well as by lesser farmers normally belonged to them in full allodial ownership. In some regions of Denmark independent allodial peasants may have owned most of the land, while in others—most notably the province of Zealand—aristocratic ownership dominated. The distinction between lesser magnates and rich peasants was probably often fluid.

In Denmark, a typical aristocratic estate would consist of a home farm (*mansio, curia*) and a number of tenant holdings, which were sometimes consolidated in four to six surrounding villages and sometimes scattered around as *strøgods* in several different localities. Some magnates were immensely wealthy. The landed property of Sune Ebbesen, a prominent lay noble from the mid-twelfth century, has been estimated at more than 600 individual farms.³ From the twelfth century onwards many aristocratic holdings came under the dominion of monasteries and cathedral churches through pious donations. Leading families founded and endowed their own *Hausklöster*, and ecclesiastical magnates, usually recruited from the same dominant elite groups, came to play increasingly important roles in the competition for social power. Although kin-groups were supposed to afford members help and protection, the uneven distribution of wealth

² For the following notes on social structures and property relations in Denmark, see Erik Ulsig, *Danske adelsgodser i middelalderen* (Copenhagen: Gyldendal, 1968); Michael H. Gelting, “Legal Reform and the Development of Peasant Dependence in Thirteenth-Century Denmark,” in *Forms of Servitude in Northern and Central Europe*, ed. Paul Freedman and Monique Bourin (Turnhout: Brepols, 2005), 343–67; Per Andersen, *Legal Procedure and Practice in Medieval Denmark* (Leiden: Brill, 2011), 18–24. A more comprehensive introduction is found in Nils Hybel and Bjørn Poulsen, *The Danish Resources c. 1000–1550: Growth and Recession* (Leiden: Brill, 2007).

³ Poul Nørlund, “Jorddrotter på Valdemarstiden,” in *Festskrift til Kristian Erslev*, ed. Poul Nørlund (Copenhagen: Den Danske Historiske Forening, 1927), 141–70; Tage E. Christiansen, “Sune Ebbesens halve hovedlod,” *Historisk Tidsskrift (Danish)* 81 (1981): 83–192; Erik Ulsig, “The Estates of Absalon and the Hvide Family,” in *Archbishop Absalon and His World*, ed. Karsten Friis-Jensen and Inge Skovgaard Petersen (Viborg: Roskilde Museums Forlag, 2000), 89–101.

and power caused lesser people throughout society to enter informal clientele relationships of patronage with people of higher status. In some of the Danish regions such bonds became formalised—entailing, for instance, the lord's right to collect from individuals he protected certain judicial fines which otherwise would have gone to the king.

Below the aristocracy was a highly heterogeneous working population. Some of its members were independent landowning peasants. These freeholders are usually assumed to have constituted the backbone of society in the high Middle Ages. They enjoyed full legal rights (defined by the ability to pay the basic fine of three marks); they paid taxes to the king from their own land; and they supplied the bulk of the naval defence (the *leding*, *leiðangr*), a duty which gradually came to be replaced by royal taxation as developments in military practices saw a transition from ships to mounted horsemen.⁴ The landless cultivated the property of magnates or wealthy farmers, either as estate managers (*bryder*) or as leaseholders (*landboer*). These people were not serfs in the strict sense. Although they suffered certain legal incapacities, they remained subject to the public courts (the *thing*; see below). Their relationship with the owner of the land was of a contractual nature and did not entail personal subjection or bondage to the soil. Again, the social distinctions were blurred and were definitely more social or legal than economic in nature: some leaseholders or estate managers of a rich farm could easily be better off than lesser allodial peasants on poor land. Slaves (*thralls*) had constituted the bottom layer of Danish society since pre-Christian times. In the twelfth century it was no longer permitted to keep fellow Christians in servitude, but wars against the non-Christian Wends continued to provide a steady influx of slaves until the mid-1180s, and even prelates such as Archbishop Absalon (d. 1201) had slaves in their households. Slavery disappeared over the course of the thirteenth century.⁵

From the thirteenth century onwards the number of landowning peasants in Denmark gradually declined as well. While they may have comprised as much as 50 percent of the total peasant population in the twelfth century, their number dropped to around 15 percent by the end of the

⁴ In Norway, this transition was only partially implemented, as the military levy continued to be used in times of war until the fifteenth century.

⁵ In Norway, the abolition of slavery is explained with reference to both demographic and economic factors. See Tore Iversen, *Trelldommen. Norsk slaveri i middelalderen* (Universitetet i Bergen: Historisk Institutt, 1994).

fifteenth century.⁶ Some were recruited into the knightly class, but most surrendered their property to lords in return for protection and became their tenants, exempt from ordinary taxes but deprived of full legal status. The steady tightening of the estate owners' control over their dependants culminated at the end of the Middle Ages with the introduction in some regions of forms of bondage to the soil (*vornedskab*).⁷ At the other end of the social scale, landed property tended to become concentrated in progressively fewer hands and a clearer division between high and low nobility emerged.

Like Denmark, Sweden and Norway were also highly stratified societies. The high aristocracy was not as dominant as was the case in Denmark, however. The large estates upon which the elite's power was based were limited and were concentrated in central plains areas. In Sweden, these can be found in the provinces of Östergötland, parts of Västergötland, and around Lake Mälaren;⁸ in Norway, in parts of the eastern region and in Trøndelag. In contrast to the Danish kingdom, which was bound together by cultivable plains and sea routes, Swedish topography was marked by large forest regions that did not lend themselves well to the creation of large landed estates. Vast territories were therefore controlled by local magnates who were only loosely linked to the power holders of the realm. Norway was similar to Denmark in having a long and easily accessible coastline. However, many inland areas were less well integrated into the realm, with Telemark as a prime example.

The allodial peasantry constituted the mainstay of Swedish and Norwegian society. During the high Middle Ages such freeholders played an important role in the naval defence along the coast, and in land-based forces in Sweden. Like their Danish counterparts, they enjoyed a rather strong position relative to other parts of Europe. Their military and material resources enabled them to exercise an influence on politics, and they were often actively involved in the major conflicts of the realms. Because of the limited number of great landholding magnates in Sweden and Norway, the proportion of leaseholders there was smaller than in Denmark. It was, however, not insignificant, and in central areas leaseholders were

⁶ Ulsig, *Danske adelsgodser*, 376.

⁷ Traditionally the transition from free peasantry to dependent tenantry has been explained with reference to issues of royal fiscality, while more recent explanations look to legal developments and changes in Danish legal procedures. See Gelting, "Legal Reform," 346–47 and *passim*.

⁸ Sweden consisted of Götaland in the west and south, and Svealand towards the east and north.

quite common. Moreover, as a result of a population growth persisting until the fourteenth century, their number increased steadily, at the expense of both freeholders and slaves (thralls). As in Denmark, the latter group largely disappeared in the thirteenth century, although in Sweden slavery was not formally abolished until 1335.

In contrast to the situation in Denmark, in Sweden and Norway landholding magnates' control of their landless dependents did not increase after the Black Death.⁹ On the contrary, peasants enjoyed more favourable conditions following the dramatic population decline, whereas magnates suffered from a sharp decrease in land rents and other incomes. The number of landholding freemen probably increased during the late Middle Ages, and they maintained their rather strong position within society.

The Legal Foundation

All the Scandinavian kingdoms were divided into provinces. Sweden consisted of eight main provinces, Norway four, and Denmark three. Each province had its own public assembly (*thing*) and initially, most of the provinces also had their own law.¹⁰ Little is known about law and legal practice before the twelfth and thirteenth centuries, when a process of putting law into writing was initiated in all three kingdoms.

Norway seems to have been first to get written laws, perhaps as early as the late eleventh century, although the oldest provisions cannot with certainty be traced back further than to the mid-twelfth century.¹¹ The writing down of the Norwegian provincial laws as we know them today took place between the 1150s and the 1260s. The Gulathing law district covered the western part of Norway; the Frostathing law district the northern part of the realm (Trøndelag). Of the provincial laws from the south-eastern part of Norway, the Borgarthing's and Eidsivathing's Laws, only the church

⁹ Thomas Lindkvist, "The Peasantry and Peasant Communities," in *Campagnes Médiévales' L'homme et son espace. Études offertes à Robert Fossier*, ed. Elisabeth Mornet (Publications de la Sorbonne: Paris), 390–91.

¹⁰ For a general English introduction to the Scandinavian provincial laws see Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010); for the Danish laws see Andersen, *Legal Procedure*.

¹¹ Per Norseng, "Lovmaterialet som kilde til tidlig nordisk middelalder," in G. Karlsson, ed. *Kilderne til den tidlige middelalders historie. Rapporter til den XX nordiske historikerkongres Reykjavik 1987*, vol. 1 (Reykjavik 1987), 51–52.

laws are preserved.¹² As both law books have been through several revisions, it is difficult to say when individual provisions entered the laws. Many provisions can undoubtedly be dated to King Magnus Erlingsson's rule in the mid-1160s.

In Sweden the process of systematic law making began somewhat later, perhaps because a stable royal power was not established here before the 1230s. The Swedish king would often have his power base in either Svealand or Götaland, while his sovereignty over other parts was precarious. The Swedish judicial system was based on regional districts called *lagsagor*, which were subjected to the jurisdiction of lawmen (or law-speakers). The lawman was a member of the regional elite who was supported by district judges (*häradshövdingar*) descended from the local nobility. This judicial organisation was a distinctive feature of the Swedish kingdom, which had no equivalent in the other Scandinavian countries. It was controlled by the nobility, which meant that royal legislative power was weak. These conditions partly explain why the medieval Swedish kingdom has been characterised as an "aristocratic republic."¹³

The law-making process in Sweden seems to have begun between the 1220s and the 1240s, when the older Västgöta Law was compiled. The existence of an older version of the Östgöta Law is known from other sources, but no manuscripts of this text have survived. The rest of the Swedish provincial laws—the newer Västgöta Law and the Östgöta Law—date from the decade around the year 1300. The legal style and language in the Östgöta Law are quite sophisticated, and lead one to think that members of the royal chancery and/or the episcopal see in Linköping initiated the work. The newly created legal province of Uppland situated in the heart of Svealand also got a written law, which can be precisely dated to 1296, when it received royal assent. In the subsequent decades the rest of the Sveaprovinces got written laws, all quite uniform, modelled after the Uppland Law. The structure of the Uppland Law was also used as a model for King Magnus Eriksson's National Law (1350).

There were marked differences amongst the individual provincial laws in Norway and between the Swedish laws from Götaland and Svealand. That is probably the reason why both Norway (in 1274) and Sweden (in 1350) got national law books covering each kingdom as a whole.

¹² For recent research on the church laws see Torgeir Landro, *Kristenrett og kyrkerett. Borgartingskristenretten i eit komparativt perspektiv* (Universitetet i Bergen, Bergen, 2010).

¹³ Herman Schück, "Sweden as an Aristocratic Republic," *Scandinavian Journal of History* 9 (1984): 65–72.

Denmark, where the provincial laws were much more uniform, did not obtain legal unity until 1683.¹⁴ Here the process of law-making seem to have started around 1170 with the compilation of ecclesiastical statutes for the provinces of Scania (the southern part of present-day Sweden) and Zealand. The oldest Danish provincial law is probably the Law of Scania, dating from the first decades of the thirteenth century.¹⁵ From the province of Zealand two legal texts are known. Both of these are named after kings, Valdemar and Erik,¹⁶ but it is uncertain if they were linked to the kings from the beginning, or if this connection was made in the second half of the thirteenth century, when monarchs and magnates quarrelled about the extent of the king's power to legislate.¹⁷ Valdemar's Law of Zealand was supplemented in the 1240s by Erik's Law of Zealand.

Erik's Law differs markedly from the other Danish provincial laws in its awkward language, characterised by long, tortuous and sometimes unfinished sentences. The text deals almost exclusively with the role of the local *thing*, and its detailed provisions about how cases were supposed to be pursued at the assembly makes it a very important source for the rules of legal procedure in the thirteenth century. In fact, the author(s) of the text might not have intended to create a law in the first place, but rather a kind of handbook for legal practitioners. As the text apparently proved to serve a need, however, it quickly achieved the status of a regular law-book. In the western province of Jutland, the first written law was officially presented by King Valdemar II, with the concurrence of bishops and nobility, at a great meeting at Vordingborg Castle in 1241. According to some scholars the promulgation of the Law of Jutland was an attempt to create a national law covering the entire kingdom, but this remains an issue of debate.¹⁸

¹⁴ In the duchy of Schleswig, conquered by Prussia in 1864, the provincial Law of Jutland was in force until 1900.

¹⁵ Traditionally the Law of Scania is dated to the period between 1202 and 1216 as it contains, on the one hand, a royal decree from 1202, and, on the other hand, prescriptions for the use of ordeal by hot iron, which was abandoned at the Fourth Lateran Council in 1215.

¹⁶ Probably referring to Valdemar II (ruled 1202–1241) and Erik IV (ruled 1241–1249).

¹⁷ Helle Vogt, "The King's Power to Legislate in Twelfth- and Thirteenth-Century Denmark," in *Law and Power in the Middle Ages—Proceedings from the Fourth Carlsberg Academy Conference on Medieval Legal History*, ed. Per Andersen, Mia Münster-Swendsen, and Helle Vogt (2008; 2nd ed., Copenhagen: DJØF, 2012).

¹⁸ Ole Fenger, "Jydske Lov og de øvrige danske landskabslove," in *Jydske Lov 750 år*, ed. Ole Fenger and Christian R. Jansen (Viborg 1991), 47–50; Michael H. Gelting, "Skånske Lov og Jyske Lov: Danmarks første kommissionsbetænkning og Danmarks første retsplejelov,"

The Scandinavian law-books are different from one another with regard to both style and content, but they also share important common features. They are all written in the vernacular, and they are quite long and detailed. Many provisions concern legal procedure and what we today would call penal law; others deal with issues of inheritance, donation, regulation of household-partnerships, transfer of property, sale, mortgage, contracts, and—especially in the Norwegian laws—renting of land. The Danish and Swedish laws, in particular, contain large sections on matters related to agriculture and village life. Very few manuscripts of the Swedish and Norwegian laws survive, and indeed some are known only from a single manuscript. Quite likely these provincial laws lost their relevance following the promulgation of national laws in Sweden and Norway, which would explain the low survival rate. This contrasts with Denmark, where the lack of a national law meant that the provincial laws were continuously copied throughout the medieval period. Each of the Danish provincial laws is preserved in more than 100 manuscripts, and some were even printed as books in the sixteenth century.

The making of the laws took place in close cooperation with the religious seats of learning: the monasteries and the episcopal sees. Even though the laws were written in the vernacular, it is likely that clerics wielded the pen. Influences from learned law are clearly detectable, especially in provisions concerning family and succession, prescription rights, crime, and military service. References to canon law can occasionally be found, as for example in the provisions relating to spouses who are “separated alive according to God’s law,” and the stipulation that a child should be baptised in order to take inheritance.¹⁹ At least some of those who participated in the making of the laws must also have known Roman law. This is particularly obvious in provisions on contracts and slaves in the Law of Scania. Archbishop Anders Sunesen of Lund (archbishop 1201–1223), who had studied theology in Paris and law in Bologna and who wrote a Latin learned version of the text,²⁰ may also have been involved in the making

in *Jura & historie. Festskrift til Inger Dübeck som forsker*, ed. Henrik Dam, Lise Dybdahl, and Finn Taksøe-Jensen (Copenhagen: DJØF, 2003), 43–49.

¹⁹ *Danmarks gamle Landskabslove med Kirkelovene* (DgL), ed. Johs. Brøndum-Nielsen and Poul Johs. Jørgensen (Copenhagen: Det Danske Sprog- og Litteraturselskab, Gyldendal, 1933–1961): vol. 1, 1 Law of Scania 2, 9; vol. 2, Law of Jutland 1:1, 1:24; vol. 5, Erik’s Law, 1:2; vol. 8, Valdemar’s Law, 40, 50.

²⁰ Anders Sunesen’s *Liber legis Scaniae* is traditionally referred to as his “paraphrase” of the Law of Scania, but that designation is quite misleading. Anders Sunesen’s text is written in grandiloquent, classicising Latin which, apart from the obvious linguistic

of the vernacular version.²¹ Another example is the development in the Norwegian laws of the rules about property and land tenancy, which followed Roman law distinctions between *dominium utile* and *dominium directum*.²² Traces of learned law are less detectable in the parts of the laws which regulated agriculture and village life, which probably originated from local customs. In general, the shape of the Scandinavian law-books reflect the wish and the skill to include the latest developments in European learned jurisprudence.²³

The function and importance ascribed to royal power varies in the laws. It is most pronounced in the peace legislation contained in the newer laws, such as the Swedish ones. But the king has some role to play in all the Scandinavian laws, both with regard to military service and as protector and keeper of the peace, and thereby as collector of fines for breaking the peace. Royal officials and other representatives also contributed to the local administration of justice and collection of taxes and dues. Furthermore, the process of writing down the laws in itself and the claim to legislative authority was a way of asserting royal power.

Little is known about the laws' exact context of production. Some may be the result of the work of law commissions; others may be private works. In the Danish laws such phrases as "this we want you to know" leave the impression of a committee with some sort of mandate to give or confirm laws. Such a mandate, however, must have been restricted, as consent by both lay and ecclesiastical magnates was required. The laws are probably best seen as the outcome of a highly political negotiation process circumscribed by power, custom, and the framework of Christian theology and canon law.

difference, is also very different in style from the vernacular Law of Scania; it also elaborates on a number of passages in the vernacular law, adds new material, and is much more closely related to Roman law. *Liber legis Scaniae* is printed in DgL, vol. I; 2.

²¹ Ditlev Tamm and Helle Vogt, "Creating a Danish Legal Language—Legal Terminology in the Medieval Law of Scania," in *Historical Research* (London 2013), vol. LXXXVI, no. 233, 505–14.

²² For a detailed description of how changing interpretations of Roman law influenced the Norwegian provincial laws see Tore Iversen, "Property and Land Tenancy—Norwegian Medieval Laws and the European Learned Law," in *How Nordic are the Nordic Medieval Laws?*, ed. Per Andersen, Helle Vogt, and Ditlev Tamm (2005; 2nd ed., Copenhagen: DJØF, 2011), 135–76; and Tore Iversen, "Jordeie og jordreie—Eiendomsbegrepet i norske middelalderlover," *Collegium Medievale* 14:2001 (Oslo, 2001), 79–114.

²³ Jón Vidar Sigurdsson, Frederik Pedersen, and Anders Berge, "Making and Using the Law in the North, c. 900–1350," in *Making, Using and Resisting the Law in European History*, ed. Günther Lottes, Eero Medijainen, and Jón Vidar Sigurdsson (Pisa: Edizioni Plus, 2008).

Secular Court Assemblies: The Scandinavian Thing

The main secular institution for administration of justice in medieval Scandinavia was the *thing* (*placitum* or *ius*),²⁴ a public assembly of all free men within a province or a certain jurisdictional district. In Denmark, for instance, each *herred* (equivalent, roughly, to the English hundred, but much larger) had its own *thing*. The *thing* was not a court of law in the narrow sense. It had no judges, scribes, or legal officials of its own and it had no executive power. It is best conceived of as a multifunctional venue for discussion and determination of any matter of communal concern, including public announcements, calling of the military levy, publication of social status, settling of disputes, and the like. An early twelfth-century source from Denmark explains how the provincial assembly would gather regularly “to discuss and establish the truth or firmness of the laws.”²⁵ In Norway formal legislative authority rested solely with the provincial assemblies until the mid-thirteenth century, whereafter it became the privilege of kings and their councils.²⁶ The proceedings at the *thing* took place at regular intervals in the open air at fixed sites protected by the peace. Danish sources describe how the most important men of the community (magnates and wealthy peasants) would be seated on four benches arranged in a square. The space between the benches would provide the arena for the parties to present and discuss their case as well as for the testimony of witnesses and performance of oaths. The men on the benches would then rise and pronounce the decision to the surrounding crowd.²⁷ Trial by hot iron was used in Denmark as a means to establish proof until the prohibition of clerics’ participation by the Fourth Lateran Council in 1215 necessitated a gradual replacement of the ordeal by boards

²⁴ The charters used *placitum*, whereas Archbishop Anders Sunesen used *ius* in *Liber legis Scaniae*.

²⁵ Ailnoth, “Gesta Swenomagni regis et filiorum eius et passio gloriosissimi Canuti regis et martyris,” in *Vitae Sanctorum Danorum*, ed. M.Cl. Gertz (Copenhagen: G.E.C. Gad, 1908–12), III.

²⁶ Sigurdsson, Pedersen, and Berge, “Making and Using the Law,” 42 and 55.

²⁷ For an early description see DD 2.5.229 (1302). Regarding the *thing* in general, see Poul Johs. Jørgensen, *Dansk Retshistorie* (Copenhagen: Gads Forlag, 1940), 244; *Kulturhistorisk Leksikon for nordisk middelalder fra vikingetid til reformationen* KLNLM (Viborg: Rosenkilde og Bagger, 1980) s.v. “Ting”; Anders Leegaard Knudsen, “Testimonia Placiti—Private Charters as Public Instruments: A Study in Medieval Danish Diplomats,” *Archiv für Diplomatik* 57 (2011): 153–55.

of nominated men (*nævnninge*).²⁸ In Sweden and Norway the process of abolishing the ordeal took a little longer than in Denmark.²⁹

Sometimes a representative of the king (or, in rare cases, the king himself) would lead the proceedings at provincial assemblies, but the smaller *herredsting* would not be presided over by royal officials in a regular way before the later Middle Ages. Attempts by thirteenth-century Danish monarchs to encroach upon the jurisdiction of the *thing* mainly concerned criminal cases, not matters relating to property law, and was contained in 1282 when King Erik V Klipping was forced by opposing nobles to formally recognize the authority of existing laws and institutions. Around 1300, however, the king established his own rival court of law (*rettertinget*) with—among other things—specific prerogative jurisdiction in regard to disputes involving certain privileged monasteries.³⁰ At Norwegian assemblies royal officials gradually established themselves to act as a kind of judges in cases concerning property and goods, while permanent courts, operated by royal agents, were set up in towns.³¹

To what extent legal proceedings at the *thing* in the Scandinavian kingdoms were determined or influenced by the provincial laws is difficult to say. Rules of procedure seem to have been generally accepted, while studies of legal practice in Norway suggest that social status and local opinion were often more important than the letter of the law. Rules and norms were flexible; they could be adapted to the interests of the community or bent by people with power. Even if some scholars have noted a gradual congruence between law and legal practice in Norway from the late thirteenth century onwards, most disputes, at least among members of the upper social strata, were still resolved according to principles of arbitration and conciliation rather than according to official judgments. A study of Norwegian charters from the thirteenth and fourteenth centuries shows that the concept of “law” was used primarily in royal and ecclesiastical circles and primarily “as a metaphor of a *correct* or *fair* decision”³² (for instance with regard to the estimated value of a property). As a specific

²⁸ King Valdemar’s Ordinance of Ordeal by Hot Iron (DD 1.5.96) is usually dated to 1216 or immediately after, but according to Vogt, *Function of Kinship*, 115, it may be of a slightly later date. See also Andersen, *Legal Procedure*, 108–15 and 193–99.

²⁹ Bertil Nilsson, “Gudsdomar i Skandinavien under vikingetid och medeltid,” in *Kontinuitäten und Brüche in der Religionsgeschichte*, ed. Michael Stausberg (Berlin: Walter de Gruyter, 2001).

³⁰ Anders Bøgh, “Magten i middelalderen,” *Den jyske Historiker* 42 (1987): 98.

³¹ Sigurdsson, Pedersen, and Berge, “Making and Using the Law,” 52–53.

³² *Ibid.*, 55.

legal argument used by litigants “law” only appears very rarely, especially among ordinary peasants. “Disputes can thus be said to have been conducted more in the ‘shadow of the law’ than according to its letter.”³³

Yet in Denmark, in the course of the thirteenth century, the local *thing* acquired important functions, specifically with respect to property transactions and provisions to prevent contestation of land conveyances. When nobles and landowning peasants wished to give, buy, sell, or exchange landed property the transfer was effected by way of “scotation,” a traditional ritual procedure common to all Scandinavia and known in Denmark as *skødning* (Latinised as *scotatio*).³⁴ The ritual is explained in the *Liber legis Scaniae* and in a letter of Pope Innocent III from 1198 reproducing a description by Archbishop Absalon, who complained about recurrent contestations of pious gifts.³⁵ According to these sources the alienator would take a sod from the land about to be transferred and place it in the recipient’s cloak (Danish *skød*, hence *skødning*), which was held out by attending witnesses, while he formally pronounced the land to be henceforth the rightful possession of the new owner (the basic *pars pro toto* symbolism of the scotation ceremony thus resembling similar rituals known from many other parts of Europe). Because only men were allowed to make scotations, when a woman wanted to alienate property the ritual had to be performed by her husband or a male relative.

Traditionally the scotation ceremony took place at or near the actual land that was about to be transferred. If the recipient was an ecclesiastical institution, the act was moved to the church, where the sod would be placed at the altar or in the corner of the altar-cloth, in this case held out by clerics. In 1241, however, with King Valdemar II’s promulgation of the Law of Jutland, it became obligatory in this province to perform scotations at the *thing*. According to the new rule only land conveyances made at the public assembly (or before the king) would thenceforth be regarded as legally valid:

³³ Ibid., 55. The illuminating phrase “shadow of the law” was originated by Robert Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of the Law: The Case of Divorce,” *The Yale Law Journal* 88:5 (1979).

³⁴ See the informative discussion in Michael H. Gelting, “Circumstantial Evidence: Danish Charters of the Thirteenth Century,” in *Medieval Legal Process: Physical, Written, and Spoken Performance in the Middle Ages*, ed. Marco Mostert and Paul S. Barnwell (Brepols: Turnhout, 2011), 6–9.

³⁵ DgL I;2, ch. 38, DD 1.3.238. In 1234 the letter was included in the *Liber Extra* collection of papal decretals: Gelting, “Circumstantial Evidence,” 32.

Men must perform scotations in court and nowhere else, that is, in the court of the *herred* in which the land lies, or in the court of the *syssel*, or in the provincial court, or in the King's presence, because the testimony of the court is so strong that against a court testimony no law may be given.³⁶

Similar provisions appear in the Law of Scania and in Erik's Law of Zealand, although in these laws the scotation at the *thing* in relation to land transactions was not strictly obligatory, but merely a means of securing the transaction in case of contestations.³⁷ At the *thing* a group of at least seven men would swear a collective oath as evidence of the transaction. This oral testimony—known in Danish as *thingsvitne* (*testimonium placiti*)—would constitute the strongest proof imaginable and thus strengthen land conveyances against the all-too-familiar challenges by inheritors and kinsmen. From around 1300 the testimonies would sometimes be officially authenticated by a written document, but throughout the Middle Ages most sworn declarations of this kind remained in oral form.³⁸

"Law-offering" (*lovbydelse*) was yet another legal provision introduced in the Danish provincial laws with the aim of safeguarding land transactions which involved the *thing*. According to this rule, inherited land could be sold only on the condition that the vendor gave first refusal to his own kinsmen. The offer would have to be performed publicly at the *thing*, following detailed procedures. If the vendor failed to do so, and sold the land to someone outside the kin-group, his kinsmen were entitled to reverse the transaction within a specified period of time. In Denmark the rule of law-offering appears to have created a "late but sustained surge in the use of the *laudatio parentum*," the formal consent from heirs and kinsmen to alienation of paternal or maternal land.³⁹ A Swedish version of the rule of pre-emption, *bördsrätt* (the right of rank, birth or kinship), worked in much the same way as *lovbydelse*. In Norway, land which had been owned by the same family for four generations (or sixty years) was considered subject to the *odelsrett* (right to allodial land). According to this law members of the family were entitled to redeem land which had

³⁶ *Law of Jutland*, book 1, c. 37, trans. in Gelting, "Circumstantial Evidence," 8. (The *syssel* was an administrative unit peculiar to Jutland).

³⁷ With respect to illegitimate children, who did not have a claim on inheritance after their fathers, although the father could decide to give them something the gift was valid only if he conveyed it by scotation at the *thing*. DgL, vol. 1: The Law of Scania 64; vol. 2, The Law of Jutland, 1:2; vol. 5, Erik's Law 1:18; vol. 8, Valdemar's Law, 68.

³⁸ Knudsen, "Testimonia Placiti," 147. See also Jørgensen, *Dansk Retshistorie*, 512–13; KLNLM s.v. "Tingsvidne."

³⁹ Gelting, "Circumstantial Evidence," 17–23, citation at 19.

been sold to a stranger any time up to sixty years after the transaction, even if the sale had been duly announced at the *thing*.⁴⁰

Ecclesiastical Jurisdiction

The provincial laws of Denmark contain no rules for the regulation of religious issues. At the time the laws were written down, the authority of canon law and the ecclesiastical courts seems to have been fully accepted.⁴¹ At this point Denmark differs from Norway and Sweden, where all the provincial laws began with a Christian law.⁴² The Christian laws regulated matters concerning religion, church buildings, and the functions of the priest. Even though the Christian laws were a part of the provincial laws, they were administered by the church. In both Norway and Sweden, however, ecclesiastical courts were often located at a great distance from the parties' homes. In that case, lawsuits relating to Christian law were pursued at the local secular assembly. In Norway this practice of mixed jurisdiction was maintained throughout the Middle Ages.⁴³

To understand what went on in the ecclesiastical courts a few words need to be said about canon law procedure. All conflicts involving an ecclesiastical party were supposed to be handled by church courts. Cases could be heard at a secular court, however (or handled outside court) if the ecclesiastical party agreed to this. Lawsuits relating to property issues were to be raised in the diocese in which the contested land was located. The bishop would act as judge. If one of the parties was dissatisfied with the outcome, the judgment could be appealed to the archbishop's

⁴⁰ On pre-emption and different interpretations of the rules, see Michael H. Gelting, "Odelsret—lovbydelse—bördsrätt—retrait lignager: Kindred and Land in the Nordic Countries in the Twelfth and Thirteenth Centuries," in Lars Ivar Hansen, ed., *Family, Marriage and Property Devolution in the Middle Ages* (Tromsø 2000), 133–65; and Vogt, *Function of Kinship*, 209–24.

⁴¹ In Norway church jurisdiction in Christian matters was recognized by the second half of the twelfth century, though it is difficult to establish what that meant in practice. (Sverre Bagge, "Kirkens jurisdiksjon i kristenrettssaker før 1277," *Historisk Tidsskrift* (Norway) 60 (1981): 144–45). In Sweden, efficient ecclesiastical legal control was not established in many areas before the thirteenth century, and there were probably variations among the provinces. Vogt, *Function of Kinship*, 51–53.

⁴² Church laws for the Danish provinces of Scania and Zealand existed from around 1170. According to these laws, the inhabitants entered a compromise with their bishop about which legal procedure to follow in cases of lawsuits relating to canon law.

⁴³ Anne Irene Riisøy, *Sexuality, Law and Legal Practice and the Reformation in Norway* (Leiden: Brill, 2009).

court. The pope was the supreme judge, and an appeal to the Holy See was allowed at any point in a conflict. However, as the number of cases increased over the course of the thirteenth century, the real judicial authority was left to the cardinals.⁴⁴ Furthermore, in all cases the power to investigate and to judge was delegated to one or more lower-ranking clerics, usually canons or deans.⁴⁵ When trying to establish which party was the legal possessor of a contested property the judges often appointed an *ad hoc* tribunal of local men—usually described as either landowning or “wise”—and had them swear to the truth of the case. These seven or twelve men were called *nævninge* (nominated men).⁴⁶ They were not a jury in the modern sense of the word; they simply presented a proof by giving an oath and then left the sentence to the ecclesiastical judge. (At the secular court assembly the function of the board of nominated men was slightly different. As there was no judge at the *thing* the oath of the majority of the nominated men in practice constituted a judgment.) However, according to canonical ideology, lawsuits concerning worldly matters such as property issues should be settled amicably, and far from all conflicts actually led to a judgment. Many property disputes initiated in ecclesiastical courts were settled either by compromise or by jointly approved arbitrators, thus allowing both parties to escape an often long, tiresome, and costly lawsuit.

Ecclesiastical courts in Denmark (and possibly in Norway and Sweden as well) seem to have respected the authority of secular legislation regarding the size of donations and the rules for property conveyances, but they objected to the use of oath-helpers or compurgation. The pope repeatedly banned this “plague that is against all justice” (*pestis contraria omni iuri*), and forbade the Danish bishops to allow it in their courts.⁴⁷ The difference

⁴⁴ James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 124–25.

⁴⁵ *Ibid.*, 122–25. For the different kinds of clerics in Denmark and their legal functions see J.O. Arhnung, *Roskilde Domkapitels Historie i Tiden indtil 1416* (Roskilde: Erh. Flensborg Forlag, 1937), 32–60.

⁴⁶ In the absence of Swedish and Norwegian charters, the following is based exclusively on Danish sources. However, one can assume that the picture was more or less the same for each realm.

⁴⁷ DD 1.5.140 (1218); and see also DD 1.6.241 (1237). Charles Donahue has shown how difficult it was for the English church courts to implement the change from oath-helpers to witnesses, and further, that many of those who are called witnesses in the records were in fact oath-helpers. Charles Donahue, Jr., “Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law,” in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris S. Arnold, Thomas A. Green, Sally A. Scully, and Stephen D. White (University of North Carolina Press, 1981).

between raising a claim within a secular court and an ecclesiastical one was primarily a matter of procedure—oral or written—and modes of proof—oaths or witnesses. Yet the boundary between the two was not necessarily clear-cut. On the one hand, the provincial laws, probably inspired by canon law procedure, favoured claims that could be strengthened by witnesses.⁴⁸ On the other hand, the oath performed by twelve kinsmen in support of a lay litigant's claim—the kin's oath (*kønsed*)—was accepted by some ecclesiastical courts.⁴⁹ There is even evidence to suggest that monks were allowed (or allowed themselves) to act as brothers and present a kin's oath in order to prove their right to possession of land.⁵⁰

Charters

With regard to the study of property disputes and the strategies to handle or possibly avoid them, the all-important sources are charters. Unfortunately, the charter evidence from Denmark, Sweden, and Norway appears rather poor compared to many other parts of Europe. First of all, the number of extant charters is limited. For example *Diplomatarium Danicum*, the exhaustive, multi-volume edition of Danish charters, contains around 3,200 entries in all for the period 1200–1299. This includes not only charters or diplomas issued in Denmark, but every papal letter sent to Danish kings and prelates and every single record found in European archives which refers to people or places in the kingdom.⁵¹ Of the genuine Danish charters, not all are known in full text: some are just short entries gathered from registers. Very few are preserved as originals, the vast majority being copies or summaries found in late medieval monastic cartularies. Many archival records were of course lost during the early modern period because of war, fires, accidents, and other catastrophes; others seem to have been discarded by medieval monastic archivists.⁵² Yet as Michael H. Gelting has argued for the case of Denmark (and this may be relevant for Sweden and Norway as well), the number of charters may in fact never have been very large. The legal procedures prescribed by the Danish

⁴⁸ Andersen, *Legal Procedure*, 130–99.

⁴⁹ The kin's oath was used only in the region covered by the Law of Jutland.

⁵⁰ DD 2.2.388.

⁵¹ In comparison, the cartulary of the Burgundian abbey of Cluny alone comprises around 5,500 charters. *Receuil de chartes de l'abbaye de Cluny*, ed. Auguste Bernard and Alexandre Bruel (Paris, 1876–1903), 6 vols.

⁵² Brian P. McGuire, *The Cistercians in Denmark: Their Attitudes, Roles, and Function in Medieval Society* (Kalamzoo: Cistercian Publications, 1982), 202–203.

provincial laws with respect to property transfer or litigation about land gave priority to witnesses and oral testimony: no law-book has anything to say about charters or other kinds of written evidence. Charters alone simply did not constitute proof of ownership at the secular courts in Denmark before well into the fourteenth century, and consequently there was no general incentive to produce them. Ecclesiastical institutions, which put greater trust in written records and needed this kind of proof in church courts applying canon law, might nevertheless have wanted to document their title to land on parchment, but transactions among lay people, and even many transactions involving high-ranking clergy, were usually completed through speech and ritual alone without the use of writing.

The earliest surviving Danish charter is a royal letter of donation from 1085. In Sweden the first known charter dates from the 1160s, while the oldest Norwegian charter is from the 1170s. Up until around 1200 all extant Scandinavian charters were issued by kings (or members of the royal families) and bishops. From the thirteenth century onwards there is a steady increase in the number of “private” charters attesting gifts of land to ecclesiastical institutions by lay or clerical magnates. The flow of this type of charters is clearly related to the foundation and early growth of monasteries across Scandinavia. In the twelfth century these were primarily Cistercian abbeys; from the mid-thirteenth century Dominican and Franciscan nunneries were included as well. In the late Middle Ages the number of charters increases markedly in all three kingdoms, but most of them still stem from ecclesiastical institutions. An interesting exception is the region of Telemark in central Norway, mentioned above, where a substantial number of charters issued by lay people have been preserved to give a unique view of property relations, marriage strategies, disputing, and peace-making among the upper layers of landowning peasants.

The language of Scandinavian charters follows the same general pattern as the narrative sources discussed in the introduction to section I of this volume. In Denmark and Sweden all charters were drawn up in Latin until the later Middle Ages, when the use of vernacular was introduced in the second half of the fourteenth (Sweden) and the early fifteenth century (Denmark). In Norway the picture is more complicated. Among ecclesiastical institutions the standard language was Latin, but charters issued by kings or other lay people were written in the vernacular at least from the 1170s and probably even earlier.⁵³

⁵³ Sverre Bagge, *From Viking Stronghold to Christian Kingdom: State Formation in Norway, c. 900–1350* (Copenhagen: Museum Tusculanum Press, 2010), 243–47.

The style of the documents varies. In Denmark, for instance, royal and episcopal charters were often supplied with elaborate ideological preambles and solemn sanction clauses, while private charters from the thirteenth century onwards often tend to have a more “businesslike” appearance. Recipients of donations—mostly monasteries—often developed their own individual style and favourite formulas. A common characteristic of Scandinavian charters, however, is their usually rather short and formulaic form. Only very rarely does one find the kind of extensive, vivid *narrationes* known from the records studied by non-Nordic scholars of medieval dispute settlement that originated in other parts of Europe such as France, Italy, and England. Hardly any information is provided about the specific arguments used in legal proceedings and negotiations; only brief references to ritual and gesture; and details of conflicts preceeding transactions and agreements are only cursorily described—if they are mentioned at all.⁵⁴ Compared to dispute studies in general, then, not only the number of charters but also the style and content of the documents necessarily set a limit to our view into the practices of disputing in medieval Scandinavia. This, of course, only makes interdisciplinary and comparative methods all the more relevant.

⁵⁴ For a rare exception see the Norwegian charters analysed in Steiner Imsen, “Den gammelnorske drapsprocessen,” *Historisk tidsskrift (Norwegian)* 2 (2009): 185–229.

THE POWER TO JUDGE: JURISDICTION IN PROPERTY CONFLICTS IN THIRTEENTH-CENTURY DENMARK

Helle Vogt

*"Pactum . . . Legem Vincit et Amor Judicium"*¹—an agreement supersedes the law and amicable settlement a court judgment. This title, used by Stephen D. White in his famous article on dispute settlements in eleventh-century France, has often been used as a slogan by legal anthropologists working on the Middle Ages in support of the idea that the medieval mentality was anti-legalistic because compromise and concord frequently were preferred to lawsuits and judgments. Often contrasted with this "traditional" way of understanding justice is the learned law with its more legalistic approach, including a corpus of written law and a well-developed court system. This idea of a contradiction between a high frequency of compromises and cases settled outside the court on the one hand and a highly developed legal thought and system on the other will be questioned in this paper. Even today, most conflicts regarding private law in the Western world end with a compromise instead of a judgment,² and we can hardly call our systems anti-legalistic.

This paper examines jurisdiction in property conflicts in thirteenth-century Denmark, investigating who had the power to judge or settle these conflicts and how that power was used. As always when working with Danish medieval history, the focus is decided by the sources. In this instance, there is over-representation of sources for cases regarding land conflicts between lay people and ecclesiastical institutions, and cases that were dealt with by an ecclesiastical court. In Denmark—unlike England, for example—it was recognized that church courts had full jurisdiction over both land and chattel in conflicts over wills, and many conflicts

¹ Stephen White, "*Pactum . . . Legem Vincit et Amor Judicium*: The Settlement of Disputes by Compromise in Eleventh-Century Western France," *The American Journal of Legal History* 22 (1978): 281–308. The quotation is taken from the *Leges Henrici Primi*, cited in White, "*Pactum . . . Legem*," 308, n. 101.

² Patrick J. Geary, "Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050–1200," in *Living with the Dead in the Middle Ages* (Ithaca: Cornell University Press, 1994), 125, n. 2. The difference now is primarily within the field of penal law, where private compromises started to disappear in the early modern era due to the state's efforts to secure a monopoly on adjudicating violence.

arose from disputes over donations, whether they were made *inter vivos* or *mortis causa*. Even though a substantial proportion of the Danish sources from the last part of the twelfth and the thirteenth centuries consists of charters detailing land conflicts, not much attention has been paid to the legal questions. Instead, these documents have mostly been seen as portraying conflicts between secular magnates and the greedy church, with its so-called dead hand.³ Hardly any attention has been paid to the fact that whereas no Danish ecclesiastical court records of justice from the Middle Ages are preserved, these charters give a glimpse of ecclesiastical legal practice and the use of canon law. Yet it is commonly recognized among legal historians that canon law and ecclesiastical jurisdiction were already thoroughly accepted in Denmark in the twelfth century.⁴ The charters reveal glimpses of how both lay people and clerics used the church courts and the law—secular as well as canon—to further their own interests, and how in conflicts between a lay and an ecclesiastical party the outcome was by no means certain to benefit the latter.⁵

Property Conflicts in Thirteenth-Century Denmark

From the thirteenth century, we know of 74 instances of disputes⁶ over land and property from the kingdom of Denmark and the duchy of Schleswig that have survived the wear and tear of time. Even when one takes

³ See for instance Niels Skyum-Nielsen, *Kirkekampen i Danmark 1241–1290—Jakob Erlandsen, samtid og eftertid* (Copenhagen: Munksgaard, 1963); and Helge Paludan, *Familie og familia—To europæiske kulturelementers møde i højmiddelalderens Danmark* (Århus: Aarhus University Press, 1995).

⁴ Areas covered by canon law such as marriage are hardly mentioned in the secular laws that were written down in the period from around 1170 to the mid-thirteenth century. Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010), 61–73; Per Andersen, *Legal Procedure and Legal Practice in Medieval Denmark*, (Leiden: Brill, 2011), 71–83.

⁵ See for instance *Diplomatarium Danicum* (DD), (Copenhagen, Det Danske Sprog- og Litteraturselskab, Ejnar Munksgaard, 1938–2000 (different editors.) 1:7:27 (1239); 2:2:337 (1278); 2:3:141 (1285). This is probably just the tip of the iceberg, since the abbey kept only the charters that could support their claims to the land, and charters that showed the opposite were destroyed. Brian P. McGuire, *The Cistercians in Denmark: Their Attitudes, Roles, and Function in Medieval Society*, Cistercian Studies Series 35 (Kalamazoo, MI: Cistercian Publications, 1982), 202–3.

⁶ In a few of the cases the conflicts continued for decades, but as long as no judgment was passed or a compromise entered into, they are still counted as a single dispute. Each settlement/judgment counts as one case even though the dispute at a later point was resumed, but it has been very difficult in some conflicts to decide if they should count as one or two, and thus the number must be seen as an estimate.

in account the various reasons for why so few charters are preserved,⁷ the number of cases of which we have information is still very small, and many of them are not properly elucidated. Many of the disputes are mentioned in just a single source, and often the information is insufficient. For instance, only one of the disputing parties might be known, or the legal forum that handled the case is unknown. For some of the cases it can even be questioned if there was conflict at all, since the charter might only divulge to whom the land belonged and not how it had come into the owner's possession. Even the outcome of the conflicts can often be difficult to establish. When a charter states that the bishop passed a judgment, did this mean that the judgment was accepted, or did the dispute continue for years before finally ending in a compromise that has left no traces? Furthermore, how shall we interpret the charter statement that the litigants had agreed upon arbitration or had entered into a compromise after the king or the bishop had threatened to pass a judgment if the litigants did not solve the conflict themselves? Can we, in these instances, really talk about a voluntary compromise? Or had the "compromise" been imposed upon the parties? If so, had the parties preferred to call it a compromise instead of a judgment in the charter because of the ecclesiastical ideal of concord, or as a way for the defeated party to save face?

Another problem to consider is how the litigants understood the outcome. Did they, for instance, distinguish between compromise and arbitration? When we talk about compromise and arbitration in a modern context, we see a clear distinction between them, the former being outside the court and the latter inside it. In modern arbitration it is also established practice that the parties, under the threat of a monetary penalty, promise to respect the ruling. There are two examples from the Danish medieval charters in which the litigants agreed upon fines⁸, but only one of them dates from the thirteenth century, and these are exceptions and not the rule. Another difference between compromise and arbitration is that arbitrators, at least in modern times, are professionals and are paid for their efforts. Many of the medieval arbitrators were also professionals in the sense that they were used to acting at legal *fora*: bishops were used in the role of judges at the ecclesiastical courts, and lay magnates often appeared at the provincial assemblies and must thereby have acquired a good knowledge of legal practice. However, even though they may have

⁷ See the Introduction to Part II of this volume.

⁸ DD 2:1:315 (1260) 10 marks; 2.6.162 (1308) 100 marks.

received gifts in return for their services, it seems unthinkable that they would have demanded a wage for their work. Did the thirteenth-century Danes recognize this difference between compromise and arbitration? Possibly they did so in the cases where they promised to respect the ruling, under penalty of a fine, but in many of the other cases, where the arbitrators were chosen during the legal process, this is more doubtful. In fact, in many of the instances in which I have categorized a case as being resolved by either compromise or arbitration, I have been in doubt as to which categorization is correct, and hence my numbers may be imprecise. But that is the rule of the game when working with such thin source material.

One case that shows the difficulties in defining these categories is a dispute over a wood, settled in 1263 between the monks of Løgum and Jakob Tuesen.⁹ The charter issued by Duke Erik I of Schleswig tells that the duke's *dapiferum*,¹⁰ Johannes Hvitting, with the help of many good men and with the unanimous consent of the parties, solved the case with a judgment (*iudicialiter*), detailing that the old borders should stand and that each party should enjoy the same rights as before the dispute started. How should this charter be understood? Did Johannes Hvitting act as an arbitrator, or as a judge? The wording in the charter referring to the "many good men" and the "unanimous consent." I have interpreted as indicating that the decision was the result of arbitration, but it could also be argued that what we see in this document was a judgment. In favour of the latter interpretation is that, according to the charter, the duke sent Hvitting to settle the case. In addition, the fragmented source material makes it difficult to know if the decision actually was respected, appealed, or simply ignored, in which case a new dispute would have begun.

Charters offer another challenge when they are almost the sole material available for evaluating disputes in thirteenth-century Denmark. Charters are legal documents that are more concerned with who had right of possession and the outcome of the conflict than with the dispute itself. If we are lucky, they reveal who the other party was, what the dispute was about, who resolved it, and what kind of legal forum—if any—solved the dispute. Charters were issued for the winners, and it is their story that is told. This is why we often do not know such aspects of the dispute as

⁹ DD 2:1:393 (1263).

¹⁰ Danish *drost*. The duke's deputy or steward often functioned as judge in the duke's stead.

Table 1 Property Disputes: Litigating Parties and Outcome

	Lay/lay	Lay/?	Ecclesiastical/ Ecclesiastical	Ecclesiastical/?	Ecclesiastical/ Lay
Compromise	3	0	3	0	15
Arbitration	2	0	2	0	11
Judgment	1	1	2	1	19
Unknown	0	0	1	0	14
Total	6	1	8	1	58

when a donation was being disputed or a border between properties was in question; or whether the claim was made for a legal reason, out of honour, as a way to start a negotiation, or simply to harass.¹¹

The 74 cases of dispute can be divided into 6 cases where both parties were lay; 8 where both parties were ecclesiastical; 58 where one party was secular and the other ecclesiastical; 1 where one party was lay and the other party not known; and 1 where we know only that one of the parties was ecclesiastical. There is a huge over-representation of ecclesiastical parties and courts, but this is not surprising, since the most important sources for land transactions in thirteenth-century Denmark are the abbeyes' cartularies.

The six cases where both the parties were lay are so few that they in no way can be seen as statistically significant. Therefore, it can hardly be taken as an account of the normal way of solving land disputes between lay persons that five out of the six cases ended with a compromise or arbitration. In two of these five cases, the royal family was directly involved. Both of these arose from strife over the division of the inheritance of a king¹² and a son of a king.¹³ Both conflicts were settled by arbitration by a group of the best and noblest men in the kingdom and dukedom, bishops included. The next two compromises both arose from detailed disputes over inheritance involving some of the richest nobles of their

¹¹ For a discussion of what charters say and do not say, see Wendy Davies and Paul Fouracre, eds., *The Settlement of Disputes in Early Medieval Europe* (Cambridge: Cambridge University Press, 1986), 1–2, 207–14.

¹² The daughters of Erik IV had seen part of their parental inheritance in Denmark confiscated by the crown: DD 2:3:98 (1284). For the political implications see Kai Hørby, *Status regni dacie. Studier i Christofferlinjens ægteskabs- og alliancepolitik 1252–1319* (Copenhagen: Den danske historiske Forening, 1977), 70–72.

¹³ The inheritance after Abel Abelsen, son of king Abel, and brother to the duke of Schleswig and his daughter Margrethe who both were deceased. DD 2:4:290 (1297).

time. The first of these concerns the countess Ingerd of Regenstein, who had to divide her possessions with her heirs before she could enter a convent,¹⁴ while the second detailed the inheritance following the death of her nephew Johannes Johannesen in 1257.¹⁵ They are both private compromises, but both of them received royal confirmation. In the latter case, one can question if it really is a compromise or if it is a judgment disguised as a compromise. The king and the duke of Schleswig had commanded the parties to enter an agreement,¹⁶ so it is perhaps questionable if it was voluntary. In the lay/law conflicts the only mention of a secular court is from the 1260s, when it was declared that land that had been claimed by others was defended by oath at the district assembly according to the laws of the realm.¹⁷ The charter has probably only survived because the owner later donated the land to a convent.¹⁸

To sum up, the charters are by and large silent about lay people's land conflicts, and there are no narrative sources to fill the gap. When traces have survived, it is almost exclusively because those involved were at the absolute top of society. Here, it should also be mentioned that there probably would not have been as many conflicts about inheritance, dowry, and so forth in Denmark as are known, for instance, from England and France. All children inherited from their parents, with girls inheriting half the amount that boys did, and the same rule applied if nieces and nephews or more distant kin were heirs. Because of the right of girls to inherit, dowry was unknown, and so too was dower. In Denmark holding land in fee was also unknown, and hence conflicts between a lord and the landholder's heir did not occur.

¹⁴ DD 2:1:226 (1257). According to the law, a person healthy in both mind and body was allowed to enter a convent with his or her whole capital lot, i.e. all possessions, both land and chattel: (Valdemar's Law of Zealand, *Danmarks gamle Landskabslove*, (VsL), text 1, vol. 8, 1941 ch. 46). Since Ingerd was childless, this meant all that she owned. Her niece and nephew challenged her gift to the convent for reasons unknown. Possibly they claimed that she wasn't well, in which case she would only be allowed to enter the convent with half her capital lot (VsL, ch. 47). Ingerd died shortly after she entered the convent, which could indicate that she was in ill health when she entered. On the other hand, the heirs could have claimed that she was not going to take the veil but merely wanted to spend the rest of her life in the convent—a way to spend old age that was not uncommon among the nobility.

¹⁵ DD 2:2:79 (1267). Johannes Johannesen's legal heir gave up one-third of the inheritance as compensation for losses Johannes Johannesen had incurred when he was guardian of his sister's sons. Hørby, *Status regni dacie*, 67–68.

¹⁶ DD 2:2:221 (1273–88).

¹⁷ DD 2:2:96 (1267).

¹⁸ DD 2:2:95 (1267).

In the one case where only one lay party is known, we know very little about the actual conflict. In 1273, the city of Roskilde confirmed Nicholas Hermansen and his heirs' legal possession of a mill.¹⁹ Why Nicholas Hermansen needed the confirmation is unknown, but I suspect that his possession was disputed. As for the eight cases where both parties were ecclesiastical, they are too few to get a general picture, but since they are all we have, I will nevertheless use them. In all cases, except one where the record does not mention where it originated,²⁰ the disputes involved an ecclesiastical court. Four of them ended with a compromise²¹ or arbitration and two or probably three of them in a judgment, whilst the outcome of the last is uncertain. In only one case do we have sufficient information to understand the entire process. The case in question is a dispute over possession of land on the island of Læsø, between the Cistercian abbey of Vitkøl and the chapter of Viborg. The conflict was taken all the way to the Holy See, but the judge appointed by the pope failed to pass a judgment, and hence the litigants agreed to appoint the king as arbitrator and to accept the decision following an inspection of the disputed land by Abbot Gunnar of Øm on behalf of the king.²² Each of the three cases that ended with a judgment was handled in a different forum. One judgment was passed by nominated men (*denominacio*);²³ the second by Pope Boniface VIII in 1295²⁴—although unfortunately the facts about this strife and why it ended at the papacy are unknown; and in the third lawsuit it seems probable that a bishop passed the judgment.²⁵ In the last of the eight internal ecclesiastical conflicts the outcome is unknown, although we can see how the bishop used the threat of passing a judgment to try to force the litigants to enter a compromise made by good men.²⁶ This example certainly illustrates how undesirable a judgment was considered

¹⁹ DD 2:2:210 (1273).

²⁰ Because it records a compromise about the right to a church, an ecclesiastical forum seems probable. DD 2:4:147 (1294).

²¹ DD 1:5:160 (1219); 2:3:219 (1288); 2:4:147 (1294); *Øm Klosters Krønike*, trans. Jørgen Olrik (Århus: Forlaget for Historisk Samfund for Århus Stift, 1960), 32. I choose not to include the dispute between Sorø Abbey and St Agnes started there in the thirteenth century because the compromise, if we can call it that, was first entered in 1300. Cf. article by Esmark in this volume.

²² See DD 1:5:160 and 161 (1219). For a comprehensive account of this case see McGuire, *Cistercians in Denmark*, 130–32.

²³ Sorø and Solbjerg, see article by Esmark in this volume, DD 2:3:287 (1288).

²⁴ DD 2:4:189 (1295).

²⁵ DD 2:3:268 (1276), Alex Bolvig, "Stridighederne omkring Brede kirke 1250–1350," (Danish) *Historisk Tidsskrift* 13, no. 4 (1977): 94.

²⁶ DD 2:3:232 (1274).

to be. It also indicates that this must have been a complicated case, and that neither of the parties could be sure that a judgment would fall to their advantage. In the one case where only one ecclesiastical party is known, we know solely that in 1289 King Erik VI delivered a judgment saying that Bosjö Abbey had the right to possess a meadow.²⁷

To sum up, one wonders if the relatively few cases of conflict between ecclesiastical institutions are due to the fact that it was quite a rare phenomenon. Usually, conflicts arose when land was donated, mortgaged, exchanged, or sold to an ecclesiastical institution by a lay party and then another lay person, for instance an heir, raised a counterclaim on the land. Property was almost never handed over to more than one ecclesiastical institution, making Princess Agnes's gift of Hesselbjerg first to St Agnes and later to Sorø the exception that proves the rule.²⁸ In most of these cases, the properties disputed were churches, chapels, and other ecclesiastical properties. Even though it was relatively rare that ecclesiastical institutions disputed, one gets the impression that when they finally did, the disputes were often very bitter and intense—a pattern also known from other areas.²⁹ The majority of conflicts were between an ecclesiastical and one or more lay parties. It will be far beyond the scope of this paper to give an overview of all the disputes, and therefore I will limit myself to giving a picture of which kinds of legal or non-legal *fora* heard the cases and what the outcome was. Finally, I will use three examples to illustrate the variation in conflicts and for one of them, the sophisticated use of law and procedure.

Of the 58 conflicts, 31 were handled by an ecclesiastical court, though in many cases the source material does not allow us to see if attempts had previously been made to resolve the dispute in other ways, for instance by compromise. For almost a third of the conflicts (9 out of 31) the outcome of the case is unknown, which clearly illustrates how fragmented our knowledge is. Out of 31 cases, 15 had a bishop, 11 the archbishop, and 5 the pope as the final court of appeal, though the pope in four of the cases delegated to a local bishop the power to judge. In many cases, the bishops and the archbishop also left the investigation of the litigants' claim

²⁷ DD 2:3:360 (1289).

²⁸ Cf. article by Esmark in this volume.

²⁹ See for instance Belle S. Tuten, "Disputing Corpses: Le Ronceray d'Angers versus Saint-Nicolas d'Angers, 1080–1145," *Medieval Perspectives* 10 (1995): 178–88; and Tracey Billado, "The Politics of 'Evil Customs' in Eleventh-Century Anjou" (Ph.D. thesis, Emory University, 2006).

Table 2 Disputes Brought before an Ecclesiastical Court

	Bishop	Archbishop	Pope
Compromise	5	3	0
Arbitration	1	1	0
Judgment	5	6	1
Unknown	4	1	4
Total	15	11	5

to lower clerics; and if they could not get the parties to enter a compromise or agree to arbitration, they delivered their judgment based upon the investigation.

At the bishops' courts the ratio between compromises and judgments was around fifty-fifty, with a little more leaning towards compromises, whereas there was a slight predominance of judgments passed by the archbishop. Nevertheless, the statistical material is so thin that it is hard to regard it as significant. A cautious estimate would be that about half of the cases brought before an ecclesiastical court ended in a compromise or arbitration. Whether the parties respected the outcome afterwards is another story.

In ten cases, a secular party settled the disputes. The numbers are distributed so that the king settled three, the duke of Schleswig three, and the assemblies four. Those settled by assemblies are divided between one unknown, one at the provincial assembly, and two at the district assembly. The king in one case ordered that the men of the assembly should present evidence.³⁰ For those cases that involved the king, two ended with a compromise and one is merely a confirmation of rights. Those involving the duke of Schleswig were divided as follows: one compromise, one judgment, and one arbitration. For the assembly, the division was one arbitration, and three judgments. One of these judgments was later judged to be against the freedom of the church by the bishop, and consequently the dispute was resumed at the ecclesiastical court,³¹ at which its outcome is unknown. We are then left with seventeen cases where either a legal forum was never involved or the details of this have disappeared from the sources. The outcome of five of these cases is unknown but six of the

³⁰ Slagelse district court. One can question whether this case should count as handled by the assembly or by the king, since the assembly acted according to the king's command. Cf. article by Esmark in this volume.

³¹ DD 2:3:387 (1289). For the conflict see article by Esmark in this volume.

others ended in arbitration, five in compromise, and two in oath-taking that took place before a secular authority, the king or the duke of Schleswig, from which we must assume that the party who successfully gave an oath won the dispute.

Just over one-sixth of the cases where an ecclesiastical party was involved as one of the litigants were handled by a secular authority. This may seem a large number and a sign of resistance to ecclesiastical courts' being accepted as the clerics' venue, but the example mentioned earlier, in which the king acted as arbitrator between the chapter of Viborg and Vitkøl Abbey, shows that it was the parties themselves that had agreed upon using the king as arbitrator. This could also be the case in other disputes, as we shall see later in an example from Schleswig. The above-mentioned example where an ecclesiastical court annulled the decision of the assembly shows that the secular court was not regarded as an alternative to the ecclesiastical court, unless both parties had agreed upon letting lay persons solve the dispute.

What were all the disputes about? The simple answer is land and property, but that does not answer the question of why the disputes began. Again, the paucity of sources makes it difficult to get a clear picture. Many conflicts between lay persons and an ecclesiastical party may well have originated in a donation, exchange of property, or sale of land to an ecclesiastical institution. The transfer may afterwards not have been accepted by an heir or kinsman, but by the time the conflict appears in the sources the original reason for the dispute is not mentioned, giving the appearance of its being over, for instance, boundaries or violation of property. Instead of trying to read between the lines and to interpret why the poorly documented disputes began, I have chosen to make my starting point what the documents say about the conflict and not what I might imagine was the origin.

The grounds for the disputes can be categorized this way: 23 donations, 5 sales, 4 exchanges of property, 4 disputes over inheritance,³² 19 over boundaries between and rightful possession of land, 3 over violation of property, 10 over other matters, and 6 unknown. By far the largest group is donations. This is hardly surprising, since the majority of the disputes originated in gifts to the church, but what is more surprising is that just under a quarter of all the conflicts were about boundaries and possession.

³² Understood as conflicts between lay heirs, where donations were not the disputed subject.

As mentioned earlier, some of these could have started as disputes over donations, but many of the disputes also show the problems that a lack of proper land registers created, meaning it was difficult to prove where borders should be. Boundary stones and stakes could easily be moved, as is claimed in some of the conflicts. This, combined with an increased pressure on resources in the thirteenth century, meant that areas such as woods and meadows that before had been used freely by those who lived nearby began to be monopolised. New rules of proscription and ideas of absolute private property, introduced via Roman and canon law, provided fertile ground for a long line of conflicts.³³

If we look at all seventy-four disputes from the thirteenth century, the cases are by no means spread evenly over the century. This is not surprising, since the number of surviving sources in general is much larger at the end of the century than at the beginning. Still it is worth looking at how the relationships between the different kinds of dispute settlements are distributed over time. I have divided the century into four parts, each of twenty-five years, and for these quarters the numbers distribute in the following manner: 7 cases between 1200 and 1224,³⁴ 10 between 1225 and 1249, 21 between 1250 and 1274,³⁵ and 36 between the 1275 and 1299. I have not distributed the numbers as percentages because the material is too meagre for that.

Table 3 Disputes' Outcomes over Time

Years	1200–1224	1225–1249	1250–1274	1275–1299
Compromise	4	3	8	6
Arbitration	0	1	4	5
Judgment	2	2	2	19
Unknown	1	4	7	6
Total	7	10	21	36

³³ Helle Vogt, "From Tribute to Taxpaying—The Changes in the Understanding of Private Property in Denmark circa 1000–1250," in Lars Jørgensen, Mads Holst, and Helle Vogt, eds., *Law and Archaeology Proceedings of the Seventh Carlsberg Academy Conference on Medieval Legal History* (Copenhagen: 2013), forthcoming.

³⁴ For one of the disputes, it is unclear if it belongs to this category, as the conflict cannot be more precisely dated than to somewhere between 1214 and 1250. DD 1:5:52 (1214–1250).

³⁵ Again, there are two disputes where the dating does not allow us to know which category they belong to. The charters that mention the disputes can both be dated to the period 1273–1280. DD 2:2:220 and 221 (1273–1280).

What can we make of this? One observation could be that we are witnessing a shift from a period where no judgments were passed and the role of the courts primarily was to create the framework for entering a compromise, to a period where more than half of all the conflicts ended in a judgment. This could mean that not only had the power of the courts increased but also that the mentality had changed, and that an overall change in the power structure had led to litigants' seeing that it was in their interest to change their legal strategies. This is a nice and easy explanation. Unfortunately, the picture gets a bit muddled when we compare it to dispute cases from the twelfth century. Before the year 1200 I have found traces of eight conflicts. Four of them ended with a judgment and four with a compromise—the same pattern as for the end of the thirteenth century. Should we then draw the same conclusion for the late twelfth century as for the late thirteenth? This shows that statistics can be both very dangerous and enticing: it is quite easy to make them give you the answers you want. Another example is that if the period under investigation is narrowed down to the middle of the thirteenth century, we can observe that the number of judgments declines from around one out of four in 1224–50 to being only one out of ten in the following twenty-five years.

Now, I had better stop this playing with numbers and focus on what they actually can be used for, to the extent that the small number of cases from the first half of the century allows us to make some general observations. For the second half of the century, and especially the last two decades, the number of judgments is increasing, a tendency that also can be followed into the fourteenth century. This is essentially due to three factors. The first is the introduction of a new high court, the king's court (*kongens retterting*).³⁶ Here, the king, or his presiding judge, adjudicated land conflicts. Although these were primarily disputes between lay parties,³⁷ several ecclesiastical institutions also used the king's court as their venue.³⁸ The second factor was a change in the legal procedure,

³⁶ First in full operation around the year 1300. The king's increased function in conflicts, as for instance the one that confirmed the judgment or the compromise, can be observed also in the thirteenth century. Henrik Lerdam, *Kongen og tinget—det senmiddelalderlige retsvæsen 1340–1448* (Copenhagen: Museum Tusculanums Forlag, 2001), 21.

³⁷ In the second half of the fourteenth century, the kings also used the king's court for show trials to increase the crown's land.

³⁸ For more information on the king's court see Lerdam, *Kongen og tinget*.

with written evidence increasing in importance.³⁹ Thirdly, the royal administration became more focused on enforcement. What was the use of knowing you had a legal and moral claim, if the judgment would never be carried out? Note, however, that I am not saying that the enforcement was very effective—it was slow and expensive, as it also was to have a lawsuit at the king's court.

As the sources show, the increased legal activity within the courts did not mean that the number of compromises and arbitration settlements declined. This was probably not only because of an ineffective, slow, and expensive legal system, but also because disputes often were about honour and public appearance. A compromise, even if you did not obtain any advantage compared to going to court, could still be a way to demonstrate that you did not accept the authority of the judge or loss of honour. Both are factors that could have influenced the examples below.⁴⁰

The Disputes of Løgum Abbey

In the 1230s a dispute arose between the Cistercian abbey of Løgum (*Loco Dei*), located in the northern part of the duchy of Schleswig, and a knight, Ubbe Thorsen, over some land in Bejle.⁴¹ The dispute was probably brought before Bishop Tyge of Schleswig, and then somewhere in the process one of the parties appealed to the archbishop's court. We do not know if Tyge gave a judgment before the appeal, but according to canon law the lower court of first instance should have given a judgment before an appeal to the archbishop was allowed. The archbishop appointed Tyge and Bishop Gunner of the neighbouring diocese of Ribe to start an investigation and end the conflict, either by "friendly compromise or by decision" (*amicabilem compositionem uel per sententiam*). No later than September 1238 their investigation was finished. As part of the investigation they summoned the litigants to the disputed place. The bishop, together with the best men of the district, lay as well as clerical, and the

³⁹ Anders Leegaard Knudsen, "Testimonia Placiti—Private Charters as Public Instruments: A Study in Medieval Danish Diplomats," *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde* 57 (2011): 147–179.

⁴⁰ Stephen D. White, in his investigation of eleventh-century western France, has shown that many compromises cannot be explained by the lack of courts but were entered into because compromises were seen as more just and efficient. White, "Pactum . . . Legem," 303–308.

⁴¹ DD 1:7:13 (1238); DD 1:7:14 (1238–1241).

abbot of Løgum went to the place as summoned, while Ubbe refused to show up, possibly in an effort to demonstrate that he did not recognise the bishops' power to judge. According to the documents, around two hundred local men gave a collective testimony, *testabatur communiter*,⁴² stating that the disputed land belonged to the monks.⁴³ The declarations from the two bishops differ a bit here. Whereas Tyge mentions only that they testified that the land was and ought to be the monks', Bishop Gunner's declaration is more legalistic: the monks had received the land from the rightful owner and they had gained "a prescriptive right to the land" (*legitimo tempore prescripserint*). How long they had possessed the land is not mentioned, but according to canon law the required time period for establishing prescriptive rights was thirty years for ecclesiastical land, and this same time frame is also found in the Law of Jutland of 1241.⁴⁴ Only two men spoke against the monks, one of whom was Ubbe's brother and therefore not a very impartial witness. Against this background, the bishops concluded that the case was closed, the land belonged to the abbey, and anyone who did not respect the judgment would incur the wrath of God, all the saints, and the archbishop!

Apparently, the threat of neither the archbishop's wrath nor God's frightened Ubbe, who refused to hand over the land to the monks. The archbishop, in turn, did nothing to force him. This is clearly illustrated by a request by six Danish Cistercian abbots and two monks from Cîteaux to the archbishop to confirm the judgment.⁴⁵ It seems that this request was unsuccessful and the abbots, in what could be seen as a desperate move, confirmed the judgment themselves.⁴⁶ In their confirmation letter we read that the monks had possessed the land for more than thirty years, but there is no mention of how they got it from the lawful owners. One could hazard a guess that the monks' title to the land was more

⁴² DD 1:7:13 (1238).

⁴³ This case shows that the Danish church courts also had problems distinguishing between witnesses and oath helpers. It is not likely that all two hundred men were questioned according to the rules of canon law, as it would have been impossible to do it in one day. In addition, according to canon law, the maximum number of witnesses allowed was forty. *Liber Extra*, "Episcopo placentino," 2.20.37, in *Corpus Iuris Canonici*, ed. E. Friedberg (Leipzig: Bernhard Tauchnitz, 1879; rpt. Graz: Akademische Druck- und Verlagsanstalt, 1959), vol. 2.

⁴⁴ *Danmarks gamle Landskabslove med Kirkelovene*, vol. II., Johs. Brøndum-Nielsen and Poul Johs. Jørgensen, eds. (Copenhagen: Det danske Sprog- og Litteraturselskab, 1933), book 1, ch. 44.

⁴⁵ DD 1:7:17 (1238–1241).

⁴⁶ DD 1:7:16 (1238–1241).

questionable than the letters from the bishops reveal. The letter continues that, since the case had been heard at an ecclesiastical court in “a just and legal way” (*iuste et legitime*), the abbots were confirming the judgment and threatening Ubbe with excommunication. This did not impress Ubbe any more than the previous judgment had, and why should it? The abbots did not have the power to excommunicate, and the archbishop was clearly not going to use his power to do so. The dispute went on for years, and apparently force was used by each side to harass the other.⁴⁷ Finally in 1245 the litigants entered a compromise, negotiated by Tyge’s successor as bishop in Schleswig, Eskil. Strangely enough, at that point Ubbe renounced all claims to the land on his own and his heirs’ behalf. As a part of the compromise, any ill deeds or damage caused by either side were forgiven. The monks were apparently very content with the outcome. How important the land was to them can be seen by the fact that they got three kings to confirm the compromise,⁴⁸ despite the steep price that they would have had to pay for such a service.⁴⁹

This case raises some questions. Firstly, who appealed to the archbishop? And secondly, why did Ubbe accept a compromise which had the same outcome as the judgment that he did not recognise? It can hardly have been the abbey that appealed to the archbishop, since we are told in the report Tyge sent to the archbishop that he had already come to the same conclusion when he investigated the facts as judge in the first place. Therefore, it must have been Ubbe who appealed, but why? We know that he refused, when summoned, to come and present his case. If he had been the one to launch the appeal, why would he then not come to present his counterclaim to the land? There can be two explanations. Either Ubbe only appealed the judgment in order to drag the conflict out and uphold the claim to possession of the land for as long as the lawsuit continued, or he actually expected that the case could receive a different outcome at the archbishop’s court. When he then discovered that the archbishop had appointed the same investigator as was judge in the first instance, that hope was shattered. Maybe there was a personal enmity between Ubbe and the bishop, which could also explain why Ubbe would enter a compromise with the new bishop as mediator and why Ubbe is described in a negative way in Tyge’s and Gunnar’s letters to the archbishop. By

⁴⁷ DD 1:7:184 (1245).

⁴⁸ DD 2:1:223 (1257).

⁴⁹ McGuire, *Cistercians in Denmark*, 205; *Om Klosters Krønike*, 63.

entering into a compromise Ubbe may have obtained two things. He kept his honour by showing that he could not be forced to give up his claim to the land; that is, he gave it up from his own free will. Secondly, also linked to honour, it is possible that he, by refusing to follow Tyge's judgment, showed his contempt for him.

In 1283 Løgum Abbey was again party to a property dispute. The monks claimed that the knight Johannes of Urne had occupied by force some land and woods that had been left to the abbey in a will by Knud Stubbe around 1279.⁵⁰ We are not informed why Johannes felt that he had a claim to the property, but since the forest in dispute was called Urne wood, it is likely that Johannes felt the disputed property belonged to him as his rightful inheritance.⁵¹ The first time we hear about the conflict is October 1283,⁵² when Tyge, bishop of Ribe, held a hearing. This was not the first time Johannes and Tyge had met in court. They had previously had a long-standing dispute over an estate in Hærægsogh, and in 1279 the archbishop had judged in favour of Tyge.⁵³ Tyge was appointed judge by the archbishop in just the same way as in the previous example. At the hearing both parties were present, Urne through an unnamed lawyer (*aduocatus*). During the hearing, both parties used canon law to strengthen their claims, and the arguments show a quite sophisticated level of jurisprudence.⁵⁴ From the evidence it is possible to reconstruct the prior history of the case. Following the death of Knud Snubbe, Johannes had occupied the property in question. The monks had turned to King Eric V for help, since although the disputed land was situated in the duchy of Schleswig, between 1272 and 1283 Schleswig was under royal control. The monks rightfully thought that the king would support their claim, and indeed he did make a judgment in their favour. Unfortunately for the monks, however, in 1283 the king was forced to hand over Schleswig to Duke Valdemar as part of a larger political compromise brokered the year before between the king and a faction of the most influential men in the kingdom, a compromise that had also led to the king signing a charter that is often referred to as Denmark's Magna Carta, with many restrictions imposed upon the king's power. The return of the duke was probably the reason why the judgment

⁵⁰ DD 2:2:389 (1279–1283).

⁵¹ The abbey probably possessed the disputed land before Knud Snubbe's death, which could indicate that it was holding the land as mortgage.

⁵² DD 2:3:78 and 79 (1283).

⁵³ DD 2:2:375 (1279).

⁵⁴ It is very seldom that canon law is mentioned in the surviving charters relating to disputes, and then it is almost exclusively in charters issued by the Papal See.

in the land dispute was never enforced. Johannes was one of Duke Valdemar's men, and thus the monks could hardly expect that he would support them. The next thing we know is that the dispute was brought before the archbishop.

At the hearing before the bishop, the abbot of Løgum, backed by the authority of Gratian's *Decretum*,⁵⁵ claimed that the monks should have handed over the land and received compensation for the loss of income from it.⁵⁶ Johannes's lawyer started his procedure by claiming that the summons was illegal because of errors in the formalities. This was overruled by the bishop. Then, the lawyer claimed that there were two reasons why the bishop of Ribe could not act as judge in the conflict. Firstly, because, according to canon law, it was illegal for an archbishop to appoint a judge who was bishop of the diocese where one of the litigants was resident⁵⁷ (Løgum was a part of Ribe diocese), and secondly, since the monks had first brought the case before a secular judge—the king—it was, again according to canon law, illegal to go later to an ecclesiastical court.⁵⁸ The abbot refused the first claim and replied to the second that it was not the land dispute itself but the violence that the monks had suffered when Johannes had occupied the property that had brought them to the king's court. Tyge rejected all the lawyer's arguments and set a date for Johannes to answer the accusations, which he never did, thereby losing the case. Instead, Johannes, the day after the deadline had expired, appealed to Rome. Next time we hear about the conflict is in September 1285, when the monks appealed to the pope about the judges he had appointed to hear the case. According to the monks, the judges, out of partiality for Johannes, had for more than a year refused to hear the case.⁵⁹ They apparently did not gain much from the appeal, and neither the pope nor the appointed judges ever did pass a judgment.

Eventually, the monks must have realised that they could not defeat Johannes in court; and hence in 1290 both parties, ten years after the conflict started, agreed upon appointing the bishops of Ribe and Schleswig as arbitrators. Their conclusion was that the land which Knud Snubbe had left to the abbey lawfully belonged to the monks. This was also agreed

⁵⁵ *Corpus Iuris Canonici*, ed. Friedberg, vol. 1, *Decretum magistri Gratiani*, C. 3, q. 1, c. 2.

⁵⁶ DD 2:3:78 (1283).

⁵⁷ *Corpus Iuris Canonici*, ed. Friedberg, vol. 2, *Liber Extra*, 1.31.10: "*de officio iudicis ordinarii*."

⁵⁸ *Ibid.*, 2.2.10: "*de foro competentii*."

⁵⁹ DD 2:3:152 (1285).

to, according to the charter, by Knud's lawful heir, who strangely enough is not mentioned by name.⁶⁰ Securing the peace and quiet of both the parties (*unde paci et quieti utriusque partis*),⁶¹ the bishops decided that Johannes could choose to hand the land over to the monks and, in return for a promise to stop all persecutions of them, receive 100 marks; or, even though he did not have any right to the property (*quanquam nihil iuris haberet in bonis eiusdem*), he could pay the abbey 500 marks and keep it. Johannes chose the latter.⁶²

The two examples show different strategies in the legal process. Ubbe Thordsen chose simply to stay away and refuse any kind of cooperation, while Johannes of Urne did the exact opposite: he played the same legal game as the monks and with greater success. He used canon law and the ecclesiastical appeal system to his own benefit, showing very clearly that he would continue the fight both within and outside the courtrooms. One can even argue that by following the legal "rules" Johannes put himself in a stronger position than Ubbe. By never questioning the authority of the ecclesiastical court system, he avoided exposing himself to the threat of being excommunicated, an act which would have put pressure both on his soul and on the duke who most likely protected him.

The long dispute between Løgum and Johannes of Urne did not mean that complete mistrust or a bad relationship developed between the parties. In May 1288, two years before their dispute was settled, a conflict over the boundaries of some fields was heard at the duke's court.⁶³ The litigants were the abbey of Løgum and the unnamed owners of the fields of Kummerlev. Duke Valdemar appointed four knights, including Johannes, and four other good men to investigate the claims, and both litigants agreed to accept them as arbitrators. Again, we get a glimpse of what procedure they used, and it did not differ much from what the bishops did in the conflict between Løgum and Ubbe Thordsen. The arbitrators

⁶⁰ DD 2:2:389 (1279–1283). This heir could be Knud Snubbe's son Matthew, who is mentioned in the will.

⁶¹ DD 2:3:410 (1290).

⁶² Here, as in the case of Johannes Marsvin and Sorø Abbey (See article by Esmark in this volume), the arbitrators were very concerned with using the right legal terms in their judgment. In this case, they emphasised that the offer to Johannes of Urne to buy the land was based not on a legal right—though probably a moral one—but on the consideration of peace and neighbourliness. Hence, in the case of Johannes Marsvin the mediators saw the need for making the legal construction that he first redeem the mortgage before he donated the property to Sorø Abbey. Unlike Esmark, who views the redemption of the property as primarily a ritual act, I regard the redemption as an important legal act that was intended to prevent Johannes's heirs from making claims on the property.

⁶³ DD 2:3:290 (1288).

went to the disputed place and inspected the boundary stones. Their conclusion was that the owners of Kummarslev had removed the old stones and placed new ones in different locations, but considering “the good of peace” (*bonum pacis*), the arbitrators decided to draw new boundaries. The settlement was then confirmed by the duke two days later.⁶⁴ It seems a bit strange that Løgum Abbey would agree to have this dispute heard at the duke’s court instead of the bishop’s, the explanation can be found in the duke’s confirmation letter, in which he wrote that as soon as the litigants had agreed on the arbitrators, he commanded that they should settle the conflict immediately. Possibly the monks preferred the fast and thereby probably also cheap settlement to the long and costly dispute at the bishop’s court, which most likely would have ended in a compromise in the long run anyway. Another reason could have been that the monks thought a judgment or settlement made at the duke’s court had a better chance of being respected than one made at the bishop’s court, especially if some of the prominent men from the area vouched for it.

Conclusion

The number of disputes from Denmark is so limited and the source material, especially for the first half of the thirteenth century, so fragmentary, that any effort to use statistics is bound to be very questionable; thus, I have used them with great caution. Yet despite all the reservations already mentioned, it seems that the number of conflicts handled within the courts increased in the last part of the century. This did not mean, however, that compromises, and especially arbitration, were not going strong, but rather that litigants—lay as well as ecclesiastical—during the thirteenth century had gained an increased understanding of the possibilities and challenges that the courts provided. Furthermore, it would seem that legal arguments and the letter of the law were finding a growing place in the handling of conflicts and disputes in Denmark during this period. These conclusions are in no way a breakthrough in a western European context, given that they follow quite well the pattern found in other places. However, this is the first systematic investigation of disputes using the Danish material, and in a Nordic context the investigation throws new light on the ecclesiastical courts and especially their willingness to see compromise.

⁶⁴ DD 2:3:292 (1288).

As far as the material allows us to conclude, it seems likely that in Denmark, as in most of western Europe in the High Middle Ages, canon law and the lay magnates' ideas of honour were not necessarily conflicting interests. The ideal for the church courts was to obtain compromise, peace, and concord, and that for the magnates—besides getting the disputed property—was to avoid losing face. If you could not win, then you could, at least, keep the moral high ground. While ecclesiastical institutions did not have the same personal honour to be taken into consideration, they did, at least in theory, share the canonical ideal of peace and compromise, and for most litigants, lay as well as ecclesiastical, it was probably also of great importance to obtain a solution that would not lead to further disputes.

DISPUTING PROPERTY IN ZEALAND:
THE RECORDS OF THE SORØ DONATION BOOK

Kim Esmark

While recent decades have seen a flourishing renewal of the study of medieval Danish laws and legal institutions,¹ comparatively less attention has so far been given to actual practices of disputing. The international reorientation of traditional legal history associated with “legal anthropology” or “medieval dispute studies”—with its emphasis on process, strategy, transaction, negotiation, arbitration, ritual, compromise, out-of-court settlements, feuding, etc.—has only just begun to make an impact.²

Although the themes and issues associated with this historiography were first developed in studies of disputes in the “decentralised,” “state-less,” “face-to-face” societies of post-Carolingian France, they are today explored in increasingly diverse contexts, both geographically and chronologically. Such practices as negotiation, mediation, and compromise

¹ Arguably, some of the most important new insights in medieval research in Denmark of recent years have come about through the study of the provincial law books of the twelfth and thirteenth centuries: their origin, production, and European intellectual context. See among others Per Andersen, Ditlev Tamm, Helle Vogt, eds., *How Nordic are the Medieval Nordic Laws?* (2nd rev. ed., Copenhagen: DJØF Publishing, 2011); Per Andersen, *Legal Procedure and Practice in Medieval Denmark* (Leiden: Brill, 2011); Andersen, *Rex imperator in regno suo: Dansk kongemagt og rigslovgivning i 1200-tallets Europa* (Odense: Syddansk Universitetsforlag, 2005); Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010); Michael H. Gelting, “Odelsrett—lovbydelse—bördsrätt—retrait lignager: Kindred and Land in the Nordic Countries in the Twelfth and Thirteenth Centuries,” in *Family, Marriage and Property Devolution in the Middle Ages*, ed. Lars Ivar Hansen (Tromsø, 2000); Gelting, “Kanonisk ret og de nordiske slægtssamfund,” *Historie* (2003); “The Law of Jutland, the Law of Skåne, and King Valdemar’s Law for Sjælland: A Revision,” in *Liber Amicorum Ditlev Tamm: Law, History and Culture*, ed. Per Andersen, Pia Letto-Vanamo, Kjell Åke Modéer, and Helle Vogt (Copenhagen: DJØF Publishing, 2011).

² Lars Hermanson, *Släkt, vänner och makt. En studie av elitens politiska kultur i 1100-talets Danmark* (Göteborg, 2000); Kim Esmark, “Godsgaver, calumniae og retsantropologi—Esrums kloster og dets naboer, ca. 1150–1250,” in *Ett annat 1100-tal. Individ, kollektiv och kulturella mönster i medeltidens Danmark*, ed. Peter Carelli, Lars Hermanson, Hanne Sanders (Stockholm: Makadam, 2004); Esmark, “Hellige ben i indviet ild—den rituelle sanktifikation af kong Knud IV, 1095,” in *Gaver, ritualer, konflikter—et retsantropologisk perspektiv på nordisk middelalderhistorie*, ed. Hans Jacob Orning, Kim Esmark, and Lars Hermanson (Oslo: Unipub, 2010); Jeppe Büchert Netterstrøm, “Feud in Late Medieval and Early Modern Denmark,” in *Feud in Medieval and Early Modern Europe*, ed. Jeppe Büchert Netterstrøm and Bjørn Poulsen (Århus: Aarhus Universitetsforlag, 2007).

are also found and analysed in later medieval societies with stronger central governments and more fully developed judicial institutions. The general conclusion in these studies appears to be that state power, formal law, and the gradual formation of a proto-juridical field³ did not replace extra-judicial means of conflict resolution. The change was not one of uni-linear transition from one set of legal attitudes and practices to another. Rather, the introduction of learned Romano-canonical law, secular and ecclesiastical courts, legal professionalisation, and new ways of reasoning about justice implied an extension of options and possible strategies available to disputing parties. In the words of Claude Gauvard, summing up the results of conflict studies from France, Ireland, Spain, Italy, Hungary, and Russia: "S'il existe effectivement une évolution dans l'histoire des modes de résolution des conflits, elle consiste plutôt en un élargissement de la palette des résolutions qu'en leur transformation de l'une en l'autre [...]".⁴

To what extent, then, does the kingdom of Denmark fit into this general picture? How did legal reform and the strengthening of royal power in the high and late medieval period (interrupted by periods of political fragmentation) affect litigants' strategies and the patterns of conflict management? How did legal culture and dispute practices relate to changing socio-political structures and attempts from church and "state" agencies to set up new rules, institutions, and procedures? How did the "enlargement of the palette" of conflict resolutions translate into actual dispute processing? Here I hope to start touching upon these questions by looking at the cartulary-chronicle known as the "Sorø donation book" and its records of property disputes in the province of Zealand in the thirteenth and fourteenth century.

With regard to dispute studies the Sorø donation book certainly counts among the most rewarding medieval Danish sources. Compiled c. 1440 at the Cistercian monastery of Sorø in western Zealand, it contains two short narrative accounts, most likely composed around 1210, of the foundation and early history of the abbey, followed by extensive—and to all appearances reliable—summaries or paraphrases of charters from the twelfth to fifteenth centuries recording gifts, property transactions, and dispute

³ Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38 (1987).

⁴ Claude Gauvard, "Conclusion," in *Le règlement des conflits au moyen âge. Actes du XXXI^e congrès de la SHMESP (Angers 2000)*, (Paris: Publications de la Sorbonne, 2001), 376.

settlements. The donation book is a draft, still in the process of redaction when left for posterity. It has never received a modern critical edition, and although it has been analysed closely by at least four prominent scholars, the complicated organisation of the text still presents many unsolved questions. Why, for instance, do some transactions appear two or even three times in slightly varied accounts in different parts of the book? What is the logic behind the topographical division? How many layers of redaction lie beneath the present text? The overall purpose of the work, however, seems clear. Recurrent instructions throughout the main section on how to use the original charters preserved in the monastery indicate that the Sorø donation book was intended to be a sort of “contextualised property register” providing information about the history of each property owned by the abbey as well as advice on how to defend it in court.⁵

In Danish historiography the Sorø donation book has primarily been treated as a source for agrarian history. Scholars have studied Sorø Abbey’s history and estate management, charted the patrimonial estates of its lay patrons, calculated the size of individual noblemen’s landed wealth, and constructed comprehensive genealogies of aristocratic families in Zealand.⁶ Recently the donation book has been taken up in discussions of

⁵ *Liber donationum monasterii Sorensis*, Copenhagen, Royal Library, Gl. kgl. S. 2485, 4^o, ff. 53. Edited on the basis of a lost, near-identical manuscript by Jakob Langebek, *Scriptores rerum Danicarum mediæ ævi* 4, (Copenhagen, 1776), 463–531 [hereafter SRD]. Summaries of each charter, but not the narrative accounts, included separately in chronological order—transcribed from Gl. kgl. S. 2485—in *Diplomatarium Danicum*, ed. Herluf Nielsen et al., (Copenhagen: Munksgaard, 1938–), *passim* [hereafter DD]. Analysis by Erik Arup, “Leding og ledingsskat i det 13. Aarhundrede,” *Historisk Tidsskrift* 8, vol. 5 (1914–15); Poul Nørlund, “De ældste Vidnesbyrd om Skyldtaxationen,” *Historisk Tidsskrift* 6 (1929); Brian P. McGuire, *The Cistercians in Denmark* (Kalamazoo: Cistercian Publications, 1982), 24–25; and Kai Hørby, “Sorø Klosters Gavebog,” in *Kongemagt og samfund i middelalderen. Festskrift til Erik Ulsig*, ed. Poul Enemark, Per Ingeman, and Johannes Villiam Johannesen (Århus: Arusia, 1988).

⁶ Poul Nørlund, “Klostret og dets gods,” in *Sorø. Klostret, Skolen, Akademiet gennem Tiderne*, 2 vols (Copenhagen: Frimodts forlag, 1924–31), I; Poul Nørlund, “Jorddrotter på Valdemarstiden,” in *Festskrift til Kristian Erslev*, ed. Poul Nørlund (Copenhagen: Den Danske Historiske Forening, 1927); Erik Ulsig, *Danske adelsgodser i middelalderen* (Copenhagen: Gyldendal, 1968); Brian P. McGuire, “Patrons, Privileges, Property—Sorø Abbey’s First Half Century,” *Kirkehistoriske samlinger* (1974); Tage E. Christiansen, “Sune Ebbesens halve hovedlod,” *Historisk Tidsskrift* 81 (1981); Erik Ulsig, “The Estates of Absalon and the Hvide Family,” in *Archbishop Absalon of Lund and his World*, ed. Karsten Friis-Johannesen and Inge Skovgaard-Petersen (Viborg: Roskilde Museums Forlag, 2000); Marianne Johansen and Helle Halding, *Thi de var af stor slægt: Om Hvideslægten og kongemagt i Danmarks højmiddelalder* (Gylding: Skippershoved 2001).

gifts, patronage, and kinship.⁷ As I hope to show, the text also contains a dossier of very interesting conflict accounts. Some of these accounts have been discussed or touched upon in the historiography mentioned above, but so far the dossier has never been analysed as a whole from a dispute study perspective, which is what I intend to do in the following.

Background: Sorø Abbey

Sorø Abbey was located in the marshy woodlands of western Zealand, on the southern tip of what was in the Middle Ages a large island in Sorø Lake. It was founded as a Benedictine monastery in the 1140s by three brothers of the so-called Hvide family (or clan), a noble kin-group that would soon come to dominate power and politics in the kingdom.⁸ The founders probably hoped to create a sacred site of commemoration and intercessory prayer for their family, like those established by rival aristocratic kin-groups a few years before in nearby Næstved and Ringsted. The monastery, however, quickly fell into decay, probably because of insufficient endowments. In 1161, sons of the original founders reorganised the house completely. They replaced the languishing Benedictine community with Cistercian monks and initiated the build-up of a much richer material base. The driving force behind the reform was Absalon, friend and foster-brother of King Valdemar, bishop of Roskilde, and from 1177 also archbishop of Lund. Spurred on by Absalon a wide circle of men and women from the Hvide family contributed with grants of land, mills, woods, churches, and fishing ponds from all over Zealand to the new Cistercian foundation in Sorø. A grand new abbey church in impressive Fontenay style was constructed to form a proper symbol and burial place for the benefactors and their descendants (disregarding the Cistercian prohibition against lay burials). At the death of Archbishop Absalon in 1201 Sorø Abbey stood out as one of the most imposing *Hausklöster* in the kingdom. In the following period the abbey enjoyed continued protection and patronage from Absalon's episcopal successors in Roskilde, who until

⁷ Kim Esmark, "Fromhed og ære. Hvidernes gaver til Sorø kloster i 11- og 1200-tallet," in *Tissø og Åmoserne—kulturhistorie og natur*. Årbog for kulturhistorien i Holbæk Amt 2003, ed. Lisbeth Pedersen (Holbæk and Kalundborg, 2003); Esmark, "Religious Patronage and Family Consciousness: Sorø Abbey and the 'Hvide Family', c. 1150–1250," in *Religious and Laity in Western Europe 1000–1400: Interaction, Negotiation, and Power*, ed. Emilia Jamrozak and Janet Burton (Turnhout: Brepols, 2006).

⁸ See the chapter by Lars Hermanson in this volume and the references cited there.

1277 were all recruited from the ranks of the Hvide family. At the close of the thirteenth century, however, most branches of the family network had lost interest in the common *sepultura cognitionis*, and the stream of gifts decreased. The monks now came to rely on a broader range of less committed noble families.⁹ Sorø's prestige lingered on nevertheless, and in the fourteenth century members of the royal lineage for the first time found their burial place in the abbey church.

Throughout the period covered by the donation book the monks of Sorø (and in the early years their episcopal patrons from the Hvide family) worked consistently to increase the abbey's wealth and resources. Individual donations were fitted into large-scale, long-term plans by means of intricate property transactions: *commutationes*, purchasing, mortgaging, leasing. Isolated or outlying possessions received as gifts were traded for choice lands near the monastery's existing estates. Troublesome neighbours were bought off. Peasants on monastic lands were subjected to Sorø's jurisdictional authority.¹⁰ In their pursuit of land and resources the monks showed patience, determination, and a readiness to engage, whenever it was necessary, in exhausting and costly litigation processes, both in and out of court. Their abbots and legal experts skilfully exploited the opportunities offered by learned law and judicial procedure, while at the same time playing the less formalised game of negotiation and compromise.¹¹

The Conflicts in the Sorø Donation Book

The donation book contains accounts of around thirty conflicts.¹² No disputes are reported up until the death of Archbishop Absalon in 1201. From then on the conflicts follow a fairly even distribution chronologically, with a certain concentration in the period between the third quarter of the

⁹ According to Nørlund's calculations 71 percent of the gifts received by Sorø between 1241 and 1286 were still provided by descendants of the Hvide family. Between 1286 and 1319 this share had gone down to 45 percent and after 1319 to nothing. Nørlund, *Klostret*, 69.

¹⁰ Jurisdiction over Sorø's labourers was granted to the abbot by way of episcopal and royal privileges in the early fourteenth century (DD 2.7.99, 2.10.21). These rights may have been explicit extensions of authority already exercised by Sorø at that time: see McGuire, *Cistercians in Denmark*, 205. On monastic immunities, see also Poul Johs. Jørgensen, *Dansk retshistorie* (Copenhagen: Gads Forlag, 1940), 408–409.

¹¹ On legalism and the use of formal law by Danish Cistercian communities in the thirteenth and fourteenth centuries, see McGuire, *The Cistercians in Denmark*, 176–77.

¹² Depending on how you count and classify. Some disputes are linked because they concern the same property or the same persons and may be understood as different phases of one prolonged conflict rather than two or three individual conflicts.

thirteenth century and the first decades of the fourteenth century. The last reported dispute was settled in 1421. All disputes concerned property or territorial control: rights to land, meadows, woods, water mills, farmsteads, access to fishing ponds, definitions of boundaries, control of roads and passages. The vast majority of those who opposed or were opposed by the monks belonged to the local aristocracy: landowning magnates, lay lords, knights from the region, in many cases members of the Hvide family, one a high-ranking royal official. Only one or two disputes involved what may be allodial peasants. Conflicts with other ecclesiastical institutions likewise appear one or two times only.

The donation book hardly presents a full picture of Sorø Abbey's disputing activities. First, only cases in which the monks managed to keep the disputed property (or parts of it) are included. At one point the text expressly informs us that some of the properties acquired by the monastery had been lost again *ad hæredes priorum possessorum*, to heirs of the former possessors, probably after litigation.¹³ The monks were conscious that monastic property might in fact be lost to legally rightful claimants. Hence, in the fourteenth century they sometimes included a clause in charters recording gifts or land exchanges obliging the donor or vendor to compensate Sorø in full if the property alienated to the abbey was lost again due to justifiable claims from third parties.¹⁴ Second, when editing the donation book in 1440 (and/or reworking their documents in general) the monks sometimes consciously omitted a foregoing phase of conflict from the account of a land conveyance. In the 1330s, for instance, Sorø Abbey acquired a certain estate from the nobleman Johannes Hvitting (a case discussed in detail below). This particular transaction and its prehistory are reported no fewer than three times in the donation book. One version relates how the two parties fell out bitterly with one another before agreeing about the gift; the two other versions, however, pass over the moment of conflict. Other records of seemingly uncomplicated property transactions may hide similar phases of dispute. Third, a few conflicts involving Sorø are known from other sources but not included in the donation book. In 1326, for instance, monks from Sorø were forcibly driven away from a newly established daughter house in Knardrup (northern Zealand) by two knights, and in 1349 the bishop of Roskilde threatened

¹³ SRD, 473.

¹⁴ SRD, 500 / DD 2.10.379, compensation due within one year; see also SRD, 515–516.

to excommunicate those who cut down trees on Sorø's land without the abbot's permission. Neither dispute is recorded in the donation book.¹⁵

Also left more or less in silence by the records of the donation book are the viewpoints of the opposing parties. Disputes arose because heirs refused to surrender property legally bequeathed to Sorø by their parents or kinsmen; because heirs reclaimed or forcibly seized property rightfully donated by their kin; because neighbours disputed or violated the boundaries of monastic lands, woods, meadows, etc.; because neighbours vandalized mills owned by the abbey; or because of unspecified *tribulationes* visited upon the monks by local lords. Compared, for instance, to the famous French narrative charters from the eleventh and twelfth centuries analysed by scholars of the "legal anthropology" strand, Danish charters in general are quite laconic in style—and that goes for the Sorø records as well. They do not give any details of the arguments exchanged at *placita* or elsewhere, and rarely inform us about the possible motives or rationales of lay litigants. At the same time, the discourse of the Sorø records is actually fairly moderate. Many accounts simply state in a sober, matter-of-fact way that a dispute arose between the abbey of Sorø and this-or-that man concerning this-or-that property. Only in a few instances do the monks tag their enemies directly as being "evil," "greedy," or "wilfully disobedient"; or their actions as being carried out *violenter*.

*Negotiation and Compromise v. Court and Judgment:
An "Ideal Type" Distinction*

The question of growing legalism and diversification of dispute strategies raised in the introduction can be outlined by contrasting two particular conflicts from the Sorø dossier: the settlement by compromise of a troublesome relationship with a local castle lord in 1205 and the formal adjudication of a land dispute in 1280.

As mentioned earlier Sorø Abbey was located on an island. The only dry land access to the outside world (on the northern side of the lake) was controlled by the great castle of Pedersborg, whose lords never befriended the monastery. The castle was raised in the mid-twelfth century by Peder Torstensen, a powerful magnate with close relations to two successive

¹⁵ The Knardrup affair: McGuire, *The Cistercians in Denmark*, 194–195; trees: DD 3.3.124.

kings, who had married a woman named Cecelia of the Hvide family.¹⁶ When Cecilia wanted to contribute to the endowment of the new Cistercian foundation in 1161, Peder restricted the size of her gift, much to the annoyance of the monks, who blamed Peder for his “harshness” (*duritia*). The relationship between Sorø and its closest neighbour was bad and became worse when Peder’s grandson Johannes took over as lord of Pedersborg. According to the donation book Johannes made the monks suffer “daily tribulations.” The text does not explain in what ways—perhaps he was demanding tolls or troubling the northbound traffic from the island?¹⁷

To stop the menace from the castle the monks turned to their patron, Absalon’s cousin and successor at the episcopal see of Roskilde, Peder Sunesen, who was also a second cousin to Johannes of Pedersborg. In 1205 the bishop-patron managed to negotiate a settlement. With urgent requests, backed up by “other friends” (*aliorum amicorum*), he persuaded Johannes to make a large-scale exchange of properties with Sorø. Johannes was to give up the castle and village of Pedersborg with all adjoining lands, including woods and farmsteads in eleven other villages nearby. In return Johannes would receive six whole villages, one of them with a mill, plus lands, pasture, and fishing grounds in another seven villages, all thirteen of them located far from the monastery. The mutual transfer of property was made by the customary ritual called *skødning* (Latinised as *scotatio*): the alienator placed a sod from the land in the corner of the recipient’s cloak (the *skød*), or—in case of conveyances to ecclesiastical institutions—at the altar or in the corner of the altar-cloth.¹⁸ In material terms the deal was clearly advantageous to Johannes, but even so the bishop had to add a considerable amount of money (*sex marcas auri tribus oris minus*) from his own pocket to satisfy him and make him give up his grandfather’s stronghold. The monks paid a considerable price, but they got rid of a hostile neighbour and acquired valuable land close to the abbey. They also came to control the only dry passage to and from the island. Pedersborg castle was soon pulled down.¹⁹

¹⁶ On Peder Torstensen, see Michael Kræmmer, “Peder Torstensen af Borg”, *Årbog for historisk samfund for Sorø Amt* 88 (2001).

¹⁷ SRD, 474–75 / DD 1.4.104.

¹⁸ On the ritual of *skødning* or *scotatio*, see the introduction to this section of the present volume.

¹⁹ The acquisition of Pedersborg allowed the monks to establish a much-needed water-mill at the monastery. The work—initiated immediately after the exchange and paid for by Bishop Peder Sunesen’s brothers—involved one of medieval Denmark’s greatest

The Pedersborg affair in 1205 looks very much like a “classic” dispute settlement: A monastery is harassed by a hostile castle lord nearby. The monks appeal to the bishop, who also happens to be a leading figure of the abbey’s patron family and a distant relative of the castle lord. The bishop engages in out-of-court-negotiations with the lord; not so much, it seems, on the basis of church authority, but as a mediator. Other friends become involved in the negotiations as well. The conflict, in other words, is handled within an informal structure of personal relations and social bonds. The bishop-patron-kinsman-mediator offers to support an agreement with his own funds. Finally, a mutual concord (of which the bishop-patron-kinsman-mediator is now himself a part) is reached. The parties exchange property. Public ritual transactions are performed. Conflict, out-of-court-negotiation, mediation by third parties, amicable settlement, transaction.

A couple of generations later the monks of Sorø were involved in a conflict that was solved by quite different means. The account is worth quoting in full:

A controversy had arisen between the monastery of the Holy Virgin in Sorø and the noble men Lord Toke Jurissen and Stig Jurissen, and their co-heirs, concerning the properties which are called Ødemark, the wood in Nørre Djungsved and other adjoining lands. On the command of Lord King Erik, at a time and place set according to the laws of the province, twelve jurors of Slagelse *herred* affirmed by oath that the said property Ødemark belonged fully and legally to the monastery in Sorø, and it was immediately adjudicated to the monastery, according to the judgment of the *thing*, to have in perpetual possession, in the year of the Lord 1280, on the day of the holy virgin Cecilia. There are two letters on this, one is the confirmation by Lord King Erik, the other is from the *thing* itself on the aforementioned oath by the jurors.²⁰

engineering achievements: the digging of a long canal across the island to provide an outlet for the water from the mill. See Tage E. Christiansen, “Sorø Klosters Krise—Sunessonernes Mølledige,” in *Det skabende menneske. Kulturhistoriske skitser tilegnet P. V. Glob 20. februar 1981*, ed. Robert Egevang (Copenhagen: Nationalmuseet, 1981), I. The timing of the project leads one to speculate about the cause of the conflict and the way it was represented in the Sorø account. Was Johannes really harassing the abbey from his fortress? Or was it rather the monks who had a grudge against the lords of Pedersborg because their territorial control for years prevented the construction of a watermill?

²⁰ “Exorta controversia inter Monasterium beatæ Virginis in Sora & nobiles Viros Dominum Tukonem Jurissön & Stigotum Jurissön, & eorum cohæredes, super bonis dictis Öthemark, silva in Nørre Diwnxwith, & aliis pertinentiis, XII. nominati de provincia Slauelsehærit ad mandatum Domini Erics Regis, & secundum Leges terræ, loco & die eis præfixis, affirmaverunt juramento suo, qvod bona prædicta Öthemark integraliter & legaliter attinerent Monasterio Soræ, statimque de iudicio ejusdem placiti adjudicata sunt

Toke Jurissen and Stig Jurissen were brothers, distant descendants in direct male line of one of the founders of Sorø Abbey. Like Johannes of Pedersborg they belonged to the high nobility, and at least Toke seems to have been directly involved with the king in the politics of the realm.²¹ The disputed land of Ødemark was situated between Sorø Abbey and Toke's estate in Ruds Vedby. Sorø most likely had acquired Ødemark from some of Toke and Stig's ancestors,²² but there is no record of such a transaction in the donation book or elsewhere. The wood in Djungsved lay close to Ødemark. It was one of the possessions gained by the abbey from the Pedersborg deal discussed above, and had already been the object of another dispute at some time between the exchange in 1205 and 1214 (more on this below).

In comparison with the Pedersborg settlement this case is handled in a much more formal, institutional manner. On the order of the king, who must have been approached by the monks, the dispute is brought to the public assembly of the *thing* (*placitum*) in Slagelse *herred*.²³ The record makes explicit reference to a written law code, the provincial laws of Zealand, and its provisions concerning the time and place of a valid *thing*.²⁴ The conflict is settled by a clear-cut decision, pronounced by the assembly of the *thing* on the basis of a collective oath, performed according to a statutory legal procedure by a local twelve-man board. The disputed land is assigned completely to one of the parties. The judgment is corroborated by the king. Both the judgment of the *thing* and the king's confirmation are put into writing for the monks to keep as evidence of their right.

Of course, the formularized record does not tell us about the whole process. Negotiations of a more informal character may very well have

monasterio in possessionem perpetuam Anno Domini 1280. die beatæ Cecilie Virginis. Super hoc sunt litteræ duæ, una, quæ est confirmatio Domini Erici Regis, alia, quæ est ipsius placiti super juramento nominationis prædictæ. SRD, 498 / DD 2.2.420.

²¹ DD 2.2.179 (3 May, 1272). Toke was married to a daughter of the prominent knight Jon Jonsen Lille, cf. Ulsig, *Danske adelsgodser*, 76–77.

²² Nørlund, "Jorddrotter," 157.

²³ On the Danish medieval *thing*, see the introduction to this section. Ødemark was in fact located in Alsted *herred* (parish of Bromme), although very close to the border of Slagelse *herred*.

²⁴ King Eric's Law of Zealand, book 2, ch. XLVIII, *Danmarks gamle Love paa Nutidsdansk*, 3 vols., ed. and trans. Erik Kroman and Stig Luul (Copenhagen, 1945–48), II, 47–48 (commentaries in III, 106–7): The place must be the one appointed by the king and approved by every man of the *herred*; it cannot be moved, etc.; the time is the lawful day of the *thing*, which they have had from time immemorial; hearings must begin no earlier than the middle of the morning and must end before mid-evening, etc.

preceded the oath at the *herred* court.²⁵ Also, the proceedings at the *thing* and the selection of the men of the board was no doubt influenced by power and backstage pressure.²⁶ Even so—and even considering that the issues at stake in the Pedersborg and Ødemark disputes are not strictly comparable—the judgment of 1280 clearly represents a step in the direction of a more formal, “judicial” way of settling conflict. There is a court assembly, procedures referring to written law, a clear-cut judgment, written statements on the ruling of the board of nominated men—and a king acting as participatory agent and guarantor (although still without legal force at the *thing* itself).²⁷

Court and Judgment...

Many of the conflict accounts in the Sorø dossier can be grouped according to the “ideal types” outlined above. To start with the court-and-judgment model:

In 1279 Lady Cecilia of the mighty Glug-branch of the Hvide family granted all her property in Luderup (or Lorup?) to Sorø Abbey by way of a testament (*ratione testamenti*). After her death the gift was appropriated by her brother Oluf Tagesen, knight and royal counsellor, who claimed that the testament was invalid according to the provincial laws of Zealand. The monks, however, insisted that the testament had been made public by Oluf Tagesen himself at Cecilia’s funeral. They turned to the episcopal court of Roskilde, where Oluf was ordered to relinquish the property. The knight appealed against the judgment, but failed to appear at the appointed day, whereafter the bishop ratified the sentence.²⁸

²⁵ Cf. the account of Sorø’s dispute around 1290 with landowners in Keldbylille in the island of Møn. The controversy went on for some time, until both parties on the *concilio* of *discretiores* consented to have a board of nominated men at the *thing* of Møn decide the matter. The court session seems to have been presided over by a royal official, the *herredsfoged* (*advocatus*), who was also the *hovedsmand* (*capitaneus*) of Stege castle (SRD, 501 / DD 2.3.391).

²⁶ Cf. Skyum-Nielsen, *Fruer og vildmænd*, 32, on the repeated complaints about manipulation, threats, and abuse of power practised by magnates at the *thing*. The specific statement that the *thing* “adjudicated” the land to Sorø may be an addition from the process of redaction in the 1440s. See Anders Leegaard Knudsen, “Testimonia Placiti—Private Charters as Public Instruments: A Study in Medieval Danish Diplomats,” *Archiv für Diplomatik* 57 (2011), 164.

²⁷ Jørgensen, *Dansk Retshistorie*, 505.

²⁸ SRD, 512 / DD 2.2.384. Cecilia was married to the prominent knight Anders Nielsen. Oluf Tagesen is mentioned frequently in documents between 1266 and 1307. His estates

In 1288 a dispute arose between Sorø Abbey and the parish church of Solbjerg (or its owners?) concerning a piece of land in the village. The conflict was settled in favour of Sorø “by a legally denominated board before Lord Niels, priest of Gierslev, whom Lord Johannes, archdeacon at [the episcopal see of] Roskilde, had authorized to adjudicate the case.” The judgment was confirmed by Archdeacon Johannes himself later in the same year.²⁹

In 1349 Sorø Abbey on the one hand and the noble man Tue Sverkersen and his wife Ingerd on the other had been disputing a property in Gerlev (Slagelse *herred*) for a considerable time. In the end, the case was brought to the provincial *thing* in Ringsted, where it was ascertained (*comperto*) that the monastery had acquired the disputed land from Ingerd’s father by lawful purchase and ritual transfer (*scotatio*). Tue and Ingerd renounced their claims.³⁰

In 1389 the borders of Sorø’s estate at Tågeskov (southern Zealand), acquired by way of testament in 1334, was disputed (*calumpniatus*) by yet another nobleman, Henrik Uffesen. The two parties decided to have a twelve-man board from the *herred thing* of Baarse define the extent of the estate. The sentence was afterwards confirmed by Queen Margrethe.³¹

And finally, the provincial *thing* decided a case in the early fifteenth century. A noble man violently prohibited the monastery from fishing for herring and dolphins off the coast of Ejby by Isefjord. Sorø’s abbot took the case to court, where it was concluded in 1402 and once again in 1421 that the monastery was entitled to enjoy the same fishing rights as other landowners in Ejby.³²

Negotiation and Compromise...

Turning then to the out-of-court model, the first conflict of this kind is a direct spin-off from the Pedersborg deal and a characteristic example of

were concentrated in the southwestern part of Zealand, around Skelskør. Ulsig, *Danske adelsgodser*, 67–71.

²⁹ SRD, 508 / DD 2.3.287 and 291. Sorø Abbey had been conferred the right to collect tithe in the parish of Gierslev.

³⁰ SRD, 513. DD 3.3.197.

³¹ SRD, 501 / DD 4.4.149, 4.4.150.

³² SRD, 493–94. DD 4.8.510 (<http://diplomatarium.dk/drb/diplomer/02-200.html>). The conflict about fishing rights in Ejby went on for many years. In 1466 a royal court decided that Sorø was not allowed to block neighbouring landowners’ access to the fishing grounds by putting up fences and ropes, cf. *Danske domme 1375–1662*, 8 vols., ed. Erik Reitzel-Nielsen (Copenhagen: C.A. Reitzels Forlag, 1978–87), I, no. 17, 78–79.

how the settlement of one dispute often triggered the outbreak of another. As part of the exchange in 1205 the monastery had acquired a wood at Djungsved. When the monks moved in, the boundaries of their part of the wood were disputed by one of the local landowners, the knight Knud Knudsen. Once again it was Bishop Peder Sunesen of Roskilde, architect of the Pedersborg agreement, who “restored the grave controversy to a good peace” (*gravem controversiam . . . reduxit ad pacem bonam*) by having the parties swap property: Knud was persuaded (or pressured?) to give up his part of Djungsved wood in return for a piece of farmland in faraway Skørpinge.³³

The same pattern is found in the next recorded conflict. Shortly before his death in 1214 Bishop Peder Sunesen had made a gift *in elemosinam* at the high altar of Sorø Abbey consisting of a manor with all adjoining lands in Broby village (northeast side of Tystrup Lake, some ten kilometres south of the abbey).³⁴ The donation also included a mill. After Peder’s death Karl, a knight from Broby, violently disturbed the mill (*infestavit . . . molendinum illud graviter*). This time the parties apparently managed to settle the conflict amicably themselves, again by way of a property exchange: Karl transferred all his possessions in the village to the monastery and received farmland *in recompensationem* in a place called Gurthæbol or Gvrðhæbol. The ritual *scotatio* was performed in the presence of Karl’s sons and the local priest of Broby.³⁵

In 1254 the monks saw some of their possessions in nearby Suserup, which had been donated to the monastery in return for considerable loans and counter gifts more than forty years earlier by a dean of Roskilde cathedral,³⁶ claimed by the donor’s heirs. The *controversia* seemingly went on for some time. Then, “at last, many noble men and others convened and with the help of God Almighty they restored the present discord to a good peace.”³⁷ Exactly who the mediators were, how they were related to the litigating parties, why they chose to engage themselves or how and why they were called upon are all important questions the sources do not,

³³ SRD, 475 / DD 1.4.105.

³⁴ SRD, 475 and 484 / DD 1.5.43.

³⁵ SRD, 475 and 484–85 / DD 1.5.52. Gurthæbol or Gvrðhæbol was located in or close to Broby, cf. DD 2.11.243.

³⁶ SRD, 483 / DD 1.4.63.

³⁷ “convenerunt tandem multi nobiles atque alii, & Dei omnipotentes auxilio pendentem discordiam reducerunt ad pacem bonam,” SRD, 484 (slightly different wording: 506) / DD 2.1.142.

unfortunately, allow us to answer in any detail.³⁸ At any rate, the compromise in this case carefully balanced the positions of both parties: Sorø Abbey was allowed to keep two-thirds of the contested wood, meadows, pasture, mill etc., while the heirs were assigned the last third. The monks could hold on to valuable possessions in an area where they were purposively building up a whole complex of estates at the time,³⁹ while the heirs on the other hand had their claim and status duly recognised.

Rents earned from pasturage for pigs ("pannage") were the object of a *controversia* between the abbey and two knights, Karl "Karske" Pedersen and Peder Nielsen, in 1313. At the north end of Tystrup Lake three woods were bordering on one another, one of them owned by the knights, the other two by Sorø Abbey. The parties couldn't agree about the *obventio* or "aldengield" (*oldengæld*) paid from these woods until, *mediantibus amicis*, they entered a *concordia*. The disputed woods were to be shared in common and all revenues from the pannage therein divided between the knights (four-fifths) and the abbey (one-fifth). By entering this accord the parties would prevent all future impediments, difficulties, and wrongs between them.⁴⁰

In the 1330s mediators helped settle a conflict between Sorø and the nobleman Johannes Hvitting from Niløse (around fifteen kilometres north of Sorø). In 1329 Johannes inherited a large manor with a watermill in Alsted *herred* from his grandmother. The property had since 1316 been mortgaged to Sorø for 200 marks of silver. As a gift *in caritate* Johannes's grandmother and her husband had even granted Sorø the right to enjoy all use and income of the property until it was redeemed. On accession to his inheritance Johannes first renewed the pious donation of the *fructus*. He also freed Sorø from having to pay for any damages that had been incurred upon the property. In honour of these gestures the monks offered him a lease of land in Døjringe for an annual fee of three marks, with an initial period of three years free of payment. Johannes agreed to the lease and decided to top the chain of exchanges by granting Sorø the manor in Alsted *herred* as a perpetual gift *pro anima sua*.

³⁸ This has not just to do with the particular nature of the Sorø donation book or Danish medieval sources in general. The actual process of mediation is simply rarely exposed in medieval texts, perhaps—as suggested by Hermann Kamp—because of the inherent nature of mediation: done in secrecy, by proxy, etc. Hermann Kamp, *Friedensstifter und Vermittler im Mittelalter* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2001), 10.

³⁹ Nørlund, *Klostret*, 83–84.

⁴⁰ SRD, 516 / DD 2.7.27.

Irritated (*exasperatus*), however, with the burden of the three-mark annual fee for the Døjringe estate, Johannes later regretted his pious behaviour and started harassing the monastery (*vexavitque monasterium in multis*). He probably felt offended: by insisting on the fee the monks had failed to recognise his family's long-lasting generosity and friendship. They did not appreciate the immaterial aspect of his gift, but saw it as quite simply a redemption of the loan (*scotavit... monasterio in solutum prædicti mutui*). Johannes continued to trouble the monastery "until mediators intervened" (*donec mediatores intervenerunt*) and persuaded him to make peace with the monks. To soften Johannes's attitude the mediators first instructed the monks to concede 50 marks of silver to him, "and so by this everything was restored" (*Sicque per hoc restaurata sunt omnia*). Johannes repeated his donation of the manor in Alsted *herred* "for the benefit of his soul and the souls of his ancestors," on conditions this time laid down by the mediators (*conditionibus mediis*) that the monks duly recognise his status as benefactor of the monastery. His name would be inscribed in the book of the dead; he would receive an honourable burial alongside his ancestors in the abbey church; the funeral procession would be paid for by Sorø; and the monks would pray for him and his ancestors, as they prayed for the founders of the monastery. Johannes's *scotatio* was made at Alsted *herred thing* in 1333 and corroborated one year later at the provincial *thing* of Zealand, where he also performed the rite of livery of seisin (*indførsel*).⁴¹ Finally, in 1335, the disputing parties met with *mediatores* once again. At Sorø's estate in Spanager they drew up a document to attest a solemn renunciation, made by Johannes on behalf of himself and his heirs, of any future legal action or help concerning the property and everything that had been between him and the monks.⁴²

⁴¹ On this particular ritual and its introduction in the thirteenth century, see Michael H. Gelting, "Circumstantial Evidence: Danish Charters of the Thirteenth Century," in *Medieval Legal Process: Physical, Written, and Spoken Performance in the Middle Ages*, ed. Marco Mostert and Paul S. Barnwell (Turnhout: Brepols, 2011), 32–33.

⁴² Sorø's transactions with Johannes Hvitting are described in three different redactions in the donation book, two of them consciously (and a bit clumsily) passing over the actual phase of conflict: SRD, 479–80 (incl. dispute), 489–90 and 520–21 (without dispute). DD 2.7.399, 2.10.192, 2.10.406, 2.11.131, 2.11.229. In 1343 Johannes Hvitting's widow Christina made a considerable donation of land to Sorø, SRD 480 and 489 (the last version crossed out in the manuscript, f. 16v, as if intended to be deleted in a final redaction). DD 3.1.338.

Mixing Options, Means, and Procedures

If a number of conflicts in the Sorø dossier may thus be categorised according to the ideal-type distinction between out-of-court settlement and formal legal procedure, the material as a whole presents a much more complicated picture of mixed procedures, blurred terminologies, and alternating strategies. Dispute settlement by “private” mediation, for instance, gradually came to incorporate elements from learned law and adjusted to rules and regulations established by written codes. The renunciation included in the final document of the settlement between Sorø and Johannes Hvitting discussed above is an example. *Renunciatio* clauses were a Roman law import. They started to be applied by Danish charter scribes in the thirteenth century and had their heyday in the first half of the fourteenth, the very time when Johannes concluded his peace with Sorø.⁴³

Another example from the same case: when Johannes Hvitting transferred the farm in Alsted *herred* to Sorø Abbey in 1333–34, the scotation ceremony took place at the *herred thing* of Alsted and the provincial *thing* of Zealand—that is, at public secular court assemblies. This was quite different from the conflicts discussed earlier, which were settled in the first decades of the thirteenth century (Pedersborg, Djungsved, Broby). In these cases the scotations were performed at or in the immediate vicinity of the very land that was to be transferred or at the sacred altar of Sorø—that is, within its own particular space and socio-juridical context.⁴⁴ The change was due to the promulgation of the Law of Jutland in 1241 and its innovative provision, introduced as a remedy against contestation of land conveyances, that in order to be valid scotations must happen in the public court. Prescriptions for scotation at the *thing* were also included in King Eric’s Law of Zealand, compiled a few years after the promulgation of the Law of Jutland. The impact on practice in Zealand seems to have been almost immediate. Thus in 1248 a property exchange involving Esum Abbey (the mother house of Sorø) was made at the *thing* as well as at the altar, while in 1250 a scotation of land to Æbelholt Abbey is reported to have been performed at the *thing* “according to the requirement of the

⁴³ On renunciations in Danish charters, which seem to have followed European patterns, see Ole Fenger, *Notarius publicus. Notaren i latinsk middelalder* (Århus: Aarhus Universitetsforlag, 2000), 133–42.

⁴⁴ Cf. the twelfth century transactions at Esum Abbey analysed in Esmark, “Godsgaver, *calumniae* og retsantropologi,” 150–60, and 167.

Law of Zealand.”⁴⁵ In Sorø the monks received a huge gift in that same year by way of scotation made “at the public *thing* according to the laws of the fatherland” (*secundum Leges patriæ in communi placito*), and the mention in another 1250 charter of a scotation of land to Sorø being made *legaliter* most likely alludes to a performance at court as well.⁴⁶ Scotation at the *thing* did not end scotation at the altar—the symbolic meanings and social functions of the ritual extended way beyond the strictly juridical—and so what happened was rather a “multiplication of the scotation ceremony.”⁴⁷ The procedure described in the record of a property transfer between Sorø and a local nobleman in 1259 was common:

The scotation of this exchange was first made at the monastery of Sorø in the presence of the convent on Monday, the twentyeighth day of November, then at the *thing* of Ringsted *herred* at Mulstrup on Monday, the first day of December, and thirdly in Flakkebjerg *herred* in Ting-Jellinge on Tuesday, the third day of December, in the year of the Lord 1259.⁴⁸

Just as informal settlements might incorporate elements of formal law, cases that did in fact go to court were not necessarily concluded with a one-sided judgment. An example is a conflict from the early fifteenth century between Sorø and a knight called Erik Thomsen. The issue of the conflict was very similar to the above-mentioned one settled by mediation and compromise in 1313: both parties claimed revenues from pasture for pigs in certain woods around Tystrup Lake. This time, February 1409, the dispute was settled at the provincial *thing* in Ringsted where the litigants agreed to have a board of twelve knights and esquires decide on the matter. These men concluded that the revenues should be split between the two sides, with Sorø enjoying three-fourths and Erik Thomsen one-fourth.⁴⁹

⁴⁵ DD 1.7.289 and 2.1.18, see Vogt, *The Function of Kinship*, 70–71.

⁴⁶ SRD, 481–482, 501–502, 512 / DD 2.1.4, 2.1.23. The donors of the two 1250 gifts to Sorø, Lady Ingeborg of Kalundborg (of the Hvide family) and Duke Knud, son of King Valdemar II, were half-siblings.

⁴⁷ Gelting, “Circumstantial Evidence,” 9. Gelting is probably right to suggest “a general unwillingness on the part of the greater nobility to be obliged to perform their transactions in any particular way or place.” (ibid., 26).

⁴⁸ “Scotatio hujus commutationis facta est primo in Monasterio Soræ in præsentia Conventus, IIII. Kal. Decembris, feria secunda, deinde in Placito Ringstædehærit juxta Mulstorp Kal. Decembris, feria secunda, tertio in Flakkebergshærit, Joelinge, IIII. nonas Decembris, feria tertia, Anno Domini 1259.” SRD, 498 / DD 2.1.296, 2.1.297, 2.1.298. Scotations performed outside court seem to have continued well into the fifteenth century, cf. a donation made in the church of Ribe in 1428 with no mention of the *thing* at all [<http://dd5rk.dsl.dk/diplom/14280413001>].

⁴⁹ SRD, 502 / DD 4.11.502 [<http://diplomatarium.dk/dd/diplomer/09-005.html>]. A year later Erik Thomsen granted one of the disputed woods to the abbey. In gratitude of the gift

A propensity to seek some sort of balanced outcome can also be seen in cases handled in church courts. In October 1291 two noblemen, Illuge Thomsen and Niels Pallesen Ræv, were summoned before a papally authorised judge at the court of Roskilde cathedral for having occupied a property bequeathed to Sorø Abbey in 1288 by their wives' grandfather. The property—known as Stenmagle or Øksneskov—had in fact been disputed by Sorø and different members of the family since 1213 (see further, below). At the court in Roskilde Illuge Thomsen and Niels Pallesen Ræv gave up their claim to the property as well as to some money allegedly deposited at the monastery by their wives' grandfather. The abbot of Sorø responded to this *resignatio* by renouncing all claims raised on his side against the two noblemen concerning a debt of 24 marks of silver, profits from the occupied property, and litigation expenses. Quitclaim met with (or was prompted by?) ample compensation. Court proceedings concluded by compromise.⁵⁰

Having taken a lawsuit to court in the first place did not prevent litigants from going back to mediation, either. A dispute in the 1280s about profits from milling is a case in point. At Kongskilde at the north end of Tystrup Lake, Sorø Abbey had a watermill. Peder Olufsen, knight and lord of a stronghold at Tystrup about five kilometres away,⁵¹ had another mill erected in the same area. The text is silent about the initial phase(s) of the conflict, but at some point in 1280 Peder Olufsen had destroyed (*destruxerat*) Sorø's mill.⁵² The conflict was then brought to the public *thing*, where it was discussed many times (*sæpius*). A settlement was not achieved, however, until five *amici*, all prominent lay nobles,⁵³ engaged themselves as *mediatores* and had the parties agree to the following *pactio*, concluded in July 1282: in order to compensate the monks for their loss Peder Olufsen obligated himself to get them land acquired from a

the monks allowed him to keep the property to his death (SRD, 502 / DD 4.12.130 [<http://diplomatarium.dk/dd/diplomer/10-139.html>]).

⁵⁰ SRD, 490–91 / DD 2.4.41. At the time of the court session in Roskilde Illuge Thomsen had in fact already left his part of the disputed property to another heir, Lave Lavesen. See DD 2.4.3 and Nørlund, *Klostret*, 64–65.

⁵¹ Possibly a cousin of royal *camerarius* Rane Jonsen, who was famously accused of the murder of King Erik V Klipping in November 1286 and exiled. Ulsig, *Danske adelsgodser*, 81.

⁵² McGuire, *The Cistercians in Denmark*, 178, believes the knight attacked the mill in an unprovoked “fit of anger,” while Nørlund, *Klostret*, 96, and Michael Kræmmer, *Kongemordernes slægt* (Copenhagen: Hansen & Jespersen, 2007), 64–65, view the destruction as an act in an ongoing conflict.

⁵³ Niels Drukken, whose coat-of-arms was included among those painted a few years later in the abbey church to celebrate Sorø's benefactors; Johannes Ebbesen, who made donations to Næstved Abbey; Olav Lunge; Matthew Taa; Johannes Simonsen.

third party in one of three specified localities nearby. When estimating the value of the land the parties committed themselves to relying on the judgment of the mediators (*judicio mediatorum*). If Peder did not manage to compensate the monks in this way, the mediators would have to satisfy them with property from his patrimonial estates in Eskilstrup in a way that would be answerable to God.

"The mediators did nothing to the benefit of the monastery in this" (*In istis nichil profuerunt Monasterio mediatores*), the text then goes on to say, implying, probably, that Peder's mediating friends perhaps did not strain every nerve to fulfil the agreement. At any rate, the dispute was not settled finally until two years later, when Peder "reconciled himself with the brothers" (*composuit se cum Fratribus*) by making a pious donation to the monastery of a manor farm in Bringstrup with all adjoining lands. In material terms this was definitely better for Sorø than the 1282 deal. On the other hand, the charter drawn up to witness the transaction represents the gift as being both a donation in its own right, granted for the benefit of Peder's soul, and a recompense for the demolished mill (*dedit in redemptionem peccatorum suorum atque pro recompensatione ejusdem molendini*). The impression that the gift was not a downright surrender by the Tystrup lord, but rather a mutually acceptable way to end the conflict, is confirmed by the clause at the end of the charter, stating that Sorø would only take possession of the property after Peder's death. To make the conveyance publicly known and legally valid the parties then turned again to the *thing*, where Peder performed the rite of *scotatio* in May 1284 in the presence of three named magnates of the highest status "and many others."⁵⁴ Two years later the ceremony was repeated before the king.⁵⁵ Finally, in 1313 Peder's son Karl "Karske" Pedersen corroborated the gift on the occasion of the settlement, discussed above, of his dispute with Sorø about revenues from pasturage for pigs, also at the north end of Tystrup Lake.⁵⁶

Arbitration

If negotiations reached a deadlock, and the litigants still preferred to avoid a regular judgment at court, they could also turn to arbitration in the sense

⁵⁴ Count Jakob of Halland and Peder Jakobsen, both suspected accomplices in the murder of King Erik V Klipping in November 1286, and Jon Jonsen Lille of the Hvide family.

⁵⁵ SRD, 482, 501, 506 / DD 2.3.43, 2.3.93, 2.3.131, 2.3.227.

⁵⁶ SRD, 506 / DD 2.7.26.

known from Roman and canon law. The two parties voluntarily agreed to choose *ex compromisso* a panel of arbiters to decide their dispute, and promised to respect the sentence under pain of a mutually agreed fine (*cautio*). In cases like the ones reported in the donation book where ecclesiastical and lay litigants were confronting each other, the arbitration tribunal often consisted of members from both orders.

Thus, around 1306 a dispute arose between Sorø and the knight Åge Saksesen, who had his meadows at Dalby and Stenkelstrup damaged by a flood from Sorø Abbey's watermill at Spanager. At the time of the flooding the land was mortgaged to Oluf Tagesen, the magnate who objected to his sister's testament in 1279, but as "the true owner" (*verus possessor*) Åge still watched over it. The two parties met and consented to have Bishop Oluf of Roskilde and the knights Niels Herlufsen and Knud Jul handle the case.⁵⁷ The sentence of the *arbitri*, pronounced in Roskilde, looks like a compromise: on the one hand the three men laid down specific regulations for the raising and lowering of the sluice gate at Sorø's mill so as to prevent further flooding of the nearby areas; on the other hand they decided that some lands which the monks apparently had paid out in compensation for the flood should return to the monastery.⁵⁸

Arbitration was also, of course, an obvious option in lawsuits in church courts. Again the judges seemed to prefer some sort of balanced outcome. One example is from the famous long-lived dispute between Sorø Abbey and successive descendants and heirs of the Hvide family concerning the manor farm called Stenmagle (or Øksneskov). Stenmagle was donated to the monastery in 1213 by Johannes, nephew of Bishop Absalon, as a death-bed gift in fulfilment of a pledge made by his father, Esbern Snare.⁵⁹ It would take no less than eighty years of recurrent conflict, however, before

⁵⁷ Knud Jul descended from the Snubbe family, which had some connection with the church of Roskilde. See Ulsig, *Danske adelsgodser*, 74.

⁵⁸ SRD, 511–12 / DD 2.6.14. The sluice gate at Spanager had to be raised at Pentecost and not lowered until Michaelmas (29 September). This corresponds roughly to the provisions in King Erik's Law of Zealand, 3. book, ch. V (raising the gate on 3 May, lowering when harvest was over. The Law of Scania, ch. 214, specifies Pentecost and Michaelmas). See for a similar case of flooding caused by a watermill near Ribe, DD 2.1.156 (1255). On Sorø's estate in Spanager, see Nørlund, *Klostret*, 61 and 89.

⁵⁹ In the 1170s Johannes's father, Esbern Snare, made a pledge to leave Sorø one half-lot of inheritance (cf. SRD, 473), the maximum limit to donations according to the Danish laws of inheritance. The pledge was corroborated in a papal charter of 1182 (DD 1.3.100) and meant to be fulfilled by Esbern's heirs. On the origins of the Danish laws of inheritance see Michael H. Gelting, "Pope Alexander III and the Danish Laws of Inheritance," in *How Nordic are the Medieval Nordic Laws?*, ed. Per Andersen, Ditlev Tamm, and Helle Vogt (2nd rev. ed., Copenhagen: DJØF Publishers).

the monks could actually take possession of the gift.⁶⁰ First, Johannes's brother Absalon Fed, a powerful magnate described by the monks as "cruel and greedy," refused to let go of the property until he repeated the donation on his own deathbed in 1232. The monks moved in at Stenmagle, but were then confronted by Johannes's and Absalon Fed's brothers-in-law: the mighty lord of Kalundborg Castle, Peder Strangesen, and his nephew Anders Grosen. These two men, both ranking among the most powerful nobles of the realm, claimed Stenmagle as their inheritance and "caused the monastery much disturbance on account of it" (*graviter infestaverunt monasterium pro eis*). The monks appealed to the pope, who appointed three Danish bishops as judges against them (*contra eos*). The parties had been litigating for several days when they finally agreed to take the appointed judges as arbitrators under pain of a fine of no less than 100 marks of silver. The tribunal was to decide on three specifically stipulated matters: the ownership of Stenmagle, the *fructus* of the land gained by Absalon Fed since 1213, and a debt of 300 marks of silver owed by Peder Strangesen and Anders Grosen from Absalon's deathbed donation. "Selected as arbitrators in this manner" (*taliter in arbitratore assumpti*), the bishops proceeded to inspect all documents and arguments, whereafter they "adjudged the said property to the monastery" (*adjudicaverunt Monasterio prædicta bona*). Concerning the two other issues, however, they went against the monks. Acting on their mandate as arbitrators (*auctoritate arbitraria*) they freed Peder Strangesen and Anders Grosen from having to pay back the profits gained from the manor and cancelled their 300-mark debt.⁶¹

Theoretically, arbitration in the formal sense differed from mediation as described in the out-of-court cases discussed earlier, in that the arbitrators were assigned the competence to pass a binding sentence. In practice, however, the boundary between the two was often blurred.⁶² This is reflected in the Sorø dossier, where two accounts of arbitration, almost from the same year and almost identical as regards the issue and outcome of the conflict, seem to use different terminologies. In 1260 the monks of Sorø and the knight Johannes Ranesen disagreed about a property exchange. The two parties jointly elected four leading noblemen as arbiters

⁶⁰ For an overview of the whole process of the Stenmagle dispute, see Nørlund, *Klostret*, 61–65; Kræmmer, *Kongemordernes slægt*, 67–72; Esmark, "Fromhed og ære," 117–21.

⁶¹ SRD, 517–18 / DD 1.6.163.

⁶² In a European context a clearcut terminological distinction was not in place until the fourteenth century. See Kamp, *Friedensstifter und Vermittler*.

and guaranteed to fulfil their decision under pain of a 10-mark fine. The record draws explicitly on Roman law discourse on arbitration:

Nobiles et discreti [names...] electi communiter in arbitros a Fratribus Monasterii de Sora ex una parte, & a Domino Johanne Ranonis parte ex altera, super commutandis rationabiliter quibusdam pratis seu terris in Gydemath & in Windethorp, recepta prius a partibus cautione super ratihabitione firma, sub poena 10. marcarum vallata, arbitrati sunt in hunc modum...⁶³

The year before, in 1259, Sorø likewise disagreed with a landowner, Skjalm Esgesen of Kirkerup, on the terms of a property exchange. They also decided to have a panel of arbitrators to decide on the matter on pain of a fine, but the record appears less influenced by formal legal discourse:

Fratres nostri de Sora & Schielm Esgessön de Kirkethorp super concambio bonorum in Hötwid & Lothorp sub certa poena compromiserunt, & tandem de industria & labore mediatorum consenserunt in hunc modum [...]⁶⁴

Here, the stipulation of a “fixed fine” is explained without use of the technical term *cautio*, and the arbitrators are simply called *mediatores*, the standard term used to denote informal negotiators and go-betweens in out-of-court litigation. Also, there is no talk of the arbitrators/mediators pronouncing a sentence; instead the text praises their “industrious work,” pointing probably to negotiation activities, which apparently helped the parties themselves to find an agreement. Correspondingly, closer analysis of the cases described earlier as being settled more or less strictly by informal mediation might in fact reveal elements of arbitration of a more formal kind. In the account of the dispute between Sorø and Johannes Hvitting in the early 1330s, for instance, there is no mention of arbitrators or fines. Peace in this case was established by way of *mediatores* (and the assistance of God), as described above. Yet the text may perhaps be alluding to some kind of binding decision when it says that the gift from the monks of 50 marks of silver that prepared the ground for a reconciliation

⁶³ “The noble and wise men [names...] had been jointly elected as arbitrators by the brothers of the monastery of Sorø on the one hand and by Lord Jens Ranesen on the other in order to arrange a reasonable exchange of some meadows or lands in Gydemath and in Vinderup. After having first received a guarantee by the parties concerning the approval [of the arbitration judgment], which was secured by a fine of 10 marks, they decided in the following manner [...]” SRD, 516 / DD 2.1.315.

⁶⁴ “Our brothers in Sorø and Skjalm Esgesen of Kirkerup have agreed, under pain of a certain fine, to submit to arbitration concerning an exchange of lands in Høed and Lorup, and at last, by the industrious work of the mediators, they have agreed in the following manner [...]” SRD, 498 / DD 2.1.296.

was made *de judicio mediatorum*, “according to the judgment of the mediators.”⁶⁵

In short, it appears that when litigants turned to arbitration they did not see themselves as entering a completely different kind of conflict resolution. New options were rather integrated into existing strategies and ways of perceiving and talking about disputing. In most cases, an arbitrator and a mediator would basically do the same job. At this point Zealand seems to resemble Frederic L. Cheyette’s Narbonnais, where men designated in thirteenth-century documents with the Roman title of *arbitri* “were doing the same things their predecessors without the title did in the twelfth and eleventh centuries.”⁶⁶ The composite nature of the arbitrator’s office—spanning, as it were, functions of judge, negotiator, counsellor, and peace-maker, and thus conflating different Romano-canonical categories—was recognised by canonists like William Durandus and reflected in the standard formula that came to be used all around Europe from the thirteenth century onwards to denote this office: *arbiter arbitrator seu amicabile compositor*⁶⁷—a formula that also found its way into documents related to the Sorø disputes, as we shall see.

Constructing and Representing Amicable Settlement

Mediators and/or arbitrators clearly had an important role in designing settlements that could be perceived or at least represented as fair and balanced by the litigants and the relevant community. Making peace was not (just) a question of applying rules to facts; socio-cultural norms, public opinion, and power had to be honoured as well. Even claims that had to be renounced in order to reach an agreement (or because they were downright unjust) often had to be recognised in some way. Dissimulation and “officialisation strategies”⁶⁸ were therefore necessary elements in the process, as illustrated by the following case.

⁶⁵ SRD, 479.

⁶⁶ Frederic L. Cheyette, “Suum cuique tribuere,” *French Historical Studies* 3 (1970): 291. For similar observations concerning thirteenth-century Spain see Isabel Alfonso Antón, “The Language and Practice of Negotiation in Medieval Conflict Resolution (Castille-Léon, Eleventh-Thirteenth Centuries),” in *Feud, Violence, and Practice: Essays in Medieval Studies in Honor of Stephen D. White*, ed. Belle S. Tuten and Tracey Billado (Ashgate 2010).

⁶⁷ Karl S. Bader, “Arbiter arbitrator seu amicabile compositor,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 46 (1960): 243, 245 and (Durandus’s definitions) 273.

⁶⁸ E.g. discursive strategies designed, whether in speech or writing, “to transmute ‘egoistic’, private, particular interests [...] into disinterested, collective, publicly avowable,

At some point in the 1290s a nobleman called Bent Johannessen mortgaged a manor farm in Vindehelsinge (some twenty-five kilometres north-west of Sorø, not far from the shores of Storebælt) with adjoining houses and a watermill, to Jon Fod, a canon, for 130 marks. Both men soon died. Bent's widow Cecilia married a certain Bo Due, citizen of Holbæk, who got the farm *cum ea*, but was unable to redeem the mortgage. Jon's son and heir Johannes Fod, a canon like his father,⁶⁹ therefore bought the property from Bo for the 130 marks. The conveyance was made at the public *thing* of the town of Holbæk in 1297 and consented to by Cecilia and some of her relatives. Nine years later at the *thing* of Roskilde Knud, a son of Bo and Cecilia, corroborated the sale and relinquished all future claims to the farm. In both Holbæk and Roskilde Johannes Fod had the transaction authenticated by a new type of written evidence which had only just come into use in Denmark: the *testimonium placiti*, a sealed document testifying that a group of seven or more men had affirmed by oath that they had witnessed a legal act taking place at the *thing*.

Then, in early 1307, Johannes Fod left the property by will to Sorø Abbey and died on April 30. The very next day, at the royal *placitum*, the executor of his testament formally *scotavit* the property to the abbot of Sorø. The monks got hold of Johannes Fod's *testimonia placiti* from Holbæk and Roskilde and were about to take possession of the manor when they were unexpectedly prevented by yet another heir. It turned out that Bent Johannessen had a son, Johannes Marsvin, born of a concubine but legitimised and so entitled to inherit from his father.⁷⁰ This man now stepped up "at the provincial *thing* and every other place" (*in communi placito & alibi ubicumque*) to stop the monks from moving in at the farm in Vindehelsinge. The controversy was not settled until the abbot *mediantibus placitatoribus*—prompted and/or assisted by mediators—bestowed 140 marks on Johannes. It is not clear whether the text is hinting at some sort of informal mediation here or if *placitatoribus* should be understood as the men of the *thing*—that is, whether the deal

legitimate interests" by manipulating collective opinion and definition of situations. See Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge university Press, 1977), 40. The term is discussed in a medieval context by Stephen D. White, "Inheritances and Legal Arguments in Western France, 1050–1150," *Traditio* 43 (1987): 97.

⁶⁹ See the papal dispensation of 1295, DD 2.4.166.

⁷⁰ According to the provisions in King Erik's Law of Zealand, book 1, ch. XVIII–XIX, legitimisation of bastard offspring had to be made publicly by the father at the *thing*.

was negotiated and concluded in or out of the court assembly.⁷¹ At any rate, Johannes then granted the contested farm to the monastery “as if it were his own property” (*tanquam de suo proprio*). The scotation took place before the king at the royal castle of Vordingborg, and later at Løve herred thing.⁷²

On the surface this settlement must have appeared acceptable to both parties. Johannes had managed to mobilise support for his claim as lawful heir; his status as *legitimus* was no longer just a theoretical, but a practical fact. It had been recognised by one of the wealthiest and most prestigious monasteries in the kingdom and solemnly manifested in front of the king and many important men on the occasion of the scotation ceremonies. The monks on their side had emerged as undisputed possessors of the farm in Vindehelsinge—possession usually being their most important priority. The price they paid, however, was not only one of 140 marks.⁷³ They also had to put a good face on a representation of the transaction which they clearly saw as being objectively false. Thus, according to the account in the donation book, a charter was set up to testify Johannes’s donation and scotation. In this charter (says the account) it was stated that Johannes redeemed the mortgage himself, and that the procurator of the monastery formally renounced all rights to it before receiving it again as a gift. “But it must be understood,” says the 1440 editor in a reflective commentary, “that this was not consistent with the truth, but a figure of speech, of course, enjoined on both parties by the mediators” (*intelligendum est hoc non fuisse secundum rei veritatem, sed secundum dici, scilicet per modum utrisque partibus a placitatoribus indictum*). The mediators (or the mediation process) had produced a “story” that may not have been entirely “true” from a strictly legalist point of view. It succeeded, however, in bridging competing claims and interests and was therefore embraced

⁷¹ As far as I can see, the term *placitator* is not used anywhere else in the donation book. DuCange has *plaideur*, *judex*, or *arbiter* for *placitator*, while *Lexicon mediae latinitatis danicae* does not include the word.

⁷² SRD 495–96 / DD 2.4.279, 2.6.46, 2.6.60, 2.6.306. Johannes Marsvin may not have been a stranger to the monks of Sorø: A sixteenth-century list of those buried inside the monastery, based on a pre-1289 source, mentions a little girl, niece of one Tule Bosen and *filia domini Johannis Marsvin* (SRD, 543). If this is the Johannes Marsvin of 1310, he must have chosen Sorø as burial place for his prematurely deceased daughter, though not necessarily before the conflict, and he must have been related to the said Tule Bosen, from whose daughter Sorø acquired an important estate at Suserup in 1287 (cf. Nørlund, *Klostret*, 83–83).

⁷³ It is not clear whether the 140 marks were paid to enable Johannes to redeem the property, or if they were intended to be a sort of “countergift.”

by both parties in ritual drama (scotiation ceremonies) as well as in written discourse (donation charter).⁷⁴

Use of Force, Use of Courts

Initiating a legal conflict by raising a claim in a public court, as Johannes Marsvin did, was certainly not the only way to go. As demonstrated in a number of the cases discussed above, lay nobles often chose to manifest their claim by way of force—seizing land, destroying mills, etc. And as we have seen, this kind of “extra-legal” disputing strategy was perfectly compatible with uses of courts and formal litigation.

In 1268 Sorø’s fields at Munkebjergby were invaded by Absalon Geritsen, Asgot Thortvardsen, and their brothers, noble landowners from the adjacent area of Rude Eskilstrup. On the king’s command the royal *dapifer* soon brought the “unjust occupation” to an end. The invaders were removed and the exact border between Sorø’s and their fields, which seems to have been uncertain, was defined in the presence of leading Zealand magnates.⁷⁵

Invading property, as did Absalon Geritsen, Asgot Thortvardsen, and co., was by no means unheard-of. In the early 1250s a certain Peder Erresen, himself royal *dapifer*, had seized violently upon Sorø’s lands at Gimlinge in a similar manner. According to the account Peder Erresen was persuaded by the malign intimation of wicked men (*inductus maligna suggestione pravorum*), and with the help of Almighty God he later changed his mind, made amends, and restored the old boundaries in the presence of the king and his noble peers.⁷⁶

⁷⁴ The account of the affair ends with a short discussion of the legal value of Sorø’s documents related to the case—Jon Fod’s testament, *testimonia placiti* from Holbæk, Roskilde and the royal *placitum*, Johannes Marsvin’s donation charter—and concludes that in case of litigation the best strategy is to rely on Johannes’s gift (*SRD*, 496).

⁷⁵ *SRD*, 516–17 / *DD* 2.2.134. Four of the knights are identified by name: Absalon Andersen who at this time possessed the estate of Stenmagle, claimed since 1213 by Sorø Abbey; Esbern Karlsen, son of the knight Karl who disputed Sorø’s mill at Broby around 1220 and one of the arbitrators deciding on Sorø’s land exchange with Johannes Ranesen in 1260; Oluf Ranesen; and Anders Nielsen, married to Cecilia, whose testament was disputed by Oluf Tagesen in 1279. Sorø Abbey got the manor and village of Munkebjergby as a gift from Esbern Snare in the twelfth century and transformed it into a grange before 1198 (*DD* 1.2.138, 1.2.241).

⁷⁶ *SRD*, 500 / *DD* 2.1.148. Sorø had acquired the estate at Gimlinge before 1215 by gift from Bishop Skjalm of Århus (a brother of Lord Johannes of Pedersborg), and transformed it into a grange before 1248, cf. *DD* 1.4.130, 1.7.287. On the office of *dapifer* (*drost*), the

In the case of Munkebjergby Absalon Geritsen seems to have reconciled completely with the monastery of Sorø, where he was later buried.⁷⁷ Asgot Thortvardsen, however, resumed the conflict some years later. This time he went to the secular court. Both Munkebjergby and Sorø Abbey were located in Alsted *herred*, but Asgot chose to take the case across the district border to Merløse *herred thing*. Perhaps he was better positioned to mobilise compurgators and influence proceedings here? He certainly obtained a favourable judgment *contra Monasterium*, apparently managing to have nominated men redefine the boundary more in accordance with his claims. On the basis of what was now a formal legal decision by a public assembly, Asgot then took possession of the same territory again. The monks responded by taking the case to yet another court, the episcopal court of Roskilde. Bishop Ingvar, who presided here, was no friend of the monastery (more on this below), but in 1289 he nevertheless annulled (*cassavit*) the judgment of Merløse *thing*. The decision by the board of nominated men at the *thing* went “against the freedom of the church” and was therefore declared null and void (*irritam & inanem*).⁷⁸ Asgot’s stubborn attempts to claim the borderlands between Munkebjergby and Rude Eskilstrup illustrate how different means and strategies could be employed in the same dispute. It also points to the rivalry between secular and church courts and the ways litigants could try to play these institutions off against each other. Another example of this is found in Sorø’s dispute with Lady Margareta of the Hvide family in the 1230s.

As mentioned earlier, Bishop Absalon’s brother and co-reformer of Sorø Abbey, Esbern Snare, instructed his sons to leave one half-lot of inheritance to the monastery when he died (see note 59, above). Esbern died in 1204, but his sons showed themselves very reluctant to fulfil their father’s pledge. As discussed above, one of the sons, Johannes, waited until 1213 before he finally granted Sorø the manor of Stenmagle. Another son, Niels Mule, royal *stabularius*, gave nothing at all before he died. Then, in 1233, Niels Mule’s son Esbern Snerling was lying on his deathbed and came to reflect on his father’s *negligentia*. To compensate the monks and to

highest-ranking royal office, see Jørgensen, *Dansk Retshistorie*, 338f; and Skyum-Nielsen, *Fruer og vildmænd*, 76.

⁷⁷ SRD, 544.

⁷⁸ SRD, 517 / DD 2.3.387. This time, in the wake of the murder of King Erik Klipping in November 1286 and the subsequent political upheavals during which members of the Hvide family were accused and exiled, the monks may have doubted the king’s willingness to support their claim and go against a verdict of the *thing*, and therefore turned to the church court of Roskilde.

benefit his own soul he bequeathed to Sorø a very good manor farm in Bringstrup plus two-thirds of a village and a mill in Ørslev. Once he was dead, however, his mother and heir, Lady Margareta (widow of Esbern Snerling's negligent father), refused to let go of the property until three times excommunicated in 1237 by the bishop of Roskilde.⁷⁹

The donation book is silent about the possible motives or legal arguments behind Margareta's obstruction of her son's will. Perhaps Margareta felt that Sorø had already received more than enough from the Hvide family.⁸⁰ Niels Mule, her dead husband, had certainly not been totally negligent towards the monastery. Way back in the 1160s, when the abbey had just been reformed, he had made a donation of land in Snertinge;⁸¹ and when he died he had been duly buried in the abbey church.⁸² There is no doubt that upon his deathbed Esbern Snerling really *did* bestow property on Sorø. His written testament, sealed and witnessed, is referred to in the papal bull authorising the bishop of Roskilde to excommunicate his mother.⁸³ His gift is also mentioned in a royal privilege from 1234 exempting Sorø Abbey from having to pay certain taxes. The exemption applied to all the monastery's lands, including the ones willed by Esbern Snerling—these are specifically mentioned. To obtain the privilege, however, the monks had not only paid King Valdemar 100 marks of silver, but had also given him the particular property in Snertinge that they had received almost sixty years before as a pious gift from lady Margareta's husband, Niels Mule.⁸⁴ Did the alienation of the donated land perhaps add insult to injury, viewed from her perspective?

At any rate, the noble woman not only kept the properties willed to Sorø by her son, she also tried to have the testament formally annulled. A procedure prescribed in the Church Law of Zealand, the Book of Inheritance, and King Valdemar's Law of Zealand allowed heirs to deny donations by an oath of twelve jurors at the secular court of the *thing*.⁸⁵ In the above-mentioned papal bull, it is explained (reproducing the appeal

⁷⁹ SRD, 481 / DD 1.6.169, 1.6.245.

⁸⁰ Nearly half of the properties owned by the monastery at the close of the Middle Ages were acquired before 1215, almost all of it received as gifts from members of the Hvide family (Nørlund, *Klostret*, 91).

⁸¹ SRD, 468.

⁸² SRD, 541.

⁸³ DD 1.6.241 (issued 11 August 1237).

⁸⁴ DD 1.6.179.

⁸⁵ Vogt, *Function of Kinship*, 69. As late as 1311–1312 Danish church leaders complained that secular authorities were preventing them from judging cases about testaments. See Skyum-Nielsen, *Fruer og vildmænd*, 191.

from the bishop of Roskilde) that Lady Margareta wanted to annul Esbern Snerling's written will by way of exactly this particular "negative proof." From an ecclesiastical point of view this "custom" was against canon law and hence unacceptable by definition.⁸⁶ The pope therefore ordered and authorised the bishop of Roskilde to carry the testament into effect, if necessary with the help of spiritual sanctions. In fact, this was not just a collision of two different courts or court systems, but of two different ways of thinking and practicing law as such.

The strategy of using different courts and authorities, both secular and ecclesiastical, was also practiced in inter-clerical conflicts. Sorø Abbey's dispute with the Dominican nunnery of St Agnes in Roskilde provides an example. St Agnes was founded in 1263 by two daughters of King Erik Plovpenning. Both women granted their entire property to the convent, piously placing their hair clippings on the altar.⁸⁷ They acted as prioresses for a period, but then decided to return to the world and to withdraw all their holdings from St Agnes's endowment. A prolonged legal struggle followed, as the nuns refused to give up what they had received from the princesses. Obtaining two letters from Pope Nicholas III in the late 1270s instructing Danish prelates to restore all property to the nunnery brought them nothing.⁸⁸ Then in 1286 one of the royal women, Princess Agnes, chose to grant some of the contested possessions to the monks of Sorø, who thereby became part of the conflict with their own interests to pursue. Agnes's gift to Sorø—land in Hesselby—was made at the provincial *thing* in Ringsted. The legality of the transaction was vigorously disputed by the nuns at this same court assembly, which nevertheless ended up reconfirming Sorø's ownership, whereafter Princess Agnes repeated her scotation.⁸⁹ Rejecting the validity of the session at the *thing* the nuns then turned to Rome and canon law again. In 1297 they managed to have the pope authorise three Danish prelates to judge the dispute with Sorø.⁹⁰ They also reached out for the help of King Erik Menved, who issued three charters in the years 1295–1297 testifying that Hesselby was indeed their property.⁹¹ Furthermore, they had the bishop of Odense, the archdeacon of the cathedral chapter in Århus, and the citizens of Roskilde certify their

⁸⁶ In a letter to Archbishop Anders Sunesen in 1218 Pope Honorius III stressed the prohibition against uses of negative proof at ecclesiastical courts (DD 1.5.140).

⁸⁷ DD 2.1.418, 2.4.205, 2.4.206.

⁸⁸ DD 2.2.172, 2.2.340, 2.2.382.

⁸⁹ SRD, 508 / DD 2.3.228, 2.3.229.

⁹⁰ DD 2.4.246.

⁹¹ DD 2.4.188, 2.4.204, 2.4.269.

story on sealed parchment.⁹² None of this, however, was to any avail. Neither secular court sessions, papal and royal support, canon law judges, nor testimonies from leading ecclesiastics and the town of Roskilde prevented Sorø from clinging to the possession in Hesselby. In 1300 St Agnes finally capitulated. With the consent of the Dominican provincial prior and in the presence of the papal judges the nuns agreed to what the 1440–compiler of the donation book calls a *transactio seu compositio*, implying in effect, that they were giving up all claims to Hesselby.⁹³

The Struggle for Sørtorp

I will conclude these loosely structured observations of the variability of disputing strategies according to the Sorø donation book by presenting one last case from the dossier, which incorporates a number of the themes and issues discussed in the preceding pages: the case of Sorø Abbey's prolonged struggle for the estate of Sørtorp.⁹⁴

In the spring of 1253 Sorø made a property exchange with the knight Anders Ågesen. The monastery's possessions in faraway Vejleby were swapped for Anders's extensive holdings in nearby Sørtorp, a fortified manor with watermill and adjoining lands in Krøjerup.⁹⁵ For thirty years the monks kept the estate without contestation (*sine impetito*). After Anders Ågesen's death in 1283, however, heirs of a certain Bo Breth stood up and claimed the property as their inheritance.⁹⁶ The claim probably did not come as a surprise to the monks. They knew that Sørtorp and Krøjerup were not part of Anders Ågesen's patrimony, but property acquired by the knight c. 1250 from a man called Ebbe Spink and his wife Arine, who had inherited the land. To strengthen the validity of their own transaction with Anders Ågesen, the monks therefore carefully noted in their records

⁹² DD 2.4.205, 2.4.206, 2.4.213.

⁹³ SRD, 508–9 / DD 2.5.117. See McGuire, *Cistercians in Denmark*, 167–68, for a comment on the rhetorical dodges produced by the compiler of the donation book in order to provide moral backing for the behaviour of the runaway princesses—and thus to legitimise Sorø's possession of Hesselby.

⁹⁴ SRD, 503–504.

⁹⁵ Sorø's land in Vejleby had been acquired between 1186 and 1197 as a gift from Archbishop Absalon, who bought it from local landowners (SRD, 469 / DD 1.3.141).

⁹⁶ Thirty years of uncontested possession conformed to the period required by canon law to obtain prescriptive rights on church land: see Vogt, *The Function of Kinship*, 217. On death as a principal trigger of conflict in medieval society, see the remarks by Cynthia Johnson, "Kinship, Disputing, and *Ira*: A Mother-Daughter Quarrel in Southern France," in Tuten and Billado, eds., *Feud, Violence, and Practice*, 277.

how the property had passed *legaliter* from Ebbe and Arine to the knight by way of scotation, first before the king in Roskilde, then at the provincial *thing* in Ringsted, and finally at Merløse *herred thing*. In short, the conveyance had been made in perfect accordance with the provisions of law—at that time only just introduced—that in order to be valid scotations must be performed publicly in court.

The donation book says nothing about the legal basis for the claim raised by the heirs of Bo Breth. They may have been related to Anders Ågesen or to Ebbe Spink or Arine, or they may have had some other kind of relation to the property—we don't know. When Ebbe Spink conceded Sørtorp to Anders Ågesen he was allowed, as compensation, to stay at the estate as manager or farm bailiff for the rest of his life.⁹⁷ Presumably he continued in his function when Sorø took over, but whether this had anything to do with the claim following Anders Ågesen's death remains uncertain. Apparently not all of the heirs agreed about the issue. A sister of Bo Breth, Katrine, had her son enter Sorø Abbey as a monk and granted her share of the disputed property (that is, one-fourth) to the monastery at the court of Merløse *herred* and at the provincial *thing*. But one of the other heirs, a man called Johannes, persisted in his claim. According to the account in the donation book Johannes managed to obtain “unjust judgments, ecclesiastical as well as secular” (*judicia injusta, tam ecclesiastica, quam forensia*) in support of his case. With these favourable sentences in hand he then gathered his friends and expelled the monks by force from Sørtorp.

Nothing is known about the proceedings at the *thing*. The process at the church court, however, is documented by a brief summary in the donation book and by three original letters. From these sources it appears that Johannes took the case to the episcopal court in Roskilde in 1285. At this time the see of Roskilde was occupied by a certain Ingvar, who was not only the first bishop there who was not affiliated with the Hvide family; he also happened to be the personal lord of Johannes, the claimant, who served as his master cook. Sorø Abbey was not represented at the court hearing, as the monks had not been summoned or even notified, and Bishop Ingvar's judgment—based on “the account and instruction of trustworthy men” (*fidedignorum relatione et instructione*)—was unequivocal:

⁹⁷ Ebbe Spink may have become Anders Ågesen's *bryde* (Latin *villicus*). For the social and legal position of a *bryde*, see Per Andersen, *Legal Procedure and Practice in Denmark* (Leiden: Brill, 2011), 21–22.

the monastery's exchange with Anders Ågesen was legally invalid; the property rightfully belonged to the heirs of Bo Breth; and the monks were to leave Søtorp or they would be excommunicated.⁹⁸

Following their expulsion from Søtorp the monks appealed to Archbishop Johannes Dros of Lund, who in 1286 appointed Bishop Johannes of Odense and magister Rane, a canon from the church of Roskilde, to judge the case. The bishop of Odense died before any proceedings had begun, and his place was taken by Johannes Rude, another canon from the cathedral chapter in Roskilde. In 1288, not surprisingly perhaps, this tribunal ended up confirming the sentence passed by their own bishop three years earlier. They even repeated the threat of excommunication.⁹⁹ Sorø then turned to the archbishop again, this time to have him refer the case to the papal court in Rome. From Abbot Niels's letter of appeal to the archbishop we learn some interesting details about the process of the court session in Roskilde (as experienced and represented by the abbot, that is). Accusing, in the first instance, Johannes, the master cook, of having unjustly deprived the monastery of its rightful holdings at Søtorp, the monks insisted that they be reinstated there before any sentence be passed. Johannes replied that his seizure was perfectly legal and offered to prove it. The judges allowed him some days to provide the necessary evidence. On the appointed day Johannes produced a sealed letter containing his lord Bishop Ingvar's judgment of 1285, but as the monks had never been summoned by Bishop Ingvar, they simply refused to recognise the legal validity of the sentence, which to their mind really was "no sentence at all" (*sententia diffinitiva, que tamen nulla est*). The judges then proposed to the parties to leave it to some men to terminate the dispute *amicabiliter*: in other words, this was an offer to break off formal proceedings and settle the case by way of negotiation or arbitration. The monks, however, stubbornly refused to settle anything before they had been reinstated at Søtorp, whereafter the judges proceeded to corroborate the judgment of 1285 by having it read aloud. The monks reacted by appealing to the archbishop. As he reconfirmed the judgment, they asked him to bring the case to Rome, which he did.¹⁰⁰ It is impossible in this brief outline to reproduce the thoroughly legalist discourse of the Sorø abbot,

⁹⁸ DD 2.3.141. Present at the hearing were, among others, Niels Drukken, the knight who acted as mediator in Sorø's dispute with Peder of Tystrup concerning the watermill at Kongskilde; and Peder Saxesen, a knight from a noble family based around Roskilde.

⁹⁹ DD 2.3.294.

¹⁰⁰ DD 2.3.298, 2.3.299.

who pleaded his case before the Roskilde judges with persistent invocation of canon law rules and procedure. In the donation book the monks put the entire blame on Bishop Ingvar, who was accused of “disregarding all judicial practice in favour of his own cook” (*prætermittens in favorem ejusdem coci sui judicarium ordinem universum*).¹⁰¹

By their own account the monks were slowly starting to be exhausted by expensive litigation and unavailing appeals when, in 1289, the process took a new turn. Bishop Ingvar died and was replaced in the Roskilde see by Johannes Krag, a man more closely connected to Sorø Abbey, where he was later buried. Realising that he had lost his patron, Johannes the master cook now alienated the property at Sørtorp to “the most cruel man, Lord Asser Jonsen, knight,” a prominent noble from the area around Næstved,¹⁰² who quickly showed himself capable of defending the holding against the monks without episcopal or other support. Asser Jonsen’s catalogue of sins according to the donation book is not unlike those of the castle lords described in eleventh-century French monastic charters. Asser is reported to have occupied not only the Sørtorp estate but also fields and meadows owned by peasants in the nearby area. He destroyed boundary markers, cut down trees in the wood at Djungsved, and prevented the monks from fishing in Lake Magle. He furthermore seized Sorø’s manor at Tersløse and kept it violently.¹⁰³ The new bishop of Roskilde was unable to help Sorø: neither moral reproof, nor legal judgments by the church had any effect on Asser Jonsen, “because he was stiff-necked in everything and had hardened his heart with excessive harshness” (*quia contumax fuit in omnibus & obfirmaverat cor suum duritia nimia*). In fact, the very same Asser also occupied the much-disputed estate at Stenmagle (or Øksneskov) for a while. As explained above, papally authorised judges had awarded Sorø the title to Stenmagle in a court case against Illuge Thomsen and Niels Pallesen Ræv in 1291. Hardly had this case been settled before Asser Jonsen and one Jakob Olufsen seized the property, only to quitclaim it again in 1292 on the occasion of the burial of Jakob Olufsen’s brother.¹⁰⁴ To make a bad relationship even worse, Asser Jonsen became opposed to Sorø Abbey in yet another context six years later, when King Erik Menved in 1298 appointed him defender of the nuns from St Agnes in Roskilde,

¹⁰¹ SRD p. 503.

¹⁰² Ulsig, *Danske adelsgodser*, 81.

¹⁰³ Ulsig, *Danske adelsgodser*, 81, suggests Asser Jonsen may have inherited land at Tersløse but does not substantiate the idea.

¹⁰⁴ SRD, 491.

who at that time were disputing the title to Hesselby with the Sorø monks (see above).¹⁰⁵

The conflict between Sorø Abbey and Asser Jonsen went on for more than a decade, testing the stamina of three different abbots, and did not draw near any kind of conclusion until both parties finally agreed to have a mixed tribunal of ecclesiastical and lay arbitrators decide the case. In the donation book the arbitrators are referred to as “faithful mediators” (*fideles mediatores*) sent by God in response to the *clamor* of the powerless monks.¹⁰⁶ The charter describing the settlement is only summarised briefly, but more information is provided by the extant original, complete with the seals of Asser Jonsen, the abbot of Sorø, and the five arbitrators: Bishop Olav of Roskilde (who succeeded Johannes Krag in 1300); Adam Boesen, canon of Roskilde; Ingvar Hjort and Herlug Jakobsen, knights; and Åge, *frater conversus* from Sorø Abbey.¹⁰⁷

The charter relates how Sorø and Asser Jonsen had been disputing lands in Søtorp for many years “in court as well as out of court” (*tam in iudiciis quam extra*), when they chose “the path of peace and concord” (*uiam pacis et concordie*), agreed to elect five men “as a kind of arbitrators and amicable mediators” (*tamquam in arbitratore et amicabile compositore*),¹⁰⁸ and obliged themselves by corporeal oath to respect the decision or judgment of these men—or the majority among them. A first attempt (August 1305) to settle the dispute by awarding Sorø one-quarter of the contested property, corresponding to the gift received from Bo Breth’s sister Katrine, apparently did not satisfy the monks, and litigation was soon resumed. Two years later (July 1307) a new round of arbitration ended with a more comprehensive deal, concluded in the city of Roskilde. Sorø Abbey was again awarded the same one-quarter of Søtorp. In addition, Asser Jonsen was enjoined to transfer the rest—that is, the entire manor farm at Søtorp, including all adjoining lands, meadows, woods, watermill, etc.—to the monastery. In return the monks would have to assign all Sorø’s land in Tersløse to him (that is, Asser was allowed to keep what he had seized there). Objectively this looked like a compromise, and the charter text takes great care to represent it exactly like that: not as a judgment or sentence, but as an “arrangement or agreement” (*ordinacionem seu*

¹⁰⁵ DD 2.4.334.

¹⁰⁶ SRD, 504.

¹⁰⁷ DD 2.6.74.

¹⁰⁸ On the development and diffusion of this particular formula in Europe from the second half of the thirteenth century, see Bader, “Arbiter arbitrator.”

composicionem) which would see all rights and losses set off and compensated on both sides. "And blessed be God," ends the compiler of the donation book, "by whose special grace this costly litigation process, which had lasted for 24 years, was terminated."¹⁰⁹

Conclusion

This article started out from a general problematic: What was conflict and litigation like in thirteenth- and fourteenth-century Denmark? How did the introduction of learned law and new legal institutions affect the disputing process? And how, in this regard, did Denmark compare to other parts of Europe?

At first sight the Sorø records do give an impression of a gradual "Verrechtlichung" of dispute practices in thirteenth- and fourteenth-century Denmark. Such things as permanent courts, appeals, and references to codified law and written testimonies, use of clauses, concepts, and arguments from Roman and canon law, procedures of appeal (within the system of church courts) all attest to a progressively more "legalist" attitude to the resolution of conflict and to a growing institutionalisation of law. At the same time, however, the evidence makes it very clear that informal mediation by friends and kinsmen, settlement by compromise, reliance on oral testimonies, and other features associated with conflict resolution in the central Middle Ages continued to play important roles. Litigants applied a plurality of means and strategies, often in bewildering combinations: in-court, out-of-court, in-and-out-of-court, negotiation, arbitration, appeals to royal or clerical authorities, occasional force. The choice of court (church or secular? this or that particular *thing* assembly?) was not regarded as decided by law: rules and norms allowed, to some extent at least, for flexibility and considerations of micro-political power, social bonds, and situational urgency.

Litigants were rarely strangers. Around 1300 the Zealand nobility may have constituted no more than about forty important families,¹¹⁰ whose members were closely interrelated through bonds of marriage, friendship, patronage, and religious affiliation. Most of the people involved in the Sorø

¹⁰⁹ "Et benedictus Deus, de cujus speciali gratia terminatum est hoc sumptuosum litigium, quod fuerat XXIII. annis continuatum": SRD, 504. Asser Jonsen's widow Cecilia donated land in Døjringe to Sorø Abbey in 1317, cf. SRD, 477 and 487 / DD 2.7.476.

¹¹⁰ Ulsig, *Danske adelsgodser*, 87.

disputes knew each other rather well, and would have been able to read, utilise, and take account of positions and position-taking within the social network. Roles and functions, in consequence, were often overlapping. A lay noble whom the monks of Sorø confronted in one dispute might appear as mediator between the monks and another party in another conflict at the same time. Sometimes it is difficult (and to some extent probably beside the point) to distinguish clearly between mediator, arbitrator, and adjudicator—or even party to a case.

The courts themselves also seem to have had more varied and multifunctional functions than one might have assumed from a modern point of view. The *thing*, for instance, might serve as an arena where otherwise “private” settlements could be publicised to a relevant community. In this sense courts had the potential of adding strength and legitimating force to decisions and agreements, whether or not these had actually been reached within those courts.¹¹¹ Courts might serve different functions in different dispute contexts; they could be played out against each other; and they were approached at different moments during the disputing process, not necessarily at the end of it. *In practice*, then, the justice of courts was not simply (or perhaps not even primarily?) the instrument of a coercive state to be, but also (or rather?) something to be appropriated and applied by litigants, something to be “consumed.”¹¹² From this perspective, such ideal-type dichotomies as in-court versus out-of-court, or trial-and-conviction versus mediation-and-compromise do not necessarily prove to be the most useful framework for understanding disputes, especially as the outcomes of different types of processes do not seem to have been markedly different from each other (although they could be). In many cases it was simply a question of litigants taking different routes to achieve the same kind of result.¹¹³

¹¹¹ This in itself may of course constitute a very important element in a state formation process if—following Bourdieu—one extends Weber’s classic definition of “state” to include a monopoly of not only physical but also symbolic violence. See Pierre Bourdieu, “Esprit d’État. Genèse et structure du champ bureaucratique,” *Raisons pratiques. Sur la théorie de l’action* (Paris, 1994). For similar uses of courts in thirteenth-century Castille-Léon, see Antón, “The Language and Practice of Negotiation”, 169.

¹¹² In the sense in which the word is used by Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Cornell University Press, 2003).

¹¹³ See the observations by Stephen D. White, “Inheritance and Legal Arguments in Western France, 1050–1150,” *Traditio* 43 (1987): 68–69; adjudicated cases differed not in substance from other settlements; half of all adjudicated cases ended in compromise, etc.

The propensity among the Sorø litigants to settle disputes by some sort of concord or to represent apparently lopsided settlements as evenly balanced agreements is striking. It seems to have reflected a shared discourse or cultural model of conflict resolution which pervaded even among Danish society's prime proponents of juridification, crown and church. Thus, out-of-court negotiation and compromise settlement through friends and kinsmen was explicitly recommended and even presupposed by the provincial laws, including the laws of Zealand.¹¹⁴ King Valdemar II himself, assisted by the learned Bishop Gunner of Viborg, articulated the discourse of concord in a way that almost echoes the "*Pactum . . . legem vincit*" phrase of the *Leges Henrici Primi* famously cited by Stephen D. White.¹¹⁵ In 1219 the king settled a property conflict between two ecclesiastical houses by dividing the disputed property evenly between the parties, recognizing, according to the charter, that "it is wiser to end a calumny by friendly concord than by legal judgment."¹¹⁶

In a recent discussion of the impact of legal developments in thirteenth-century Castile-Léon, Isabel Alfonso Antón stresses the continuation of mediation and compromise and the complex interconnectedness of formal justice, arbitration, and negotiated resolutions. The introduction of new legal institutions, according to her study, "was undoubtedly important, but within a dialectical, not exclusive, relationship"—a "connection between the judicial and other less formal conflict resolution mechanisms [that] prevents us from maintaining the much generalised definitions about the nature of each."¹¹⁷ Judging from the Sorø evidence, this observation would apply to thirteenth- and fourteenth-century Denmark as well.

Needless to say, the findings reported here only scrape the surface. A comprehensive understanding of the workings of conflict in medieval Denmark must necessarily "emerge slowly with nuance," to borrow a phrase of William Ian Miller's,¹¹⁸ from accumulated studies of varied

¹¹⁴ Andersen, *Legal Procedure and Practice*, 90, 156–60, 190.

¹¹⁵ Stephen D. White, "*Pactum . . . legem vincit et amor iudicium*: The Settlement of Disputes by Compromise in Eleventh-Century Western France," *The American Journal of Legal History* 22 (1978).

¹¹⁶ "*sacius . . . per compositionem a[micabilem] quam per sententiam iudicalem [c]al[u]mpniam terminare*," DD 1.5.160.

¹¹⁷ Antón, "The Language and Practice of Negotiation," 169, 173.

¹¹⁸ William I. Miller, *Bloodtaking and Peacemaking* (Chicago: University of Chicago Press, 1990), 180.

types of dispute in different social and geographical landscapes. The present review of conflict accounts—examining a particular type of conflict (property disputes within the elite) in a single region (western Zealand) according to one monastic dossier (the cartulary from Sorø Abbey)—is but one such study. Hopefully more research will follow.



Localities in Zealand mentioned in the text

GIFTS AND SOCIETY IN FOURTEENTH CENTURY SWEDEN

Catharina Andersson

Gifts to churches and religious houses were one of the clearest manifestations of the relationship between the individual and God in the Middle Ages. All over Europe, gifts and donations were a natural part of how faith was expressed. By conferring real and personal property upon religious houses and churches—whose clerics, monks, and nuns were mediators between the people and the saints—the donor created strong and indissoluble bonds with the recipient: ultimately, God. Therefore the purpose of the gift was of course religious, and in return the donor and his or her family received prayers, masses, or perhaps a burial place inside the church. However, as has been exhaustively discussed and shown over the last decades, the social and political significance of donations and gifts could be as crucial as their religious importance. Inspired not least by social anthropology, various studies have shown how religion was an integrated and unquestionable part of everyday life, and how religious gifts can be interpreted as an important element of the efforts and strategies people used to strengthen their social positions. For the donor, gifts and donations to religious houses and churches not only involved important bonds with these institutions; they also created significant relations with secular people. Religious gifts were part of how medieval society organized such relations—kinship, relations with ancestors, and so on—as well as playing a part in solving conflicts.¹

The aim of this article is to analyze some aspects of the Scandinavian culture of gift-giving. In Scandinavia, as in other parts of medieval Europe, religious gifts were part of a wider social system. Using the example of Sweden, my intention is to show how religious gifts can be interpreted as an important way of creating personal networks with other secular aristocrats, as well as being understandable in terms of strengthening a person's symbolic capital. Gifts could also be part of the reconciliation process in

¹ See for example Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050–1150* (Chapel Hill: University of North Carolina Press, 1988); Barbara H. Rosenwein, *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny's Property, 909–1049* (Ithaca: Cornell University Press, 1989); Patrick J. Geary, *Living with the Dead in the Middle Ages* (Ithaca: Cornell University Press, 1994).

conflicts between different kin-groups, disputes about inheritance, and other, less severe conflicts. A further aim is to address a perspective which hitherto has attracted relatively little attention from scholars who study gift-giving, namely the practice of giving children to monasteries or convents.

Gift-Exchange in a Scandinavian Context

Analyses of the social and political implications connected with medieval donations have been particularly inspired by Marcel Mauss's classic work, *The Gift*. In this well-known study, Mauss describes the phenomenon of gift-exchange as a part of a total social phenomenon, a theoretical view that has been used and developed by many subsequent scholars in various fields of research. Following Mauss, one can say that gifts and counter-gifts play a crucial part in how relationships and hierarchies are organized in societies not yet centralized in terms of, for instance, political rule or formal laws. Three fundamental duties characterize the gift-exchange system: the obligation to give a gift, the obligation to accept a gift, and the obligation to give a gift in return. The gift does not necessarily have to be a material object or an object of special value, but might also be some type of personal contribution such as military assistance, feasts, rituals, or offering diversions.²

As Aron Gurevich demonstrated, the conditions described by Mauss are directly applicable to early Scandinavia. By using sagas, law texts, and linguistic observations, Gurevich showed the way in which gifts and counter-gifts such as material objects, services, or feasts were an important part of how social relations and hierarchies were manifested during the Viking Age and the early Middle Ages. The treasures and riches the Vikings brought home with them were used to arrange feasts and carouses, occasions on which generous gifts were given to the guests. These feasts and gifts were of major importance in maintaining and increasing the donor's social authority and prestige. What is more, Gurevich described the feast, together with the *thing* (the local assembly), as the focal points

² Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (London: Routledge & Kegan Paul, 1970; originally published as "Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques," *L'année sociologique* (1925): 30–186).

of ancient Scandinavian social life.³ Another example of how gift-giving was a crucial part of social relations and dependences in ancient Scandinavia is the practice of *gästning*,⁴ by which subjects were obliged to assist the king with provisions, transportation, fodder, etc. This was a custom once performed voluntarily, which over time came to be transformed into permanent taxes.⁵

In Icelandic society, gifts were a natural element in how relations between friends and kin groups were expressed. They were also of great importance in negotiations and the resolution of conflicts. In his study of the exchange of goods among Icelandic free farmers (*bændr*), William Ian Miller notes that “[o]vert conflict was euphemized or even suppressed entirely by densely hedging the transaction with safeguards of peacefulness. Shows of generosity were to be met with shows of gratitude.”⁶ Gifts were thus given for purely strategic reasons, motivated by both a desire for reconciliation and a pragmatic self-interest. Gifts entailed prestige, power, and respect for the giver. There were, however, various types of gifts, and Miller notes that exchange of goods was more commonly associated with conflicts than it was with negotiations in connection with, for example, marriage or fostering arrangements, these “transfer[s] of human capital”⁷ being “more familiar and regular than requests for goods.”⁸

The sagas have thus been important in analyzing the system of gift-exchange in early Scandinavia. Less attention has been directed towards charters, which have served only to a limited extent as the empirical basis for analyses of the social and political significance of gift-giving. Rather, when religious gifts to churches and monasteries have been studied, the focus has been upon their pure religious significance and the expected counter-gifts—whether given by monks, nuns, or priests, or anticipated in the donor’s afterlife. In those cases, the Nordic tradition shows many of the characteristics related to the European culture of gift-giving. As elsewhere in Europe, the cult of saints was essential. The cult was a reciprocal

³ Aron Gurevich, “Wealth and Gift-Bestowal Among the Ancient Scandinavians,” *Scandinavica* 7, no. 2 (1968): 126–38; Gurevich, *Feodalismens uppkomst i Västeuropa* (1970; Swedish trans. Stockholm: Tiden, 1979), 74–94.

⁴ Cf. *Gästa* (visit).

⁵ Gurevich, “Wealth and Gift-Bestowal,” 135; Gurevich, *Feodalismens uppkomst i Västeuropa*, 56–57.

⁶ William Ian Miller, “Gift, Sale, Payment, Raid: Case Studies in the Negotiation and Classification of Exchange in Medieval Iceland,” *Speculum* 61, no. 1 (1986): 18–50 at 21–22.

⁷ Miller, “Gift, Sale, Payment, Raid,” 48.

⁸ *Ibid.*, 47–48.

relationship between the people and the saints, a relationship that in a way can be compared to ties of friendship. In exchange for honouring the saints with gifts, miracles and help were expected in return, for example in times of illness.⁹ Some studies have also discussed religious donations from a gender perspective—investigating the relative frequency with which men and women donated to churches and monasteries and whether a difference in motive between female and male donors can be identified. Many studies show that women were responsible for about 25 to 30 percent of the gifts—with the reservation that because of women's limited legal capacity, some transactions might very well have been carried out on their behalf by their male guardians (in most cases their husbands). If that was the case, the actual proportion of women involved in such transactions would then be even higher. Differences in motives between men and women seem, on the other hand, more difficult to discern, although some researchers ask whether women were guided by a stronger "personal" spirituality than male donors were.¹⁰

The focus among Scandinavian scholars on the gifts religious significance may, at least partly, be explained by the fact that the region was Christianized relatively late. The conversion also went hand in hand with a societal transformation leading towards a more institutionalized and centralized society (see further, below). This is probably one reason why an anthropological perspective on gift-exchange has not been very much used in previous Scandinavian research on gift-giving. The religious significance of the gifts is likely to have been more important in fourteenth-century Sweden in comparison with, for example, their direct political meaning. This increasing religious significance of such gifts has also been observed outside Scandinavia. Arnoud-Jan A. Bijsterveld points out that "[t]he main difference between pious gifts in the early and central Middle

⁹ Jón Viðar Sigurðsson, "De vennlige Islendingene og den uvennlige kongen," in *Vänner, patroner och klienter i Norden 900–1800. Rapport till 26:e Nordiska historikermötet i Reykjavik den 8–12 augusti 2007*, ed. Lars Hermanson, et al. (Reykjavik: Háskólaútgáfan, Íslands universitets förlag, 2007).

¹⁰ Linda Rasmussen, "Den sociale og kønsmæssige fordeling af donationer på danske herrekloster indtil 1385, (unpublished master's thesis [speciale], Institute of History and Civilization, University of Southern Denmark, 1990); Arnved Nedkvitne and Per G. Norseng, *Oslo bys historie. Byen under Eikaberg. Fra byens oppkomst til 1536*, vol. 1 (Oslo: Cappelen, 1991); Jørn Bakervik, "—til sin sjels frelse—En analyse av sjelegaver i Gjerpen- og Oslo prosti med basis i Biskop Eysteins jordebog" (master's thesis, Department of History and Religious Studies, University of Tromsø, 2005); Anders Emanuelsson, "Kyrkojorden och dess ursprung. Oslo biskopsdöme perioden ca 1000–ca 1400," Ph.D. diss. (Göteborg: University of Göteborg, 2005).

Ages on the one hand and gifts in the late Middle Ages in the other is the decreased political significance of the latter."¹¹ A British example of this was offered by Joel T. Rosenthal, who showed that although ecclesiastical donations in late medieval England could still create personal social networks as well as personal status, their direct political or economic significance for the donor was limited.¹²

Thus, in previous studies on medieval Scandinavia, limited attention has been paid to the political and social significance of religious gifts to monasteries or other ecclesiastical institutions. This can be contrasted with studies of conditions elsewhere in Europe, where the social importance of gift-giving has been thoroughly studied by several historians during recent decades. Barbara Rosenwein's study of donations to the monastery of Cluny in the tenth and eleventh centuries clearly shows the social significance of these gifts and how they functioned as a "glue" in social relations. Property was donated, taken back, and re-donated, while simultaneously personal social bonds were strengthened between the contracting parties: the donor, the monastery, and the saint. At the same time, gift-giving entailed social status and esteem and thus contributed to strengthening the donor's social position in general.¹³ The formal practices that surrounded the donations—not static, but negotiable—also affected the family structures surrounding the donor. The custom that the relatives of the donor should give their consent to the donation was, for example, not merely a formality to secure the donation's legal validity, but also, as Stephen D. White has shown, also affirmed and united family alliances in a profound way.¹⁴

Fourteenth-century Sweden was, however, not equivalent to tenth-century Cluny. There are some noticeable differences between the Nordic societies and other parts of Europe, which helps to explain why analyses of gift-exchange cannot be transferred unrevised to this northern region. An important distinction between Scandinavia and other parts of Europe is, as indicated above, the fact that Scandinavia was Christianized comparatively late. In Sweden, it was not until the twelfth century that religious institutions began to establish themselves to a large extent—invited,

¹¹ Arnoud-Jan A. Bijsterveld, "The Medieval Gift as Agent of Social Bonding and Political Power: A Comparative Approach," in *Medieval Transformations: Texts, Power, and Gifts in Context*, ed. Ester Cohen, et al. (Leiden: Brill, 2001), 151.

¹² Joel T. Rosenthal, *The Purchase of Paradise: Gift Giving and the Aristocracy, 1307–1485* (London: Routledge & Kegan Paul, 1972).

¹³ Rosenwein, *To Be the Neighbor of Saint Peter*.

¹⁴ White, *Custom, Kinship, and Gifts to Saints*.

supported, and protected by the upper strata of society. Consequently, and by contrast with tenth-century Cluny, these oldest Scandinavian churches and monasteries were themselves an important part of a societal shift towards a more institutionalized and centralized society, with respect to law, warfare, taxes, coinage, and the like.

The relatively late Christianization resulted in another important difference between the Nordic societies and other parts of Europe, namely the comparative lack of written sources. The period scrutinized in Rosenwein's study on Cluny can certainly be described as a time of weak centralization and poorly developed formal structures. This was nevertheless a society that left behind a large number of written sources in the form of charters, which bear witness to a well-established ecclesiastical organization. However, in Scandinavia, this type of written source is a later phenomenon. In Sweden, the first known charters are dated to the second half of the twelfth century, their appearance closely linked to the establishment of Christian institutions. It is not until the second half of the thirteenth and the beginning of the fourteenth century that a significant increase in charters and charters can be discerned. This development goes hand in hand with the growing importance of formal taxes, legislation, and judicial proceedings.

Also significant are the structural changes that took place among the elite at the time. The importance of personal ownership of landed property increased, and became an indispensable prerequisite for social and political advancement. This is a factor of particular importance in explaining the increasing number of charters, since the right of possession and ownership of land had to be manifested in writing. One of the most explicit formal expressions of this new order was the Statutes of Alsnö of 1280, an act by King Magnus Birgersson ("Ladulås," 1275–1290) which stated that all men who could serve the king with a knight and mounted horse were exempt from the permanent royal taxes and duties. It is also from the twelfth, and especially from the thirteenth and fourteenth centuries that donations of landed property to churches and monasteries increased. In the first known Swedish charter, dated sometime between the years 1164 and 1167, the archbishop in Uppsala, Stefan, announces that he has settled a conflict between a woman named Doter, who had donated property to the Cistercian monks in Viby, and her heir, a son whose name is unknown.¹⁵

¹⁵ *Svenskt Diplomatariums huvudkartotek över medeltidsbreven* (SDHK) (The National Archives of Sweden, <http://www.nad.riksarkivet.se/sdhk>), No. 200.

The charter thus represents a new era, which can be characterized by written documents, inheritance conflicts over land, growing judicial and ecclesiastical power, and an increasing number of religious gifts.

Because the establishment of an ecclesiastical organization was itself an essential part of the transformation into a more centralized kingdom, donations to churches and monasteries cannot be interpreted as fundamental social “glue” in society. This distinguishes Sweden from other European regions from earlier times, such as France in the post-Carolingian period, which had as-yet poorly developed central governments. Nevertheless, these gifts and donations had an important function in the Nordic regions—not only in terms of creating personal relations and bonds with God and his saints, but also in terms of social culture. Gift-giving was still one way in which social relations and personal bonds between aristocratic families were created. It is therefore relevant to take into consideration a theoretical perspective on gift-exchange when religious donations are analysed. It is true that state-formation had begun. Still, Sweden was a society without a stable central power, and it was not until the mid-fourteenth century that the first national law, Magnus Erikssons Landslag, was established. Social networks still played an important role in public power. In the local environment, central authorities could be weak. For example, in the fifteenth century personal networks could be crucial for appointments to certain types of public office. Families could control appointments and ensure that someone from their own family or personal network was chosen—despite the fact that legislation formally provided for an election process by the local community. These social networks were created through marriage alliances, patron-client relationships, or other personal relations—and gifts could also be of importance.¹⁶

Thus, there are reasons to believe that older and newer systems existed simultaneously, and that gifts to religious institutions were still an important constituent of society, which contributed to the settling of social relations and hierarchies. Giving gifts of various kinds, people as well as estates, could in thirteenth- and fourteenth-century Sweden be understood as an act within a system of exchange. Moreover, these gifts played an important part in terms of how the medieval aristocrat could strengthen his symbolic capital. Below, attention will be given to the social import of

¹⁶ Tomas Småberg, “Det stängda frälset. Makt och eliter i det medeltida lokalsamhället: Marks och Kinds härader i Västergötland ca. 1390–1520,” Ph.D. diss. (Göteborg: University of Göteborg, 2004).

these gifts, through a closer study of some donations to monastic institutions in medieval Sweden.

Gifts and Children

The most common gifts to ecclesiastical institutions during the early and high Middle Ages were donations of real estate. These gifts were crucial to the large holdings many churches and monasteries came to possess. In return, the churches offered prayers and masses for the souls of the donor and his or her ancestors and family—not least in order to reduce their time in purgatory. Other counter-gifts could be burial places inside the church, or the reception of the donor into the monastery brotherhood.

Another type of gift to a monastic institution, less observed in the theoretical context of gift-exchange, was the practice of giving a child to a monastery or a convent. Although certainly the custom of placing children in convents has been analysed, it has been considered to a lesser extent, if at all, as part of a system of gift-exchange. Rather, it has been explained in terms of demographic or economical factors. Sons in monasteries have, for example, been interpreted in the light of changing inheritance patterns—Georges Duby points to the fact that primogeniture resulted in sons' seeking options in life other than taking over the family estate.¹⁷ The presence of daughters in convents has, on the other hand, often been explained in strictly economic terms, the argument being that putting a daughter in a convent was less expensive for the family than a dowry would be. The entrance donation has thus been seen as less costly for the daughter's family, and the convent as a "second choice" in comparison with worldly marriage.¹⁸ However, for several reasons, in a Swedish context this explanation is quite problematic. Apart from the fact that such an interpretation reveals a rather anachronistic and narrow view of how economic rationality in the Middle Ages should be understood, in reality comparisons between the entrant donation and the dowry are difficult

¹⁷ Georges Duby, *Krigare och bönder. Den europeiska ekonomins första uppsving 600–1200* (1973; Swedish translation, Stockholm: Norstedt, 1983), 182.

¹⁸ Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages* (London: Methuen, 1983); Kathleen Cooke, "Donors and Daughters: Shaftesbury Abbey's Benefactors, Endowments and Nuns, ca. 1086–1130," in *Anglo-Norman Studies 12: Proceedings of the Battle Conference 1989*, ed. Marjorie Chibnall (Woodbridge, Suffolk: Boydell & Brewer, 1990), 29–45; David Herlihy, *Opera Muliebria: Women and Work in Medieval Europe* (New York: McGraw-Hill, 1990).

to carry out. Charters which give information about the size of a dowry are virtually non-existent.¹⁹ Further, daughters had a legal right of inheritance, a right which was not negotiable. Therefore, like the dowry the entrance donation should be understood in relation to women's right of inheritance, rather than being contextualized by exploring which alternative constituted the lesser expense for the daughter's family.²⁰ If we are to fully understand the tradition of placing a child in a monastic institution, as well as broadening our understanding of the system of gift-exchange, I argue that it is relevant to include and problematize this custom within the discussion on the medieval culture of gift-giving.

In thirteenth- and fourteenth-century Sweden, it was almost always daughters whom aristocrats gave as gifts to monastic institutions. Only exceptionally do surviving documents reveal that an aristocratic son—and then almost exclusively, in contrast to the daughters, a son from the lower aristocracy—was given to a monastery.²¹ There are several possible explanations for the small number of aristocratic sons in the sources. Firstly, because primogeniture was never introduced in Sweden, there did not arise a large group of landless sons who had to seek alternatives to taking over the family property, even if many children shared the inheritance. Secondly, for those young men who were expected to make an ecclesiastical career there were alternatives outside the monastery that did not require such great personal sacrifices as did the monastic life. Owning property, chivalry, being one's own master—highly valued ideals for the male aristocrat—stood in sharp contrast to monastic poverty and obedience.²² Moreover, it must be remembered that Sweden,

¹⁹ See Lizzie Carlsson, *Jag giver dig min dotter*, Skrifter utgivna av Institutet för rätts-historisk forskning, grundat av Gustav och Carin Olin. Serien 1 (Stockholm: Nord. Bokh., distributors, Rättshistoriskt bibliotek, 1965), who suggests that arrangements regarding the dowry normally were made through verbal agreements.

²⁰ Catharina Andersson, "Kloster och aristokrati. Nunnor, munkar och gåvor i det svenska samhället till 1300-talets mitt," Ph.D. diss. (Göteborg: University of Göteborg, 2006).

²¹ Ongoing research by the author shows that a majority of the Cistercian monks whose social background can be determined came either from the lower aristocratic strata, or the upper strata of peasants. No one was a member of the knightly families (who normally were part of, or closely connected to, the national nobility). On nuns, see Andersson, *Kloster och aristokrati*.

²² On identity conflicts between secular and ecclesiastical masculinities, see for example R.N. Swanson, "Angels Incarnate: Clergy and Masculinity from Gregorian Reform to Reformation," in *Masculinity in Medieval Europe*, ed. D.M. Hadley (London: Longman, 1999) 160–77; Jennifer D. Thibodeaux, "Man of the Church, or Man of the Village? Gender and the Parish Clergy in Medieval Normandy," *Gender and History* 18, no. 2 (2006): 380–99.

demographically, was a relatively small region with a limited base for monastic recruitment.

However, aristocratic daughters were frequently given to convents, and becoming a nun was hardly as much of a challenge to prevailing gender ideals as was the case for a monk. Even if in previous research these daughters have rarely been understood as a part of a social gift-giving system, in an anthropological context the custom of giving persons as gifts, not least women, is by no means unknown. Mauss included people in the different types of gifts he observed, and Claude Lévi-Strauss described women as the most prestigious gift of all, emphasizing the importance of exchanging women when kinship is established.²³ Subsequent researchers have both criticized and developed their ideas, and alternative systems of creating kinship have been presented.²⁴ Still, the connection between women and gifts is recurrent, even if not absolute. Maurice Godelier rejects Lévi-Strauss's one-sided focus on women when kinship is constructed—exchange systems consist not only of women, but also of men, and sometimes these men are given by women. Although Godelier points out that “the exchange of women is not a universal *fact*,” he nevertheless admits it to be “the most statistically frequent form of matrimonial exchange.”²⁵

The exchange of women and men, as well as children, is a phenomenon also known from ancient Scandinavia. As Miller puts it, “human bodies moved between groups for various lengths of time.” He also points out that these movements were closely connected to the exchange of goods.²⁶ During the Icelandic Commonwealth, the system of concubines was well established, and provided a basis for how different families strengthened their social positions through various alliances. These relationships created by concubinage were normally stronger than those created by marriage, since the former, in contrast to marriage, was a relationship of dependence: normally the woman originated from a family with lower social status than the man whose concubine she became. The relationship

²³ Mauss, *The Gift*; Claude Lévi-Strauss, *The Elementary Structures of Kinship* (1949; repr., Boston: Beacon Press, 1969).

²⁴ See for example Gayle Rubin, “The Traffic in Women: Notes on the ‘Political Economy’ of Sex,” in *Toward an Anthropology of Women*, ed. Rayna R. Reiter (New York: Monthly Review Press, 1975); Annette B. Weiner, *Inalienable Possessions: The Paradox of Keeping-While-Giving* (Berkeley: University of California Press, 1992).

²⁵ Maurice Godelier, *The Enigma of the Gift* (Chicago: University of Chicago Press, 1999), 35.

²⁶ Miller, “Gift, Sale, Payment, Raid,” 48; see also Gurevich, “Wealth and Gift-Bestowal,” 135–36.

could be dissolved and the concubine sent back to her family, although not necessarily with the result that the relationship between the two families was broken.²⁷ The system of fostering was also well established in ancient Scandinavia. The Icelandic sagas give many examples of how children were given to and brought up by other families, normally in a family of lower status than the child's biological family. In this way a form of "quasi-kinship" was established, and

the person who accepted responsibility for the off-spring of a noble family acquired thereby a kind of inner participation in the "success" and "good fortune" of that family and could reckon on receiving its support.²⁸

Children who were sent away to be raised by someone other than their parents are also a phenomenon known from later times.²⁹ In the medieval sources, however, the underlying causes of these actions are only rarely expressed, and sometimes one can sense more practical reasons behind the decision. A reasonable interpretation is that they were a way of strengthening kinship and social bonds between different families, kin-groups, or religious institutions. In the province of Närke the Law-Speaker (*lagman*, the highest public official in the province), Ulf Gudmarsson and his wife Birgitta Birgersdotter, later known as St Bridget, sent one of their daughters, Cecilia, to be raised in Skänninge, one of the most prominent convents at the time. She arrived at young age, but was later taken out for secular marriage.³⁰ In the same way her mother, Birgitta Birgersdotter, had been sent to her maternal aunt when she was about ten years old (although in connection with the death of her mother at about the same time). Birgitta's aunt was married to Knut Jonsson, Law-Speaker in the province of Östergötland. He was also a member of the Council of the Realm (*riksråd*), and at various times he held one of the kingdom's most powerful offices, the *drots*.³¹ Whatever other reasons there might have

²⁷ Magnúsdóttir, Auður, "Frillor och fruar. Politik och samlevnad på Island 1120–1400," Ph.D. diss. (Göteborg: University of Göteborg, 2001).

²⁸ Gurevich, "Wealth and Gift-Bestowal," 135–36. See also William Ian Miller, "Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England," *Law and History Review* 1, no. 2 (1983): 159–204, 166–67.

²⁹ See for example Anu Lahtinen, *Anpassning, förhandling, motstånd. Kvinnliga aktörer i släkten Fleming 1470–1620*, (Helsinki/Stockholm: Svenska litteratursällskapet i Finland, Atlantis, 2009), 122–23.

³⁰ *Svenskt biografiskt lexikon* (SBL), ed. Bertil Boëthius, et al. (Stockholm: Svenskt biografiskt lexikon, 1918–), "Cecilia Ulvsdotter," 717–19.

³¹ The *drots* was responsible for the administration of royal justice and also substituted for the king in his absence, or if he was a minor.

been for allowing Birgitta to be raised in this noble family, one can also assume that her father's relationship with them was thereby strengthened. Birgitta lived with her aunt and uncle for some years before she married Ulf Gudmarsson at the age of thirteen.³²

To regard a child as a gift was a natural part of the monastic tradition, too.³³ The sixth-century Rule of St Benedict depicts entering sons—as the rule was primarily written for men—as sacrifices to God:

If a member of the nobility offers his son to God in the monastery, and the boy himself is too young, the parents draw up the document mentioned above; then, at the presentation of the gifts, they wrap the document itself and the boy's hand in the altar cloth. That is how they offer him.³⁴

The view that a person entering into a monastery should be regarded as a gift is not unfamiliar to medieval scholars. Although there are few, if any, comprehensive studies on entering daughters and sons as part of a social gift-exchange system, in more general discussions of nuns and the monastic tradition these children are sometimes designated as gifts—one speaks of “children donated by their parents”³⁵ or “the decision to give a child to a monastery was a choice to donate something of worth to God.”³⁶ In a study of French and English nunneries between 890 and 1215, Bruce Venarde writes:

The lower aristocracy of the eleventh and twelfth centuries also made contributions of another kind to the growth of female monasticism: their mothers, wives, sisters, and daughters. [...] It is not simply sentimental to regard these women as gifts, for that is the way they are described in the language of the charters. The usual formula for donations at entry, repeated in scores of twelfth-century documents, announces a gift of real property *cum filia, matre* or *sorore*, “along with” a daughter, mother, sister, or other female relative.³⁷

³² SBL, “Birgitta Birgersdotter,” 447–62.

³³ On child oblation, see Mayke de Jong, *In Samuel's Image: Child Oblation in the Early Medieval West* (Leiden: Brill, 1996).

³⁴ *Regula Sancti Benedicti, RB 1980: The Rule of St Benedict: In Latin and English with Notes and Thematic Index, Abridged Edition*, ed. Timothy Fry (Collegeville: The Liturgical Press, 1981), ch. 59:1–2.

³⁵ C.H. Lawrence, *Medieval Monasticism*, 3rd ed. (Harlow: Longman, 2001), 121; see also 34.

³⁶ Penelope D. Johnson, *Equal in Monastic Profession: Religious Women in Medieval France* (Chicago: University of Chicago Press, 1991), 19.

³⁷ Bruce L. Venarde, *Women's Monasticism and Medieval Society: Nunneries in France and England, 890–1215* (Ithaca: Cornell University Press, 1997), 114.

In the Swedish charters, the most common formulation connected with a daughter's entry into a nunnery is that real property is given to the nunnery with (*cum*) a daughter or another female relative. The phrasing corresponds well with the European tradition. In 1289 Haakan Marskalk (*marshal*) and his sister Olof Tunadotter gave some landed property, which the family had had since old times, to Vreta nunnery together with Olof's daughter (*cum filia dicte Domine Olof*).³⁸ In 1318 Magnus Gregersson gave his daughter Margareta to the nunnery in Sko, and with her (*cum ea*), also some landed property.³⁹ In the same year, the parish priest Ingevald gave, along with his *neptis* Lucia (*cum nepte mea*), landed property to the very same nunnery.⁴⁰ The above-mentioned Ulf Gudmarsson and his wife Birgitta Birgersdotter had another daughter, Ingeborg, whom they decided would become a nun. When she was given to the nunnery of Riseberga in the year 1341, the charter that was drawn up states, "to which [Riseberga nunnery] we have donated our beloved daughter Ingeborg to spiritual service."⁴¹ In this context, a similar Norwegian example may also be of interest: When Elin Thorsdatter, probably a widow, had her testament drawn up in Oslo in the year 1352, she wrote, "[...] further, I give up my daughter Ingeborg to God and I offer her to Nonneseter nunnery in Oslo."⁴²

In other words, it is clear that medieval contemporaries regarded a daughter as a gift; an offering to the monastery, to the saints, and to God. The decision to place a daughter in a convent was the decision to give something of worth to God. Consequently, gifts were expected in return. The monastery celebrated masses and said prayers for the donor. The entrant herself was, not least, involved in these prayers: through her the family obtained a special advocate who offered up prayers for family members, living and dead.

³⁸ SDHK, 1461: "nos possessionem quam nos nostrique predecessores in sætunum posederamus ab antiquo cum omnibus sibi attinentibus cum filia dicte Domine Olofo, monasterio de Wreta donacione sollempni perpetuo contulisse"; *Äldre svenska frälsesläkter. Ättartavlor* (ÅSF), vol. 1, ed. Folke Wernstedt et al. (Stockholm: Riddarhusdirektionen, 1957–1989), 97.

³⁹ SDHK, 2862: "cum ea, predia mea videlicet . . . predicto clauastro et conuentui sko approprio et assigno."

⁴⁰ SDHK, 2905: "cum nepte mea Lucia, dono et irrevocabiliter confero, monasterio in sco, ipsiusque monasterii conuentui, predia mea, videlicet [...]."

⁴¹ SDHK, 4686: "vbi delectam filiam nostram ingiburgim. ad militandum deo donauimus."

⁴² *Diplomatarium Norvegicum* (DN) IV, ed. Chr. C.A. Lange, et al. (Christiania: P.T. Mallings forlagshandel, 1857), No. 359: "jtem gefuer ek gudi j vald Jngibiorgo dottor mina ok offra[r] ek hana till Nunnu klausters j Oslo."

Gifts and the Reinforcement of Symbolic Capital

To let one's daughter take the veil can thus be understood as an act of gift-giving. However, although the phenomenon should be understood as a religious act, in a society in which gifts no longer were the basis of how social and political relations were organized, this does not mean that it was of no significance in terms of social relations. The gift, be it a daughter, estate, or other material object, concerned not only the donor and the recipient; it also entailed status and prestige outside the monastery, in the secular world in which the donor acted.⁴³ This was of course because the surrounding community valued highly these kinds of actions: religious gifts conferred status in society. One can therefore assert that the donation not only had an influence on the donor's personal relationship with God and the receiving monastery, but also affected his relations with people outside the monastery such as neighbors, kinsmen and other families, and men of the church. One can also presume that the more valuable the gift, the more social status was thereby gained—and among all different kinds of gifts one conferred on the monastic institutions, a child—a daughter—must be regarded as one of the most valuable. Giving a daughter to a convent created and consolidated personal and social prestige for the donor (in general, the father). In other words, the donation strengthened the donor's symbolic capital. In addition to theories of exchange, the concept of symbolic capital brings another dimension to the understanding of religious endowments. The theory of exchange focuses on the *relationship between the donor and the recipient*. By giving something to God, the donor increased his chances for a successful life on earth, as well as in the afterlife—Mauss speaks of an economic theology.⁴⁴ The concept of symbolic capital widens the understanding and meaning of the gift. The act of giving had social consequences, which were not directly linked to the relationship with God. Rather, they must be described in terms of the *relationship between the donor and the aristocratic environment in which he acted*. In contrast to the recipient of the gift, these surrounding aristocratic circles usually did not take advantage of the gift for themselves. However, it was their values, strongly influenced by religion, that contributed to the increasing status of the donor. The more substantial the

⁴³ See Ilana F. Silber, "Gift-Giving in the Great Traditions: The Case of Donations to Monasteries in the Medieval West," *Archives Européennes de Sociologie* 36 (1995): 2.

⁴⁴ Mauss, *The Gift*, 55.

donations he gave to churches and monasteries, the more his societal status increased.⁴⁵

Thus, one can presume that strengthening one's symbolic capital through religious gifts could be of great importance when it came to political and social strategies. The thirteenth-century Law-Speaker in the Swedish province of Östergötland, Svantepolk Knutsson, is a good example of how generous gifts—of daughters as well as property—to religious institutions effectively strengthened a person's social position and influence. Svantepolk was born around the year 1230, the son of Duke Knut of Reval. Duke Knut was the illegitimate son of the Danish king Valdemar II (1202–1241) and Helena, daughter of the Swedish earl (*jarl*) Guttorm. Svantepolk's maternal ancestry is more uncertain, but his mother was probably a woman named Hedvig, daughter of the Pomeranian duke Svantepolk III of Danzig. Svantepolk descended, in other words, from the high nobility of the Baltic region. However, he himself lived and was active in the Swedish kingdom. He contracted a marriage with Benedicta, the daughter of Sune Folkesson and Helena Sverkersdotter. Benedicta was the granddaughter of King Sverker Karlsson ("the Younger," c. 1196–1208), as well as the sister of Queen Katarina, the wife of King Erik Eriksson (1222–1229; c. 1232–1250).⁴⁶ Svantepolk had five children, of which least two, Ingrid and Ingegerd, with certainty were born of the marriage with Benedicta.

Despite the lack of close biological kin in Östergötland and the Swedish kingdom, Svantepolk would eventually become Law-Speaker in Östergötland, as well as a member of the Council of the Realm. He obtained the title *dominus* (knight) and took an active part in the foreign affairs of the young kingdom—especially during the reign of King Magnus Birgersson, who had close ties with Denmark. He also possessed large estates, in Östergötland and elsewhere.⁴⁷ Svantepolk thus gained power in the political as well as the economic and legal fields of society.

Many roads led Svantepolk to this prominent position. The marriage with Benedicta was of course of crucial importance. This connected him to the royal families, through both his brother-in-law, King Erik, and his mother-in-law, Helena Sverkersdotter. Another way for Svantepolk to strengthen his social position, as well as to gain real influence in the

⁴⁵ See Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity Press, 1992), 112–121.

⁴⁶ SBL, "Benedicta," 170–72; ÄSF, 258–59; Sven Axelsson, "Om dateringen av Svantepolk Knutssons första gåvobrev till Vreta kloster," *Historisk Tidskrift* (1950), no. 2: 135–47.

⁴⁷ ÄSF, 259a; Sven Axelsson, "När blev Svantepolk Knutsson lagman i Östergötland," *Personhistorisk Tidskrift* (1953), no. 4: 113–25.

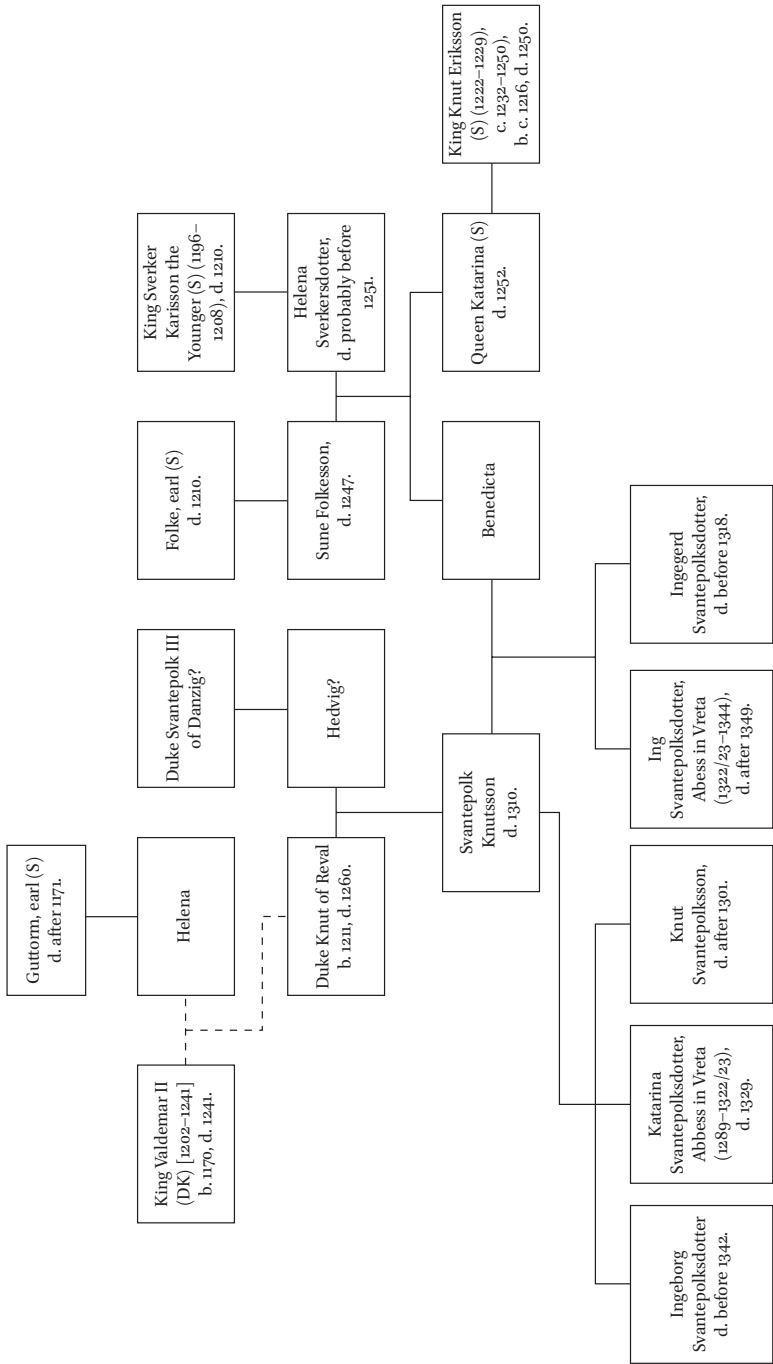


Fig. 1: Genealogy of Svanteþolk Knutsson

religious field, was by giving large and important gifts to churches and monasteries, a strategy that he put into practice throughout his life. It is worth noting that the most prominent of Svantepolk's religious gifts of which we have knowledge came at the beginning of his career. In 1266, Svantepolk decided to give two of his daughters to Vreta nunnery in Östergötland.⁴⁸ The convent was Sweden's oldest nunnery and the most prominent convent in the kingdom, which maintained its pre-eminent position throughout the Middle Ages. On the same occasion, Svantepolk conferred property on Vreta, an estate that was exceptionally large, almost seven markland.⁴⁹ Neither of the daughters is mentioned by name in the surviving charter, but one of them was probably a young girl named Katarina. The identity of the other daughter is unknown, but we do know that Svantepolk during his life had at least four daughters and one son.

The gifts proved to be a good investment. One of its consequences was that in the year 1289 Svantepolk's daughter Katarina was elected abbess of the nunnery. She held this position for thirty-three years. Her sister Ingrid then took up the office. In consideration of the fact that Ingrid had lived most of her life as a secular wife and entered the nunnery as a widow in the year 1321—just before she was elected abbess—this looks more than a coincidence. Instead of electing a new abbess from within the community, a woman from outside was chosen—a woman who happened to be Katarina's sister and the daughter of Svantepolk. Just like her sister, Ingrid then held the position for a long period, more than twenty years.⁵⁰ Svantepolk's decision to give daughters and property to Vreta nunnery thus had positive consequences for his family over a long period, as the family came to exert influence on one of the most prestigious religious institutions in the kingdom for more than half a century. During his life, Svantepolk also donated property to other churches and monasteries. These gifts not only resulted in prestige and religious counter-gifts, but also brought him real influence. He was in possession of the canonicate of Flisby (which belonged to the cathedral of Linköping), meaning that he had the right to appoint its priests; and he held the patronage of the prestigious church Kaga, near Vreta nunnery in Östergötland.⁵¹

⁴⁸ SDHK, 848.

⁴⁹ The median value of the estate that followed a female relative into a nunnery has been estimated as less than one markland (Andersson, *Kloster och aristokrati*, tables 6 and 7, 179–82).

⁵⁰ ÄSF, 259b.

⁵¹ SDHK, 917; SDHK, 1572; SDHK, 2161; SDHK, 3239; SDHK, 5133.

Svantepolk's personal thoughts and motives for these gifts remain unknown to us. His acts are necessarily the object of interpretation, and one cannot take connections between a religious gift and a certain political success for granted. Still, I would assert that Svantepolk's example illustrates very well how gifts to religious institutions, daughters as well as property, effectively contributed to strengthening a person's symbolic capital. The gifts strengthened his social position in a society characterized by religious values—values that, as well as the religious institutions themselves, were a very real and tangible part of how power was exercised. Svantepolk was of noble birth but nevertheless had to build up a social position in a new geographical region, without his nearest relations close by. His marriage to Benedicta created new and valuable bonds with the royal family. In addition, by giving an uncommonly large gift to Vreta nunnery early in his "career," including two daughters, he also created very strong and lasting bonds with one of Östergötland's, as well as the kingdom's, most important institutions. Thus, the religious field, along with economic assets and important kinship relations, formed a valuable base for his further political advancement. As mentioned above, he later became Law-Speaker in Östergötland as well as a Councillor of the Realm.

Gifts and Monastic Brotherhoods

Svantepolk gave both property and daughters to various religious institutions throughout his life. He is thus a good example of the most common way of establishing a personal relationship with a religious institution during the Middle Ages, an act that also strengthened his own symbolic capital: giving gifts to a monastery. However, he himself seems to have chosen to remain outside the monastic community. There is, for example, no document suggesting that he spent the final days of his life in a monastery, a practice not uncommon among elderly secular men, who chose the monastic life *ad succurendum*, and sometimes even took the vow just before their expected death.⁵² Nor, as far as we know, was Svantepolk ever received into a monastic brotherhood. This was another way to establish closer and stronger personal ties with a particular monastery or convent, as well as creating personal bonds with other secular members of

⁵² Joseph H. Lynch, *Simonical Entry into Religious Life from 1000 to 1260: A Social Economic and Legal Study* (Columbus, OH: The Ohio State University Press, 1976), 27.

the brotherhood. A monastic brotherhood, a fraternity, was a society tied to a particular monastery. The history of such societies goes back to the ancient church, originating in mutual agreements between different monasteries whose monks prayed for each other, especially for those who had died. These unions could also involve churches, as well as individuals—monks, priests, and laymen. Eventually, the members constituted a rather heterogeneous group from different social strata. However, to be received in the fraternity, the person in question had to be able to offer something of value to the monastery, a tangible or intangible gift.⁵³ In Swedish charters the gift normally consisted of landed property.⁵⁴

The fraternities offered advantages to both sides. The secular person who was received into the fraternity obtained a closer personal relationship with the monks and the community than was usually the case when donations were given to the monastery. Furthermore, besides gaining spiritual benefits such as prayers and masses, the member came to be part of a secular network, which could include people with higher social status. The monastery could also profit and obtain benefits from the arrangement, not least because the religious, too, could be part of and profit from a broad secular network, particularly if the network consisted of influential people from the secular elite. There are several examples of how monks were involved in disputes about property with secular people, a few dating back to the monasteries' earliest times.⁵⁵ The successful resolution of these conflicts, which included such matters as inheritance disputes, disputes over fishing rights and the like, demanded good relations with the secular elite. A clear expression of this is the number of charters drawn up by the kings, wherein they confirm the royal protection over the monasteries.

Another way in which the monks could ensure royal patronage was by receiving the king into their monastic fraternity. This was the case when King Knut Eriksson (c. 1167–1195) was received into the brotherhood of

⁵³ Herbert E.J. Cowdrey, "Unions and Confraternity with Cluny," *Journal of Ecclesiastical History* 16 (1965): 152–62; Jarl Gallen, "Brödraskap," in *Kulturhistoriskt lexikon för Nordisk medeltid*, ed. John Danström (Malmö: Allhems förlag, 1956–1978), 303–306; Kim Esmark, "De hellige døde og den sociale orden. Relikviekult, ritualisering og symbolsk magt," Ph.D. diss. (Roskilde: Roskilde University, 2002), 75.

⁵⁴ Catharina Andersson, "Andliga gåvor i världsligt bruk—om den religiösa gåvan som social och maktskapande handling", in *Gaver, ritualer, konflikter. Et rettsantropologisk perspektiv på nordisk middelalderhistorie*, ed. Hans Jacob Orning et al. (Oslo: Unipub, 2010), 68–69.

⁵⁵ See for example Curt Härenstam, "Finnveden under medeltiden," Ph.D. diss. (Lund: Gleerup, 1946), 218–221.

the Cistercian Julita monastery in the second half of the twelfth century. In a charter written sometime between 1167 and 1185, the king proclaimed that he and the monks had made an exchange, in which both parties had transferred property. Further, he declared that the monks had accepted him as a member of their fraternity, and that he, in turn, would take the part of founder and protector of the monastery.⁵⁶ In this case, the monks welcomed the king into their brotherhood without a tangible donation. The king was a noble and distinguished person, and his very presence strengthened the status of the monastery, as well as giving the monks royal protection. This protection was of particular importance to the monks, because not long before they had been involved in a protracted inheritance dispute. The monastery had earlier, as mentioned, received property in Viby from a woman named Doter. Her son, however, claimed his inheritance right, and a long dispute followed. Finally the dispute was settled by the archbishop in Uppsala, Stefan, sometimes between 1164 and 1167. The verdict was in favor of the monks, who were allowed to keep the property. Despite this, some years later the monks decided to leave Viby and settle in Julita, on land given to them by the king as part of the above-mentioned exchange. It is understandable, then, that the monks would gratefully welcome the king as their protector and as a member of their brotherhood.

King Knut's charter, coming not very long after the first Cistercian establishment, is the first known Swedish example of someone's being received into a monastic fraternity.⁵⁷ Accordingly, we know that monastic fraternities existed in twelfth-century Sweden. However, most of the surviving charters concerning monastic brotherhoods date from the thirteenth century and afterwards. Because the number is limited—slightly more than twenty charters are known before 1400—conclusions must be drawn with caution.⁵⁸ Still, some information can be extracted. What is striking is the social diversity among the members of the brotherhoods. The members have in common that they could afford to give some of their personal landed property in order to be admitted to the brotherhood, but otherwise they represent different strata of society. In addition to the king, we find members of the nobility (a Royal Constable, a Law-Speaker, and a knight), as well as a parish priest, burghers, servants, and a group of

⁵⁶ SDHK, 214.

⁵⁷ The first Cistercian monasteries, Alvastra and Nydala, were founded in 1143 as daughter-houses affiliated with Clairvaux.

⁵⁸ Andersson, "Andliga gåvor i världsligt bruk," 68.

persons who were only identified by name—most likely lower aristocrats or peasants.⁵⁹ This social diversity has also been observed outside Scandinavia. In a study of the French monastery of Saint-Aubin d'Angers in Anjou, Kim Esmark observes a great social diversity among the members of the fraternity. For those who could not afford a gift in order to be received into the brotherhood, it was however possible to come together and form a *confrérie*, and jointly become part of the brotherhood.⁶⁰

When the Swedish fraternities are studied, it is clear that most of the monastic institutions in the sources were male houses. With the exception of Eskilstuna priory (in the province of Södermanland), which belonged to the Order of St John, these male houses were all Cistercian. The only convent found among the charters is the Franciscan convent of St Klara in Stockholm, mentioned in two charters. These are dated to the first half of the fourteenth century—a period when the convent was one of the most distinguished in the kingdom.⁶¹ Of the monasteries, the two most popular seem to have been the aforementioned Julita and Eskilstuna.⁶² Despite the limited empirical base, I take the liberty of reflecting on the fact that these two particular monasteries emerge most clearly among the surviving charters. In the case of the brotherhood connected to Julita, as we have seen, one of its first members was the king, Knut Eriksson. This of course gave status to the monastery, even after the king's death. A person's death did not mean that he had left his surviving relatives. It was rather a transition from one stage to another, "a change in status, but not an end."⁶³ The dead—not only saints—were omnipresent and interacted with the living; helping, warning, or admonishing them.⁶⁴ From this perspective, the popularity of the Julita fraternity does not appear particularly strange. A person who was incorporated into the brotherhood also became part of its secular network that included both living and dead members. The entrant not only created valuable bonds with the monks and other living members of the brotherhood. He also created a personal relationship with its founder-king—a king whose father, St Eric, also was venerated as a saint. Naturally, this must have increased the popularity of the Julita brotherhood.

⁵⁹ Ibid., 68–69.

⁶⁰ Esmark, "De hellige døde og den sociale orden," 104, 148.

⁶¹ Andersson, "Andliga gåvor i världsligt bruk," 68.

⁶² Ibid.

⁶³ Geary, *Living with the Dead*, 2.

⁶⁴ Patrick J. Geary, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton: Princeton University Press, 1994), 83–87.

Similar circumstances can be detected for Eskilstuna. King Knut was probably involved in the founding of this priory, although no surviving evidence exists to show that he was also involved in the fraternity. Furthermore, a second distinguished man, Birger Brosa, was involved in the establishment of the priory. Birger held the title of *jarl* (earl), the highest royal office in the kingdom.⁶⁵ An additional cause of the brotherhood's popularity was probably the fact that Eskilstuna was the only priory in the kingdom which belonged to an order of knights, the Order of St John—an association likely to have attracted the men of the aristocracy to whom knightly ideals would have appealed. From Eskilstuna we have one interesting and unusual, example of how a son of a knight chose monasticism as his path of life. It concerns the monk Klemens Tyrgilsson, whose father and his brothers were knights. We thus here have an example of a man from the upper nobility who chose to become a monk.⁶⁶ However, what makes the case of Klemens of particular interest in this context is that in addition to his life as monk in Eskilstuna, he also chose to be part of the Julita fraternity.⁶⁷ Klemens thus pursued an older tradition in which not only did monastic houses create formal and mutual unions with each other, but individual monks were also taken into fraternities associated with other monasteries.⁶⁸ Further, Klemens's noble birth indicates that the institutions he chose can be considered as two of the kingdom's most distinguished male houses, not least in terms of their fraternities.

Thus, I would argue that gifts and donations to a monastic institution, given in order to become part of its brotherhood, could be of great social importance for its members in terms of increasing their social status. By creating personal bonds with distinguished individuals, living and dead—such as a former king—the member could strengthen his or her symbolic capital. Furthermore, the secular network offered by the brotherhood also helped to establish or consolidate contacts between still-living persons, although this is not directly evident in the charters. In his article on unions and confraternities connected with Cluny, Herbert E.J. Cowdrey stresses that the formal bonds established through the monastic brotherhoods were always vertical—between the members and the monastery—

⁶⁵ Isak Collijn, "Ett nekrologium från Johanniterklostret i Eskilstuna," *Nordisk Tidskrift för bok- och biblioteksväsen* 16 (1929): 2; Martin Berntsson, "Klostren och reformationen. Upplösningen av kloster och konvent i Sverige 1523–1596," Ph.D. diss. (Skellefteå: Norma, 2003), 31.

⁶⁶ Jan Raneke, *Svenska medeltidsvapen II* (Nora: Doxa, 2001), 569. See also n. 21 above.

⁶⁷ SDHK, 7600.

⁶⁸ Cowdrey, "Unions and Confraternity with Cluny," 152–56.

whereas no formal horizontal bonds can be traced among the members of the fraternity.⁶⁹ However, as Esmark has pointed out, this does not mean that admission into a fraternity must be understood as a limited, private arrangement. Rather, it had a public character:

and even if there indeed was not any formalised structure that connected all donors with each other [...] it is, on the other hand, clear that many (most?) of the donors were linked together in groups by, for example, blood relationship, matrimony or feudal dependence.⁷⁰

Although we find no formal horizontal bonds between the members of the monastic fraternities, it cannot be ruled out that significant informal bonds were established through these associations. In the same way that a gift to a monastery helped to establish or consolidate social relationships between lay people, it is reasonable to believe that this was also true for the members of the fraternities—perhaps to an even greater extent, since these gifts, as well as being associated with a monastic fraternity, created an even more exclusive bond with the monastery than other donations. To be part of a brotherhood might very well have entailed a form of exclusivity.⁷¹ Therefore, in my opinion, it is highly reasonable to imagine that participation in a fraternity, too, helped both to create of social networks, and to strengthen the symbolic capital of the member—not solely because of the social status of the monastery in question, but also because of the often- distinguished other members of the fraternity, living and dead.

Gifts and Conflicts

Gifts can thus be understood as a means of creating and maintaining special bonds with other families who are connected to a specific monastery or fraternity. So far the gift's symbolic significance has mainly been discussed. However, as late as the thirteenth and fourteenth century gifts could also be a part of negotiating and managing conflicts between groups

⁶⁹ Ibid., 162.

⁷⁰ Esmark, "De hellige døde og den sociale orden," 376.

⁷¹ On donations and social networks connected to them, see White, *Custom, Kinship, and Gifts to Saints*; Rosenwein, *To be the Neighbor of Saint Peter*; Constance Brittain Bouchard, *Holy Entrepreneurs: Cistercians, Knights, and Economic Exchange in Twelfth-Century Burgundy* (Ithaca, London: Cornell University Press, 1991), 170–76; Elisabet Regner, "Den reformerade världen," PhD diss. (Stockholm: Stockholm University, 2005), 77.

of kin. In such cases, the social significance of gift-giving stands out perhaps even more clearly, since a direct connection between a gift and its secular consequence can be noted. The importance of entry to monastic houses as part of managing conflicts has also been observed by Joseph H. Lynch, who points out how entries could be a part of settling conflicts between kin-groups and religious houses.⁷² This closely resembles the crucial role that secular marriages could play in confirming an agreement between conflicting kin-groups.

An example of how gifts can be interpreted as part of the settlement of a conflict between kin-groups can be observed in fourteenth-century Sweden. In this case, not only was the reconciliation confirmed by a secular marriage; a daughter was also given to a nunnery as bride of Christ. One party in this conflict was the above-mentioned Svantepolk Knutsson and his children, who, as has been shown, were closely connected to Vreta nunnery. The other party was the kin-group which goes under the name *Algotssönerna*, the descendants of Algot Bryniolfsson, Law-Speaker of the province of Västergötland at the end of the thirteenth century. Algot had seven sons of whom we know, and many of them attained respected positions in society. Bryniolf was bishop in the diocese of Skara, while Peter became canon in the same diocese and was also chancellor at the court of King Magnus Birgersson. Together with another brother, Rörik, Peter took an active part in work on the Statutes of Alsnö in the year 1280.⁷³ Other brothers were obviously also a part of the nobility, at least in Västergötland, as they were addressed as "knight" (*dominus*).

However, in the year 1288 one of these sons, Folke Algotsson, abducted Ingrid Svantepolksdotter, the daughter of Svantepolk Knutsson. At the time, Ingrid was betrothed to the future Danish *drots* David Torstensson. However, because of this felony, no alliance with the Danes was realized. Instead, Ingrid was brought to Norway, where Folke married her. Folke's action had disastrous consequences for his kin-group. Not only did Algot's sons have a personal relationship with King Magnus Birgersson, but Ingrid's father, Svantepolk, was close to the king as well. As a result of the abduction, Algot Bryniolfsson was deprived of his office as Law-Speaker, one of his sons was executed, and others had to flee to Norway.⁷⁴

⁷² Joseph H. Lynch, "Monastic Recruitment in the Eleventh and Twelfth Centuries: Some Social and Economic Considerations," *American Benedictine Review* 26, no. 4 (1975),

444.

⁷³ ÄSF, 1–6.

⁷⁴ Ibid.

Gradually the conflict died out, and at the beginning of the fourteenth century at least one of Algot's sons, Bengt, was allowed to return to Sweden. Nevertheless, the days of glory had definitely passed for the family. Thus, when Bengt's son, Algot (named after his grandfather), was about to start his "career," the situation was the opposite of what had been the case when his father and uncles had started out their courses, with his grandfather still Law-Speaker and the family at its social peak. Young Algot had to start over again from the bottom. Nevertheless, it seems obvious that Algot's ambition was to reconcile and rehabilitate the relationship with Svantepolk's descendants (Svantepolk himself died in 1310). For this he used different strategies. First, he chose to marry one of Svantepolk's granddaughters (whose name we do not know). Moreover, in the year 1337 he decided to give his oldest daughter Birgitta as a gift to Vreta nunnery.⁷⁵ And, *nota bene*, at this time the nunnery was headed by the abbess Ingrid Svantepolksdotter, the same woman who one generation earlier had been abducted by Algot's uncle. Now Algot decided to place his own daughter under this woman's protection—an act that easily can be interpreted as a gesture of reconciliation.

Algot's action is not only interesting because it illustrates how a religious gift could be used as one method of settling issues of violence between kin-groups. It also shows how different systems of conflict-solving operated simultaneously. By this time, national laws would very soon be established, and Algot was himself a part of this new societal order: like his grandfather, he became Law-Speaker of Västergötland. At the same time, his actions show that an older tradition of gift-giving still had importance, and that older traditions could coexist with new formal regulations. It also shows that an older tradition of using children as a "help to effect a reconciliation between mutually opposed families,"⁷⁶ the system of fostering, still had relevance in fourteenth-century Sweden, albeit in a modified form. Algot's decision to give his daughter to Vreta nunnery marked the end of a comprehensive and serious conflict. The gravity of the conflict helps to explain why Algot handed over a gift of great value to the monastery and its abbess: his first-born daughter. However, one can also assume that minor gifts were made in connection with less serious conflicts as symbolic gestures of reconciliation, although on the whole the sources remain silent on this. As late as the year 1477, Simon Jute and his wife

⁷⁵ ÄSF, 1–6; SDHK, 4332.

⁷⁶ Gurevich, "Wealth and Gift-Bestowal," 136.

Ingeborg drew up a charter in which they acknowledged that they had received a “gift of friendship,” cloth and a silver spoon, from the monks and monastery in Eskilstuna, as part of a settlement regarding a dispute about Ingeborg’s inheritance.⁷⁷

Conclusion

Even as late as the fourteenth century in Sweden, gift-giving could be of crucial social importance in terms of how social relations were organized. Despite the fact that the societal context was different in comparison with earlier societies such as tenth-century France or Scandinavia in the Viking Age or the early Middle Ages, where gift-exchange was a fundamental part of how social relationships and hierarchies were organized, a religious gift created more than just personal bonds between the donor and God or his saints. Certainly, in the fourteenth century Sweden was moving towards a more centralized governance, with a growing judicial and economical administration. Older systems were gradually being replaced by new ones. However, alongside with these societal changes, an older tradition of gift-giving simultaneously existed. This tradition still contributed to the creation and maintenance of social relationships, not only with the monastery that received the gift, but also with other secular persons linked to the monastery—its founders, leaders, or other important benefactors. Similarly, strong links could be established between different donors who were joined together through the monastic brotherhood. In short, the gift could strengthen the donor’s symbolic capital and his social status in society.

Children, predominantly daughters, were an essential part in the tradition of gift-giving, and placing a daughter in a convent must be understood as one of the most valuable gifts a family could make. The gift, however, ensured more than the family’s receiving special prayers through a personal family member inside the cloister walls, or other kinds of spiritual counter-gifts. Nor should the decision to give a daughter to a convent be interpreted as an act based primarily on economic grounds. Rather, giving a daughter to a convent could be essential when it came to reinforcing

⁷⁷ SDHK, 30278. Sometimes it is also difficult to determine whether a gift is a redemptive gift, or should be understood instead as a fine or penalty. For example, in 1310 Peter Magnusson, on the advice of the archbishop, “gives and pays” landed property to the nunnery Sko (province of Uppland), because he had used violence against it and acted unlawfully (SDHK, 2365).

a person's symbolic capital or his social position. Giving a daughter to a convent, as with other types of religious gifts, must be understood as part of how different types of social relations and networks were created.

Gifts could be part of reconciliations between individuals or kin-groups too. As we have seen, a daughter could also play a crucial role as a conciliatory gift, given to a convent linked to the kin-group with whom her own family was in conflict. Further, this act can be understood as an adaptation of an older tradition of fostering, in which children were used as part of a settlement between opposed families. Thus, giving a daughter to a convent is illustrative of how an older system of gift-giving, crucial in societies not yet centralized, was transformed and adapted to new societal conditions. Even so, the transition into a centralized kingdom was a long process, and in fourteenth-century Sweden, gift-giving was still a crucial part of how social relationships were organized.

THE FIELD OF PROPERTY DEVOLUTION IN NORWAY DURING THE LATE MIDDLE AGES: INHERITANCE SETTLEMENTS, MARRIAGE CONTRACTS AND LEGAL DISPUTES

Lars Ivar Hansen

Introduction

The aim of this article is to throw light upon the various legal procedures and actions that were applied to property devolution in late medieval Norway. After an overview of the premises laid down by the legal framework and the available options defined by legislation, focus will be directed on legal practice, as it can be reconstructed from charters, verdicts, and contractual agreements.

In the last part of the article, particular attention will be given to a set of documents which highlight the procedures followed and actions taken by actors with family roots in the lesser aristocracy of western Norway, who succeeded in consolidating property complexes in the southern part of the country. Through these documents, their actions and strategies can be followed through five to six generations, covering a span of two hundred years.

The Legal Framework: Conjugal Property during and after Marriage

Spouses' control over property during marriage was conditioned and influenced by a series of factors pertaining both to legal regulations of different kinds and to various sets of interests based on the relationship between the conjugal couple and their relatives on both sides. In the first place, there was the standard legislation which regulated the rights to control and inherit the dowry, the counter gift (indirect dowry), and the man's separate property. Secondly, both the older provincial laws and the later National Law established that it was the man who should be in charge of the whole conjugal property during the marriage. However, it is explicitly stated in these laws that the man had to act for the benefit of them both, and not jeopardize any of his wife's property. He was not allowed in any

way to take his wife's property abroad.¹ Thirdly, the special set of legislative measures concerning the options for establishing "community of property" or "joint ownership" during marriage came to have ever greater importance during late medieval and early modern times. But the conditions for making such specific marriage contracts,² and the subsequent consequences, changed considerably throughout the period as the result of legislation. Overall, these premises reflected competing interests in both how property should be managed during the lifetime of the couple, and how property should be transferred to the next generation upon the death of one or both of the spouses. At the same time, they formed the framework or "field" within which the competing interests and strategies were played out. Further, new premises set up by new legislative measures laid down new conditions to be taken into consideration.

Most of the issues at stake became most obvious and most significant at the conclusion of a marriage, in connection with inheritance procedures and consequent division of property. A certain tension and potential conflict of interests existed between the conjugal couple—with their common children as directly descendant heirs—and their kin on both sides who might come under consideration as heirs under special circumstances. The two spouses had their origins in two different kin lines, and were to a great extent dependent on them in several respects, but at the same time they formed a new, amalgamated union of the two lines, which could represent a continuation of both. Nevertheless, the kin on each side had their interests to take care of, through various measures, in case the couple did not produce any children, or in case the children died before either of the parents. Of central importance were such questions as these: In the case where one of the spouses died before the other, what inheritance procedures had to be undertaken immediately, and what should be postponed until after the other spouse's death? How much of the property and what parts of it could be kept by the surviving spouse for her or his lifetime? And how should the property of the spouse who died first be

¹ The Gulathing Law chap. 52; p. 74 in Knut Robberstad, trans., *Gulatingslovi* (Oslo: Det norske samlaget, 1969). (Hereafter the law is cited as GL; the Norwegian translation as Robberstad, *Gulatingslovi*.) King Magnus VI the Lawmender's National Law, section V, chap. 3; p. 74 in Absalon Taranger, trans., *Magnus Lagabøters Landslov*, repr. ed. (1915; repr., Oslo and Bergen: Universitetsforlaget, 1979). (Hereafter the law is cited as MLL; the translation as Taranger, *Magnus Lagabøters Landslov*.) All English translations of these and other laws are the author's own.

² Cf. Agnes S. Arnórsdóttir, *Property and Virginity: The Christianization of Marriage in Medieval Iceland 1200–1600* (Aarhus: Aarhus University Press, 2010).

divided? Should it pass on to the children in its entirety, if the couple had legitimate progeny? Or might other members of the deceased's kindred come into consideration, even if the couple had legitimate children? If the children who were entitled to inherit were minors, who should be their guardian(s) and be in charge of property management? These were some of the questions that the legislation had to deal with.

The Position of Allodial Estate

Matters were further complicated and accentuated by the institution of "allodial estate," or *odelsjord*, which entitled certain members of a kin group to the right of preemption and redemption of inherited lands, similar to the French *retrait lignager*.³ Such rights were known in all the Nordic countries (except Iceland) during medieval times, but by different names. In Swedish, the right was called *bördsrätt* (birth's right), while the Danish term *lovbydelse* (offer by law) referred to the obligation of a person wishing to sell allodial land to offer it to the next of kin at the same price as strangers would pay.⁴ To qualify as *allodium*, landed property must have been owned by members of the same kindred for a specified number of generations, or—according to later legislation—for a minimum amount of time. The Gulathing Law laid down six generations as a minimum, while that of Frostathing prescribed four generations. The National Law of 1274 reduced the minimum time required to sixty years.⁵ Allodial estates

³ Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050–1150* (Chapel Hill: University of North Carolina Press, 1988).

⁴ Michael Gelting, "Odelsrett—Lovbydelse—Bördsrätt—Retrait Lignager: Kindred and Land in the Nordic Countries in the Twelfth and Thirteenth Centuries," in *Family, Marriage and Property Devolution in the Middle Ages*, ed. Lars Ivar Hansen (Tromsø: University of Tromsø, 2000), 133–65; Per G. Norseng, "Odelsrett—The Norwegian retrait lignager," in *Land, Lords and Peasants: Peasants' Right to Control Land in the Middle Ages and the Early Modern Period—Norway, Scandinavia and the Alpine Region*, ed. Tore Iversen and John Ragnar Myking (Trondheim: Dept. of History and Classical Studies, NTNU, 2005), 201–227.

⁵ GL, chap. 266, Robberstad, *Gulatingslovi*, 240–45. The Frostathings Law, section XII, chap. 4; pp. 182–83 in Jan Ragnar Hagland and Jørn Sandnes, trans., *Frostatingslova* (Oslo: Det norske samlaget, 1994) (The law is hereafter cited as FL; the translation as Hagland and Sandnes, *Frostatingslova*). MLL, section VI, chap. 2.1, Taranger, *Magnus Lagabøters Landslov*, 98. It is noteworthy that the minimum number of generations prescribed by the Gulathings Law corresponded to the definition of incestuous, consanguineal relationships that was established at the foundation of the Norwegian church province in 1152–1153, while the four generations prescribed by the Frostathings Law corresponded to the reduced number of forbidden degrees adopted by the Fourth Lateran Council in 1215.

which had come into the possession of non-kin (by sale, mortgaging, or inheritance) could be redeemed by lineal relatives of the last allodial possessor, according to this law's detailed provisions. The National Law also extended the period during which a prospective redeemer could postpone the takeover, provided that he repeatedly declared at the public assembly that he was the rightful "*odal* heir" but that he temporarily lacked money.

As we shall see, the special legal position of allodial estates added further considerations to the tactics and planning of property devolution between the generations, among other things through the conscious use of marriage contracts to address property matters. The legitimate, common children of a couple also represented a continuation of the two kin lines in question, and as such they were entitled to inherit allodial land. Nevertheless, special precautions were taken in many marriage contracts in order to secure the allodial property for other members of the kin line, in case the couple's common children died before either of the parents. By inheritance, male heirs had a certain priority to allodial property. If a deceased man left both allodial and other property to be inherited by his children of both sexes, the National Law of 1274 prescribed that the sons should be assigned the allodial lands, while their sisters should receive "out-lands" (landed property without specific allodial status) and movables.⁶ Nevertheless, if the deceased did not have any sons or grandsons, some of the women who were nearest in kinship were entitled to take over the allodial property. Both the Gulathing Law and the National Law specified further a group of female relatives who could receive allodial estates after the deceased: his daughter, his sister, his father's sister, his brother's daughter, and his son's daughter. There also existed specific provisions as to how women in possession of inherited allodial land should offer it for sale to relatives (male or female) who had preemptory rights.⁷

With respect to allodial lands inherited directly from a father without any closer male heirs, women had therefore quite strong rights to possession. The same went for allodial property that was part of a wife's dowry.

⁶ "But if a father leaves allodial estate, then the sons shall go to the allodial lands, and the daughters to the out-lands and movables, if there are not any separate lands, and the oldest [son] should take over the main residence, and leave the other allodial lots on their part, so that they are equal, according to legal assessment.": MLL, section V, chap. 7.3, Taranger, *Magnus Lagabøters Landslov*, 80–81.

⁷ GL, chap. 275, Robberstad, *Gulatingsslovi*, 253; FL section XII, chap. 5, Hagland and Sandnes, *Frostatingslova*, 184; MLL, section VI, chap. 7, Taranger, *Magnus Lagabøters Landslov*, 101.

But the situation with allodial lands conveyed as part of the indirect dowry (countergift) was quite different. The National Law states explicitly that allodial lands that have come into the possession of a woman as part of her countergift, or by being inherited backwards from dead children, could not be subject to prescription (*hevd*) after her husband's death. That is, such property could not be kept by the woman for a prolonged period, or passed on to heirs in her kin line. The widow might keep it for some limited time, but as soon as the nearest one of the deceased husband's male relatives became interested in the property, he could sue her and redeem the property once its value had been assessed. The condition was that he be the first male in line to exert the rights of preemption, according to the succession order stipulated by the inheritance section of the National Law and the law provisions regulating allodial lands.⁸ The Gulathing Law contains quite elaborate provisions for the value assessment and payments, and concludes laconically: "So he shall take care of his *allodium*, and she of the money."⁹

A royal amendment of 1313 reinforced the regulations of the National Law concerning "backward" inheritance by one of the parents from children who already had inherited from the other parent, but then had died without leaving any direct heirs of their own. In such cases, the surviving parent was only allowed to dispose of movables which the children had inherited. Landed property could only be kept by the longest-living parent for his or her lifetime, and should then be returned to the kin group from which it had originated.¹⁰ A charter from 1317 gives an example of this practice: a share of allodial land in the farm Rogne, assessed for a value of 140 marks of silver, was then redeemed from the widow Gudrid Audfinnsdaughter by the brother and sister of her deceased husband on behalf of the couple's sons, who were minors.¹¹ The purchase price was to compensate for the claims that Gudrid had in Rogne, corresponding to her indirect dowry and some debt of her dead husband's that she had paid. In another example, we learn from two charters of 1339 concerning landed property in Voss that a property share in the farm Hylle, which

⁸ MLL, section VI, chap. 7, 14–15; Taranger, *Magnus Lagabøters Landslov*, 101, 106–107. Cf. Ragnhild Ormøy, "Kvinner og eiendom i vestnorske bygder, ca. 1270–1350," major diss. (Bergen: University of Bergen, 1984), 74–77.

⁹ GL, chap. 274, Robberstad, *Gulatingslovi*, 252.

¹⁰ *Norges gamle Love indtil 1387*, vol. III, ed. R. Keyser and P.A. Munch (Christiania: Chr. Grøndahl, 1849), 99–100.

¹¹ *Diplomatarium Norvegicum* (hereafter cited as DN), vol. I, no. 151 (1317). http://www.dokpro.uio.no/dipl_norv/diplom_field_eng.html (English version).

made up half of the indirect dowry of Ingegerd Torgautsdaughter, the widow of Orm Kavle, was redeemed by her two stepsons.¹²

The Development of Joint Ownership Agreements

The general premises which were laid down by the standard or “default” legislation governing inheritance succession and the division of property in the aftermath of a marriage that had ended were further influenced by the option of combining the property of the two spouses into “joint ownership” or “community of property.” In Norwegian medieval law this institution was called *félag*, a compound term made up by combining *fé* (n.)—which could mean “cattle,” “goods,” and “property”—and *lag* (n.) meaning “community,” “[that which is held] in common.” Thus the term *félag* refers to “property held in common,” or “joint ownership.”¹³ The institution of matrimonial *félag* was mentioned in the oldest provincial laws, but only in reference to its basic structure and the conditions for establishing such a combination of the spouses’ property. However, from the National Law of 1274 and onwards, the legislation became more concerned with detailed prescriptions—evidently in response to many doubts and questions as to what were the correct procedures and the outcomes that might result from them. The legislators of the monarchy were probably also influenced by the church’s conception of marriage. Between 1280 and 1348, four royal amendments gave more detailed instructions concerning how joint property between spouses should be understood and administered. The last comprehensive legislative measure came with a decree issued in 1537 by a meeting of members of the Council of the Realm and noblemen in Bergen.¹⁴

The institution of matrimonial *félag* regulated the range of options that could be used during marriage for managing the various gifts and property transfers that might have taken place at the time the marriage was contracted. But at the same time, it laid down special premises for the division of property and inheritance procedures at the end of marriage, partly deviating from what was prescribed in the standard legislation. One

¹² DN vol. II, nos. 231, 232 (1339).

¹³ In general, the term *félag* referred to cases of partnership in which people pooled their valuables or goods together and embarked on joint ventures, such as, for instance, trading expeditions.

¹⁴ Rettertingsrecess 1557, in *Lover og forordninger 1537–1605, Norsk lovstoff i sammen-drag*, ed. Harald Winge (Oslo: Norsk lokalhistorisk institutt, 1988), 59–60.

of its main features was that the longest-living spouse was guaranteed the right to hold a certain share of the common property for her or his lifetime, so that the preliminary inheritance procedure dealt only with the remaining share. Thus, this guaranteed share might serve as a subsistence basis of support for the longest-living spouse, in a way that changed what would have been the case if the customary dividing principles concerning dowry, indirect dowry, and separate property of the husband had been followed.

Still, there were several significant distinctions made as to how joint property should be established, which parties had the decisive authority to accept and conclude settlements about community of property, and which proportional division of the common property should be applied between the longest-living spouse and the heirs, at the end of a marriage. All these points were subject to changes through new developments in legislation. For one thing, both the provincial laws and the National Law distinguished between a *félag* by law and an arranged *félag*. Joint ownership “by law” was established automatically, after the spouses had been married for a certain number of years, while the arranged *félag* was established by an actual agreement or marriage contract. The oldest provincial laws set various conditions concerning the duration of marriage in order for a joint ownership to be established automatically. The Frostathing Law required only one year of marital cohabitation, while the Gulathing Law required twenty years, and the older Borgarthing Law thirty years.¹⁵

Secondly, there was the question of who could specify the property to be included in a so-called arranged *félag*, and whose consent was necessary. The old provincial laws seem to recognize the husband as the prime initiator of arranged forms of joint ownership. Both the Gulathing Law and the National Law contain clauses stating that the wife cannot deny her husband *félag*, but at the same time the Gulathing Law required the consent of the wife’s nearest heirs, unless the couple had children in common:

The wife cannot deny her husband *félag*. When a man marries a girl, they cannot join their property without the consent of their closest heirs. But if

¹⁵ FL, section XI, chap. 8, Hagland and Sandnes, *Frostatingslova*, 172–73; GL, chap. 53, 125, Robberstad, *Gulatingslovi*, 74–75, 143; the older Christian Law of Borgarthing, Version 2, in *De eldste østlandske kristenrettene*, Riksarkivet, *Norrøne Tekster nr. 7*, ed. Eivind Fjeld Halvorsen and Magnus Rindal (Oslo: Riksarkivet, 2008), 187, 220; MLL, section V, chap. 4.3, Taranger, *Magnus Lagabøters Landslov*, 77.

they have children to inherit from them, they may join their property [make *félæg*] as they want. (GL, 53)¹⁶

This tension, between the interests of potential heirs on both sides and the interests of the couple in question, became a constantly recurring topic in the successive legislation. The National Law states that the spouses should only have the capability of joining their properties according to their own will—without any other consent being necessary—if they followed certain prescribed rules. Attention was given in particular to the proportions of the property parts joined together, and the consequences of a possible increase or loss in the total property value. Later royal amendments strengthened the position of kin to some extent, and underlined that the consent or advice of “lawful heirs and relatives” was necessary. Without any further reservations, this was set forth in two amendments from c. 1297 and 1358, issued respectively by Haakon V Magnusson acting as a duke, and by the later King Haakon VI Magnusson. On the other hand, between 1299 and 1306, when Haakon V Magnusson was reigning king, he issued an amendment with more specific qualifications that limited the role of kin in some joint property arrangements. Provided the wife had been married with the consent of her relatives, and on the condition that she had received an indirect dowry from her husband, the couple should be free to join property as soon as they had children of their own. But if the spouses had children from earlier marriages who were of minor age, consent was needed from the nearest kin, those who were nearest in line to inherit. In other words, consent from relatives was now restricted to those cases where at least one of the spouses had previous children.

A third distinction concerned the theoretical shares that husband and wife were supposed to own in the joint property, and the way in which property should be divided upon the death of one of the spouses. Here, there existed two forms: the so-called *priðjungsfélæg* (one-third-share- or tripartite joint property), and the *helmingsfélæg* (half-share- or bipartite joint property). Both of these forms entailed specifics as to how the joint property was to be held, and how it should be split when one of the spouses died. With a *priðjungsfélæg* all that was not held aside as separate estate was to be divided into thirds, with two-thirds going to the husband or his heirs and one-third passing to the wife or her heirs. With the *helmingsfélæg* everything that was put into it was to be divided equally between the surviving spouse and the other heirs, either their children

¹⁶ Robberstad, *Gulatingslovi*, 74–75.

or other relatives. The oldest provincial laws knew only tripartite joint property, which was used as a standard for both the *félag* automatically established by law, and the arranged forms of *félag*:

If the couple has been together for twenty years or more, the law joins their estates, if it was not done before, [...] then she owns one-third of the estate and he two-thirds of it. If they had made a *félag*, but not made it public before twenty years had gone, it is like it was never done. (GL, chap. 53)¹⁷

[...] But if the wife loses her husband and they have been living together for at least twelve months, the wife owns a third of the estate and all movables, and her clothes in addition. (FL, section XI, chap. 6)¹⁸

The National Law, for its part, introduced the concept of bipartite joint property but prescribed a combined application of property division into halves and thirds. Insofar as the amount and value of property at the end of marriage corresponded to what had been put into the joint ownership, a bipartite division should take place between the surviving spouse and the heirs of the deceased. The only exception was in the case where one of the spouses had put in more than the other when the *félag* settlement was contracted. Then a corresponding surplus part should be taken out first. But if the amount of property had increased during marriage, this increase should be divided according to thirds. The husband or his heirs should have two-thirds of the property increase, while the wife and her heirs were entitled to one-third.

1. No man shall take his wife's estate out of the country, unless she wants. He is to govern for all of their estates, to their benefit [...] 2. No wife shall deny her husband *félag*. [...] And this is the way they shall make *félag* between themselves: Each of them shall put into the *félag* what they own and what they are going to own, either by inheritance or by other means. [...] But the one of the spouses who put the most into the *félag* shall take most out of it, or alternatively his or her heirs. [...] [T]hen [and only after this has been done] the estate shall be divided in two halves, even if the value might have been reduced. But if the value of the estate has grown, the husband or his heirs should have two-thirds of the profit, the wife or her heirs should have one-third. They do not have to ask anyone's permission to make this kind of *félag*. (MLL section V, chap. 3.1)¹⁹

¹⁷ Ibid.

¹⁸ FL, section XI, chap. 6. Cf. *ibid.*, section XI, chap. 8: "If a man marries a widow or a girl with her own property, he does not own anything in her estate before twelve months have passed; then the law puts their estate together." Hagland and Sandnes, *Frostatingslova*, 172–73.

¹⁹ *Norges gamle Love indtil 1387*, vol. II, ed. R. Keyser and P.A. Munch (Christiania: Chr. Grøndahl, 1848), 76; Taranger, *Magnus Lagaboters Landslov*, 74.

The position of bipartite joint property was further strengthened through the later royal amendments. In the great amendment given by King Haakon V Magnusson sometime between 1299 and 1306 ("About joint property between spouses"), it was explicitly stated that the kind of joint ownership which the spouses were entitled to arrange by themselves should be a bipartite one. The amendment of the later King Haakon VI can be read as a confirmation of this principle. The final, decisive step in favour of this principle of bipartite division came with the above-mentioned decree from the "nobility assembly" in Bergen 1557.²⁰ Here the bipartite form of joint property was established as standard legislation, which should govern all divisions of property taking place after the death of one or both spouses, without any exceptions. In other words, bipartite joint ownership was established as the default form by law. But in addition, the decree repeated certain procedures to be followed at the division of inheritance—with regard to the paying of debts, for example—that coincided in part with the instructions in the National Law.

The gradually increasing dominance of the bipartite form of joint ownership and the greater freedom of the spouses in some cases to make agreements about joint property by themselves without having to seek the advice or consent of their relatives seem to have set new conditions for property devolution between the generations and, consequently, also for property strategies among the landowning segments of society. In particular the new legal regulations must have had implications for the transfer of allodial property. As we have seen, the National Law contained quite elaborate instructions about the procedures that should be followed, in the cases where "that land comes under a woman which men have the right to redeem from her."²¹ But the institution of joint property influenced these matters, so that they became more complicated than in the "default" cases where no settlements had been made and the total marital property was divided in the three clear-cut parts of dowry, indirect dowry, and the husband's separate property.

²⁰ Winge, *Lover og forordninger*, 59–60; Absalon Taranger, *Udsigt over Den norske rets historie*, vol. IV: *Privatrettens historie* (Kristiania: Kart- og Litograferingskontoret, 1907), 330–31, 396. After the establishment of the union between Denmark and Norway, and after the abolition of the separate Norwegian Council of the Realm in 1536, selected members of the Danish Council of the Realm acted periodically as a High Court commission in Norway, also having legislative and administrative functions.

²¹ MLL, section VI, chap. 14, Taranger, *Magnus Lagabøters Landslov*, 106.

Marital Property Agreements in Late Medieval Times

The varying use of different kinds of marital property arrangements through late medieval times has been studied by Kathrine Græsdal, on the basis of 103 surviving charters from the period 1300–1565. The charter material comprises marriage contracts or testimonies about them, letters specifically referring to earlier concluded contracts, and letters concerning inheritance procedures which seem to indicate that such agreements or contracts must have existed.²² On the basis of this evidence, the following tendencies can be observed (Figure 1 and Table 1):

Although keeping the property of the spouses separate may have been standard procedure earlier, the use of marriage contracts explicitly establishing this kind of property relationship seems to decrease substantially and almost vanish during this period. Documentary evidence of contracts establishing separate property drops from ten instances during the first half of the fourteenth century to four in the following fifty-year interval, and remains at a minimum for the rest of the period, until 1565. While separate property agreements are no longer used, the contracts establishing joint property become completely dominant, though one has to take into consideration that a certain number of the specified marriage settlements are of a kind that cannot be determined precisely. Of the two possible forms of joint ownership, the bipartite form is the prevailing one, while tripartite joint ownership (*priðjungsfelag*) is discarded. In all, only four cases of this kind of contractual agreement are found, all from the first two fifty-year intervals. The last known property arrangement of this kind was documented in 1398. In general, the number of bipartite joint ownership contracts rises markedly during the fourteenth century and arrives at a maximum during the fifteenth century, but then drops to an insignificant number throughout the first half of the sixteenth century. A possible explanation for this last development may be that the practice of joint property arrangements had now been so well established that it did not generate the same number of conflicts as previously, and therefore was less likely to be reflected in the documentary evidence.²³

²² Kathrine Græsdal, "... legge i felaget alt det som de da eier og kommer til å eie...", *Om kvinner, eiendom og ekteskap i norsk middelalder*, major diss. in history (Tromsø: University of Tromsø, 2002).

²³ Ibid., 53, 77.

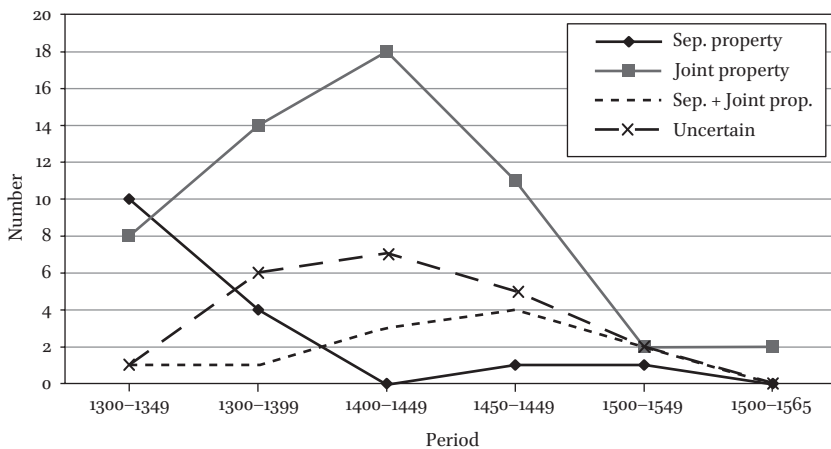


Fig. 1: Norwegian marriage contracts 1300–1565, (according to Græsdal 2002)

A peculiar feature is that to an increasing degree bipartite joined property arrangements are combined with separate property arrangements, so that the agreements stipulate that some parts of the spouses' property should be included in the joint ownership, while other parts should remain separate property. About one-third of the contracts covering bipartite jointure in the period 1330–1430 are combined contracts that also stipulate separate ownership for parts of the property. In a Nordic context, this kind of combined contract appears to be rather particular to Norway. In contrast, the landowning elite in Iceland also applied both bipartite jointure and separate ownership, but as alternatives, at different times and presumably with different strategic aims depending on the socio-economic situation. The combined contract is not known from Iceland.²⁴

The respective roles played by joint and separate ownership in combined marriage settlements could be defined in different ways. One way was to let the property already owned by each of the spouses at the contraction of marriage be defined as separate property, while the property they acquired together during wedlock would be subject to joint ownership.²⁵ Another way of dividing the property was to include the control of movables in the joint property, while the landed property held by each of the spouses at the time of the wedding would still be separate property.²⁶

²⁴ A.S. Arnórsdóttir, *Property and Virginity*, 2010.

²⁵ DN, vol. III, no. 191 (1337).

²⁶ DN, vol. XVIII, no. 39 (1400); DN, vol. X, no. 100 (1403); DN, vol. III, no. 576 (1405); DN, vol. II, no. 646 (1418); and DN, vol. V, no. 605 (1431).

Table 1 Conjugal Property Arrangements from Norwegian Charters, 1305–1487
(According to Græsdal, 2002 and Hansen, 2011)

	Total number	Bipartite joint property	Combined contract: bipartite joint property + separate property	Tripartite joint property	Undefined community of property	Separate property	No further information
CHARTER CATEGORY							
Marriage contract, confirmation of marriage contract	15	9	5				1
Gift exchange, confirmation of gifts	11	4		1	5	1	
Recording of evidence concerning conjugal property	12	7	2	1	2		
Inheritance division, inheritance settlements	11	8	2	1			
Sale of landed property	1		1				
Court case about property	2	2					
Total:	52	30	10	3	7	1	1

But there were even more elaborate ways of dealing with the division, such as having the allodial estates from each kin group defined as separate property, while other forms of landed property which had recently been bought or taken by mortgage became the subject of joint ownership. All in all, the fairly new procedure with bipartite joint ownership, combined with reservations of separate property, opened up a new flexibility and diverse adaptations.

According to a charter of 1337, the two sons of Ingebjørg, the widow of Reidar Ogmundsson, sued Arnbjørg, heiress of Reidar, claiming that their mother had not received what she was entitled to, based on her dowry and the previous property agreement made between her and her late husband. They presented witnesses who could testify that an arrangement had been made at the wedding, according to which each of the spouses should preserve what they owned at the betrothal as separate property, but that property acquired later should be held jointly. During their marriage, Reidar had inherited the whole farm of Spikdalen from his father, Ogmund, and it was now decided that his widow, Ingebjørg, was entitled to half of the farm.²⁷

Settlements combining joint and separate property arrangements seem also to have made it easier to safeguard women's allodial property. A charter from 1366 is a testimony of two witnesses who were present at the joint ownership agreement between Jon Torleivsson and his wife, Gjertrud. At this event, Gjertrud excluded from the jointure shares in the following farms: Tveit, Oppsal, Holdhus, Haugen, and Gjön (situated in Fusa county in the western parts of Norway), as well as some textiles, silver buckles, and a brooch. But thereafter, they made a joint property agreement, encompassing the remaining property.²⁸

According to a charter of 1401 from the region east of the Oslofjord, three witnesses gave proof in a case concerning the property relationships of the late Tord Gautesson and his wife, Aasa. They all swore that they had been present at Tord's deathbed and had heard him declare, in full possession of his senses, that the farm Voll was not included in the joint property settlement between him and his wife. Aasa confirmed this, and added that Voll was her allodial property.²⁹

²⁷ DN, vol. III, no. 191 (1337).

²⁸ DN, vol. XVI, no. 27 (1366).

²⁹ DN, vol. II, no. 568 (1401).

Thus, the institution of joint ownership—and in particular the bipartite form of joint ownership that prevailed through the late Middle Ages—created a new “space of action,” compared to the old, established “default” inheritance system. New options were laid down for the unfolding of more flexible property strategies on the part of the kin groups, on the part of the married couples, and on the part of individuals, women included.³⁰ As we have seen, the position of the spouses in relation to that of the kin on both sides was strengthened, at least in the cases where they had or gave birth to their own children. This gave spouses greater freedom to establish agreements about joint ownership at their own will, and with several possible options as to what kind of property should be included in the jointure, and what might be left out as separate property for each of them. It is highly probable that this increased focus on the decisions of the spouses themselves was due to the monarchy’s becoming ever more influenced by the ecclesiastical view of marriage as an independent, binding union between the spouses, in the presence of God.³¹

Nevertheless, the continued influence of the kin groups should not be underestimated, and the legislation from the early years of the fourteenth century displays a certain variation in how far the rights of the couple were extended. The spouses were still dependent on their kin for many matters, and could—certainly in relation to the management of property—have common interests with them. Nor do the kin groups seem to have been too closely attached to the standard procedures of inheritance as defined by the laws, with a priority for men and patrilineal relatives. If it might serve the interests of the kin group in the long run, and ensure that property stemming from one kin line in the future might be transferred to heirs that were acceptable, they seem to be willing to let it pass on through an intermediary female link.

Relative freedom in defining what kind of property might be owed jointly seems to have paved the way for such complex strategies. The institution of matrimonial *félag* was predominantly used by those segments of society which owned landed property in some quantity. A fair hypothesis might be that the kin groups of these strata primarily saw bipartite joint ownership as a suitable mechanism for getting a better hold on recenty

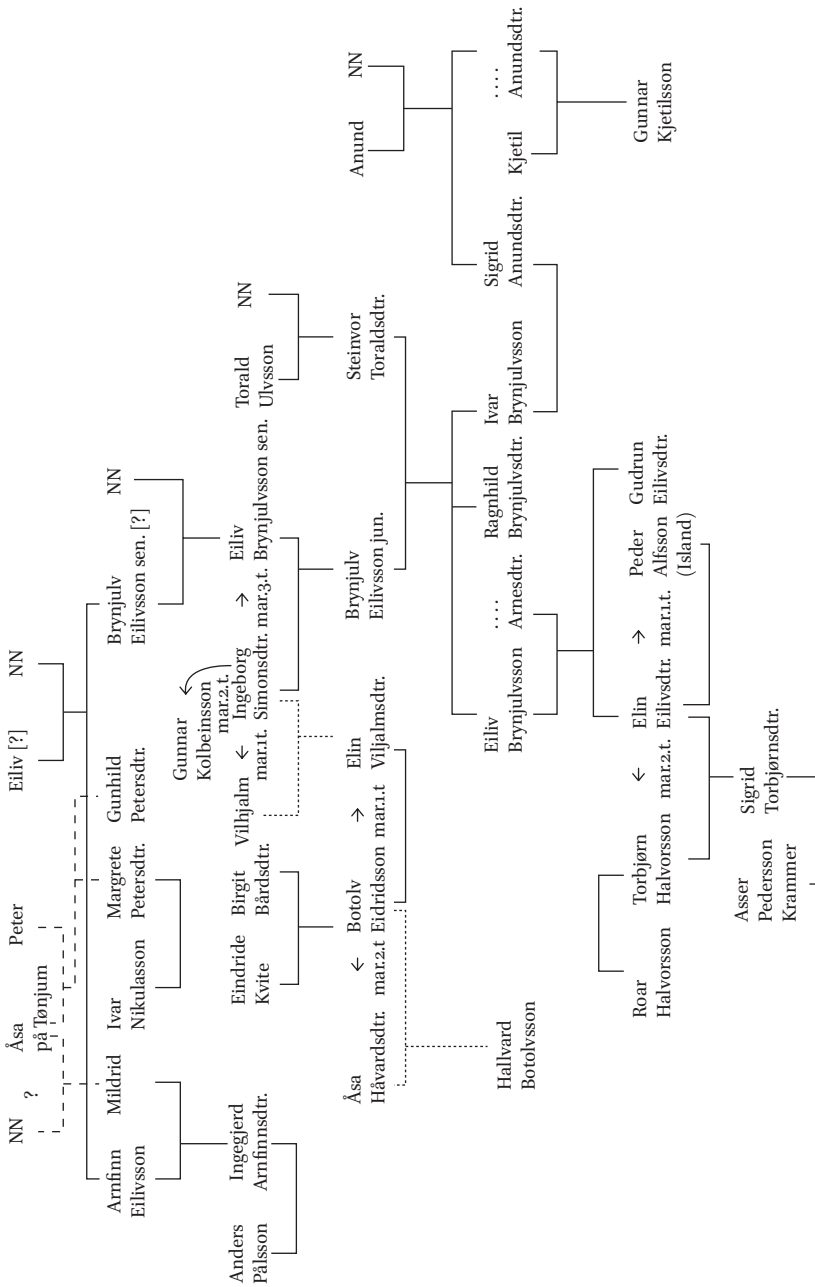
³⁰ See Ormøy, *Kvinner og eiendom*, 87.

³¹ It is interesting to note that an explicit reference to “God’s and man’s law” is made in the section concerning joint property in the great royal amendment for the counties of Ringerike and Hadeland, issued by Duke Haakon Magnusson in 1297 (*Norges gamle Love*, vol. III, 28).

obtained landed property that had been acquired piecemeal through buying, mortgage loans, and exchange and that did not yet qualify as allodial lands in their line. One possibility is, therefore, that the practice of combining separate and joint property in the marriage contracts reflected a double objective. One goal would be to ensure through separate ownership that the well-defined allodial property would primarily be inherited by lineal descendants of the original kin line through which it had been established—possibly by the new couple's children, who represented a continuation of the old lines through a new, affinally united line, but otherwise by other lineal kin members. Secondly, property acquired by the individual spouses during their lifetimes and owned jointly could preferably be passed on through the same direct descendants so that it, in time, would acquire allodial status. This would represent a combination of thinking according to lineally defined kin groups, and consideration of the affinal connections established through the institution of marriage. Both concerns would probably serve as incentives for strategic contracting of marriages with a conscious consideration of which other (bilaterally defined) kin groups would offer the best conditions for the establishment of a new, common line of descendants who, in turn, could take care of the allodial property in the best way. In some cases, such strategies appear to have been followed for several generations.

*The Case of the "Asdal estate"—Through Two Centuries
and Six Generations*

Through a period of approximately two hundred years encompassing five or six generations, several individuals belonging to distinct genealogical kin lines and partly affiliated by marriage took part in a series of transactions relating to farms and shares of landed property situated along the southernmost coast of Norway. The result of these efforts was the consolidation of the property into two complexes, one of which later became known as the "Asdal estate." The competition to control shares of landed property can be traced through a long series of strategic measures: marriages, marital agreements and dowry bestowals—*inter vivos* gifts, testaments, and inheritance settlements—as well as legal suits (including so-called allodial lawsuits). The actors included property-owning families belonging to the lesser aristocracy, with roots in both western and southern Norway which became entangled through intermarriage. In addition to their efforts to consolidate their land ownership in the southernmost



part of Norway, several of these family members were also engaged in property disputes with parts of the aristocracy in western Norway, and some of these conflicts seem to have continued for several generations.³²

One of the kin lines involved can be followed from the presumed brothers Arnfinn Eilivsson and Brynjulv Eilivsson sen. (c. 1270–1330?)—whose family roots lay in Hardanger—and down through their descendants. These descendants included Arnfinn's daughter, Ingegjerd, and Brynjulv's son Eiliv as well as his grandson of the same name, Brynjulv Eilivsson jun. (c. 1340/50–1413).³³ From the latter the property allotments and conflicts can be traced through his children and down two further generations through his grandchildren, ending with a great-granddaughter of his, Sigrid Torbjørnsdaughter (c. 1455–1534), who died childless. The following discussion profiles the marriages and marriage agreements of key couples in this kin line, several disputes that arose when these agreements were contested, as well as other cases of property litigation in which these people were engaged.

Arnfinn Eilivsson (c. 1280?–1340/50) and His Wife Mildrid (d. 1325)

During their marriage Arnfinn Eilivsson and his wife Mildrid seem to have controlled considerable property, stemming from their respective families, with roots in both in western and southern Norway.³⁴ As part of an inheritance settlement after Mildrid's death in 1325, Arnfinn transferred "that property which his wife had brought into their estate" to two sisters, Margrethe Pedersdaughter and Gunhild Pedersdaughter.³⁵ This amounted to landed property in four farms situated in the vicinity of Mandal (West

³² For a comprehensive prosopographical analysis of the landowning aristocracy in western Norway through late medieval times, see Jo Rune Ugulen, "... alle the knaber ther inde och sædescwenne..."—Ei undersøking i den sosiale samansetjinga av den jordeigande eliten på Vestlandet i mellomalderen, Ph.D. diss. (Bergen: Universitetet i Bergen, 2008). Several of the western Norwegian aristocrats presented in this article are analysed in their social and genealogical context by Ugulen. For a few of the earliest cases, relating to the first decades of the fourteenth century, my hypothetical reconstruction of the genealogical links deviates somewhat from those presented by Ugulen.

³³ Estimates of the approximate lifetime of the various persons are based upon their appearance in the charters, time of marriage (when known), time of marriage settlements of their children, and inheritance settlements.

³⁴ See Ugulen, "... alle the knaber..." 313, 357–59.

³⁵ At the settlement, Margrethe was represented by her husband, the treasurer (*fehilde*) of Tunsberg, Ivar Nikulasson. The sources do not specify the connection between Mildrid and the two sisters, but it is fair to assume that she was related with them, possibly being a third sister (or half-sister) of the other two.

Agder county), as well as movable goods (clothes, items of precious metals) estimated at a value of 167.5 marks of "*forngild*" money.³⁶ This property, which Mildrid had controlled during her lifetime, may partly have represented property set aside as dowry for Margrethe, or may stem from an earlier inheritance settlement, where the shares allotted to the two sisters had not been conveyed immediately.³⁷ If the latter, there must have existed an agreement—possibly a marriage contract between Arnfinn and Mildrid—stipulating that this property should be kept as Mildrid's separate property, and conveyed to the sisters after her death.

Disputes about property in western Norway, I: Arnfinn Eilivsson v. Eindride Kvide

Arnfinn Eilivsson also had property interests in the western part of the country. In the 1320s, he conveyed a property share that he had inherited in the farm Staareim (Sogn & Fjordane county) to the grand seneschal of Norway, Erling Vidkunnsen, who was the rightful owner according to allodial law.³⁸ Previously, in 1308, he had been sued by Eindride Kvite, who acted on behalf of his wife, Birgit Baardsdaughter, and claimed that Arnfinn unlawfully held a farm share which rightfully, according to allodial law, belonged to his wife (the farm Kvamme in Borgund, Sogn & Fjordane county).³⁹ Final verdict in this case was not given until 1362, when the son of Eindride, Botolv Eindridesson, was recognized as the rightful owner of the greatest share of the farm.⁴⁰ This case is the first example of a series of inheritance settlements and

³⁶ The *forngild* mark (literally, "mark that was valid before") was a unit of account used for calculation of prices during the first half of the fourteenth century, corresponding to one-third of the "burnt mark," which allegedly consisted of pure silver and weighed 214.32 grams. See Asgaut Steinnes, "Mål, vekt og verderekning i Noreg i millomalderen og ei tid etter," in *Nordisk Kultur*, vol. 30, *Mål og vekt* (Stockholm: Bonniers, 1936), 84–154.

³⁷ The amount of property transferred to the two sisters may partly correspond to a collection of dowry property (movables) which was assessed in a survey taking place in Bergen in 1328 as belonging to a Lady Margreta Petersdaughter, and which at that time was said to be moved to the eastern part of Norway. The textiles and clothing were assessed for 172 marks of *forngild* money, and other items, including objects of precious metals for 146 marks: *Regesta Norvegica* (hereafter cited as *Reg. Norv.*), vol. IV, no. 611; DN, vol. II, no. 165).

³⁸ *Reg. Norv.*, vol. IV, nos. 304–305; DN, vol. I, nos. 176–177. See Ugulen, "... *alle the knaber...*," 357.

³⁹ *Reg. Norv.*, vol. III, no. 166; DN, vol. I, no. 101. See Ugulen, "... *alle the knaber...*," 312–14, 318, 323.

⁴⁰ See Ugulen, "... *alle the knaber...*," 237–39, 312–14.

legal suits involving, on one side, the descendants and affinal relatives of Eindride Kvite (his son Botolv, Botolv's first wife, Elin Viljalmsdaughter, and his second wife, Aasa Haavardsdaughter, as well as Aasa and Botolv's son Hallvard); and on the other side Arnfinn Eilivsson's relatives (his nephew Eiliv Brynjulvsson sen. and his nephew's son, Brynjulv Eilivsson jun. (see below and table 3.).

Ingegjerd Arnfinnsdaughter and Andres Paulsson

After the death of Arnfinn sometime between 1325 and c. 1340, the remaining part of the conjugal property of Arnfinn and Mildrid, which probably consisted mainly of land deriving from Arnfinn's family, was inherited by their daughter Ingegjerd Arnfinnsdaughter, who was their sole descendant. Then, sometime between c. 1340 and c. 1370, Ingegjerd married a man named Andres Paulsson. At the marriage a marital settlement was concluded, stipulating that some of the property the spouses brought into the marriage should be held in common, as bipartite joint property. Some farms, however, remained outside and were to be kept as Ingegjerd's separate property. Most of these farms were situated in the vicinity of Grimstad and Arendal in East Agder, while two farm parts belonged to the same complex around Mandal (West Agder) that earlier had been transferred to the sisters Margrethe and Gunhild.

At this time Ingegjerd's father, Arnfinn, must have been dead, because her closest relative who could consent to her marriage was her cousin Eiliv Brynjulvsson sen. (c. 1300?–1371), the son of Arnfinn's presumptive brother Brynjulv. In return for his approval of the marriage, Ingegjerd at once transferred to him the ownership of one of the farms near Mandal.⁴¹ The original marriage contract is not preserved, but the content is known from a later recording of confirmatory evidence, undertaken in 1400 in connection with a property dispute between the son of Eiliv Brynjulvsson and the king's representative in Agder, Lord Gaute Eiriksson.⁴² This evidence also verifies that after Ingegjerd's death her widowed husband, Andres Paulsson, had transferred to Eiliv Brynjulvsson not only this farm and the others that had been explicitly specified as her separate property, but also property in six more localities in the vicinity of Grimstad and Arendal. This property comprised not only farm shares, but also milling

⁴¹ Farm no. 52, Halså, in the county of Halse & Harkmark, Vest-Agder. See Oluf Rygh, *Norske Gaardnavne, Oplysninger samlede til Brug ved Matrikelens Revision*, vol. IX, Vest-Agder (Christiania: Fabritius & Sønner, 1912), 75.

⁴² *Reg. Norv.*, vol. VIII, no. 816; DN, vol. XVIII, no. 39.

places and deserted farms, which were exploited for cattle grazing and fodder collecting.⁴³

Eiliv Brynjulvsson sen. (c. 1300?–1371) and Ingeborg Simonsdaughter

In this way Eiliv Brynjulvsson sen. came to be in control of a considerable amount of landed property, the main bulk of which later became known as the “Asdal estate.”⁴⁴ He was married to a woman called Ingeborg Simonsdaughter, a woman with family roots in western Norway, and the marriage must have taken place before 1365.⁴⁵ While his ownership of the Asdal property complex does not seem to have been disputed, through his wife he soon became engaged in an inheritance settlement concerning property in the western part of Norway. Her role therefore deserves some attention. Ingeborg had previously been married to two other men. Her first husband was a man called Viljalm, with whom she had a daughter, Elin Viljalmsdaughter; and in 1352 she appears to have been married to a certain Gunnar Kolbeinsson.

Disputes about property in western Norway, II: Ingeborg Simonsdaughter and the dispute over the “Finne estate”

At the start of the 1350s, before her marriage with Eiliv, Ingeborg was engaged in a dispute relating to the farm Finne at Voss in western Norway. Ingeborg acted on behalf of her child, whom she claimed to be the rightful heir of the Finne estate. The child is not mentioned by name in these documents, but it must have been her daughter from the first marriage, Elin Viljalmsdaughter.⁴⁶ Evidently, Elin’s right to inherit must have been founded on the ownership of her father Viljalm, who appears to have died immediately before, possibly from the Black Death. Judging from later verdicts of the county judge of the Gulathing

⁴³ In the vicinity of Grimstad & Arendal: Hisøy (farm no. 5), deserted farms under Hisøy, Bie (farm no. 33), Aasbie (farm no. 33.2), Asdal (farm no. 36, incl. mill sites), Hausland (farm no. 39), Aamholt (farm no. 40–41)—all in the counties of Hisøy and Øyestad), Rygh, *Norske Gaardnavne*, vol. VIII, Aust-Agder (Kristiania: Fabritius & Sønner, 1905), 103–114; in the vicinity of Mandal: Halså (farm no. 52) and Ime (farm no. 40 incl. salmon fishing sites) in the county of Halså & Harkmark, Rygh, *Norske Gaardnavne*, vol. IX, Vest-Agder (Kristiania: Fabritius & Sønner, 1912), 73, 75.

⁴⁴ Erling Brynjulvsson sen. is known to have had a coat-of-arms picturing a lily with two seed stalks, which indicates noble family origin. *Samlinger til det Norske Folks Sprog og Historie*, vol. III (Christiania: Samfundet for det norske Folks Sprogs Historie, 1835), 593.

⁴⁵ See Ugulen, “... alle the knaber ...,” 218, 234, 240.

⁴⁶ *Ibid.*, 235, 314.

Law district, Ingeborg seems to have won through with her claims against a certain Hallstein Josteinsson, who had been in possession of the estate.⁴⁷ However, the final settlement was elusive. Not only did all the property at Finne have to be assessed for value by a committee of six appointed jurors (*nevndemenn*), but Hallstein also demanded compensation for his management of the estate, including all the expenses connected with hired labour, loss of harvests, etc. Eventually, in June 1352, Hallstein sued Ingeborg Simonsdaughter to have his costs covered, but the result of this action is not known. By this time, Ingeborg was married to Gunnar Kolbeinsson. In all, six charters of verdicts and court proceedings were produced in connection with the settlements in the aftermath of the decisive verdict in favour of Elin's inheritance right.⁴⁸ Later, Elin became married to Botolv Eindridesson, the son of Eindride Kvite, who at the beginning of the century had sued Eiliv Brynjulvsson's uncle Arnfinn, claiming allodial rights to the farm Kvamme in Borgund.⁴⁹

Thus the ownership of the Finne estate was ascertained. But after Ingeborg's second husband Gunnar also had died and she was married to Eiliv Brynjulvsson, the need arose to settle the entire conjugal property that Ingeborg and Viljalm had held: the estate they held in common as joint property, Ingeborg's separate estate, and the part that should be allotted to Elin Viljalmsdaughter as her inheritance after her father. This was accomplished by an inheritance settlement in 1365, concluded by Ingeborg and Eiliv on the one side and Elin and Botolv Eindridesson on the other.⁵⁰ As part of the settlement Elin conveyed to her mother two farms and an orchard in Hardanger for permanent possession. (From a later verdict of 1389 concerning the same farms, it seems that they must have been considered as Ingeborg's separate property after the conveyance; see below under Brynjulv Eilivsson jun.) Furthermore Elin conveyed another farm to Ingeborg on the condition that she should keep it for her lifetime, but that it should be returned to Elin after her death.⁵¹

⁴⁷ Ibid., 233–34.

⁴⁸ *Reg. Norv.*, vol. V, no. 1248, DN, vol. I, no. 321; *Reg. Norv.*, vol. V, no. 1249, DN, vol. I, no. 317; *Reg. Norv.*, vol. VI, no. 23, DN, vol. I, no. 325; *Reg. Norv.*, vol. VI, no. 27, DN, vol. II, no. 308; *Reg. Norv.*, vol. VI, no. 88, DN, vol. II, no. 309; *Reg. Norv.*, vol. VI, no. 128, DN, vol. I, no. 330.

⁴⁹ See table 3 for an overview of the property disputes between the descendants/relatives of Arnfinn Eilivsson and Eindrid Kvite through three generations.

⁵⁰ *Reg. Norv.*, vol. VI, no. 1057, DN, vol. I, no. 385.

⁵¹ The extra conveyance to Ingeborg for her lifetime should probably be seen in connection with Ingeborg's earlier struggle for Elin's inheritance right to the Finne estate.

Brynjulv Eilivsson jun. (c. 1340/50–c. 1413) and Steinvor Toraldsdaughter

Eiliv Brynjulvsson sen. is mentioned for the last time in 1371, in connection with a transaction concerning a property in the western part of Norway.⁵² Sometime between 1372 and 1376 the whole property complex originally transferred to him by Andres Paulsson must have passed on as undivided inheritance to his and Ingeborg's only son, Brynjulv. At this time it seems to have consisted of six farms and property objects in the vicinity of Grimstad and Arendal, and two farms situated near Mandal.

Soon after Eiliv's death in 1376, his son Brynjulv Eilivsson jun. married Steinvor, the daughter of a wealthy peasant named Torald Ulvsson who was presumably living at Landvik near Grimstad.⁵³ At their marriage they made a contract of bipartite joint property, conditional upon their having children. Several wedding gifts were also exchanged, and Torald gave his daughter a dowry worth 80 marks of *forngild* money. Another farm, Jaabekk by name, situated in the vicinity of Mandal, may have been included in the dowry. In return, and as security for counter gift and so-called bench gift, Brynjulv put up the farm of Eastern Hisøy near Arendal.⁵⁴ Brynjulv Eilivsson and Steinvor Toraldsdaughter had three children, Eiliv, Ragnhild, and Ivar.⁵⁵

Thereafter, some minor parts of the property complex (and one near Arendal) can be traced as dowry conveyance and possible inheritance. In 1413, the last time that Brynjulv Eilivsson jun. appears in the records, he gave two farms near Mandal and a share of a farm near Arendal as dowry to his daughter Ragnhild. The remaining share of this farm, as well as another farm in the same area and a couple of deserted farms used for grazing and foddering purposes,⁵⁶ seem to have been inherited by Brynjulv's son Ivar sometime after 1413.

⁵² *Reg. Norv.*, vol. VII, no. 155, DN, vol. XIII, no. 33. Cf. Ugulen, "... alle the knaber ...," 482.

⁵³ Farm no. 18, Landvik, in the county of Landvik, Aust-Agder: Rygh, *Norske Gaardnavne*, vol. VIII, Aust-Agder (Kristiania: Fabritius & Sønner, 1905), 128.

⁵⁴ Farm no. 5, His, in the county of Hisøy, Aust-Agder. *Ibid.*, 103.

⁵⁵ In the 1390s, Brynjulv Eilivsson jun. served as commissioner for the king's official (*sýslumaðr*) in Råbyggelaget (Agder), first for Nikulas Galle and subsequently for Gudbrand Erlingsson (*Reg. Norv.*, vol. VIII, no. 328; DN, vol. IV, 636; *Reg. Norv.*, vol. VIII, no. 367; DN, vol. XXI, 193).

⁵⁶ Farm no. 4, Skaregrøm, in the county of Fjære, Aust-Agder: Rygh, *Norske Gaardnavne*, vol. VIII, Aust-Agder, 116) as well as "2 ½ deserted farms."

Disputes about property in western Norway, III: Properties in Hardanger

During the lifetime of Brynjulv Eilivsson jun. there was also some litigation concerning the properties in Hardanger, which previously had been conveyed to Brynjulv's mother, Ingeborg, as part of the inheritance settlement of 1365. This represented a continuation of the property dispute from the first decades of the fourteenth century between the Eilivsson brothers (Arnfinn and Brynjulv sen.) and Eindride Kvite and his descendants. In 1389, these farms were controlled by Aasa Haavardsdaughter, who was the second wife of Botolv Eindridesson, after his marriage with Elin Viljalmsdaughter.⁵⁷ Brynjulv Eilivsson jun. now sued Aasa for unlawful possession of the farms, but lost the case according to a verdict of the royal judge of the Gulathing law district and Bergen.⁵⁸ This seems to indicate that after their transference to Ingeborg Simonsdaughter in 1365 the farms had been recognized as her separate property, so that they could not be inherited automatically by Brynjulv Eilivsson after the death of his parents. In this case, Aasa Haavardsdaughter acted on behalf of herself and her son with Botolv, Hallvard Botolvsson.

The Inheritance of Eiliv Brynjulvsson jun. (c. 1377–c. 1450) and Elin Eilivsdughter (born c. 1415?) after 1492

The remaining bulk of the property complex, including the six farms near Grimstad/Arendal and two in the vicinity of Mandal, passed on as inheritance, first to Eiliv Brynjulvsson jun. (c. 1377–c. 1450),⁵⁹ and then to his daughter Elin Eilivsdughter. Elin resided at the farm Asdal (Øyestad 36.), and from this time the property complex appears to have been named the "Asdal estate."⁶⁰ Elin also seems to have augmented the property by buying neighbouring farms,⁶¹ and was engaged in an inheritance settlement in 1453 concerning some property shares owned by her paternal uncle Ivar and controlled after his death by his surviving spouse, Sigrid Anundsdaughter. Ivar and Sigrid had no children, and when Sigrid had also died

⁵⁷ Cf. Ugulen, "... alle the knaber . . .," 221, 237–38, 248.

⁵⁸ *Reg. Norv.*, vol. VII, no. 1530, DN, vol. I, no. 516.

⁵⁹ Eiliv Brynjulvsson jun. was commissioner in Agder for Baron Endrid Erlendsson of Losna (*Samlinger*, vol. III, 473, 491).

⁶⁰ Farm no. 36, Asdal, in the county of Øyestad, Aust-Agder: Rygh, *Norske Gaardnavne*, vol. VIII, Aust-Agder, 112.

⁶¹ DN, vol. XVIII, no. 102.

and the final inheritance division was to be settled, claims were promoted by both Elin and a certain Gunnar Kjetilsson, who was the nephew of Sigrid. In other words, the property left by the dead couple was divided between the niece of the male spouse and the nephew of the wife.⁶²

Elin Eilivsdaughter was married twice: first, to an Iclander called Peder Alfsson, without issue; and second, to a man called Torbjørn Halvorsson (from the farm Roaldstad in Telemark county), with whom she had one child, Sigrid Torbjørnsdaughter (c. 1455–1534). Sigrid seems to have inherited the complex shortly before 1500 and controlled it until c. 1534, when she died without having any children. One of the latest records that is preserved about any related property transactions during the fifteenth century dates from about 1480, when Elin's husband Torbjørn is reported to have conveyed to his brother Roar Halvorsson three farms, the very three that some thirty years earlier had been given to Elin as dowry by her father.⁶³

Conclusion

Through a series of recorded transactions, agreements, and lawsuits, the destiny of some property complexes situated in the southernmost and the western part of Norway can be followed from the beginning of the fourteenth century for two centuries onwards. By placing the various actions and procedures in a continuous context in this way, it is possible to shed more light on what kinds of actions were available, and in what kinds of situations the actors applied them. In all, the property complexes can be followed through eight inheritance procedures, of which three were recorded as formally concluded inheritance settlements, leaving documentary evidence. Three interesting agreements about the composition of conjugal property can also be identified. Two of these were formally recorded as marital contracts, while one can only be deduced from later actions (the agreement between Arnfinn Eilivsson and his wife Mildrid). Two of the marital property agreements appear to have stipulated that several farms and lands, stemming from the wife's kin line, should be kept as her separate property. One of the contracts stipulated that the property brought into the marriage should be joined—as bipartite joint property—on the explicit condition that the couple had children of their own

⁶² DN, vol. XVIII, no. 70.

⁶³ DN, vol. XVIII, no. 107.

(the agreement between Brynjulv Eilivsson jun. and his wife Steinvor Toraldsdaughter). In addition dowry bestowals, gifts during lifetime, purchases, and other conveyances also played a role.

Of particular interest are the legal court suits, of which four are known in the fourteenth century (in 1308, 1350–52, 1362, and 1389). All of these relate to property parts in western Norway, and obviously reflect disputes between contending members of the lesser aristocracy who had kin roots in this region, though one of the families, represented by Arnfinn Eilivsson and the descendants of his brother Brynjulv, had settled in southern Norway and was accumulating a basis of landed property there.

In all, the evidence seems to highlight a thoroughgoing, double concern of the actors: (i) they were preoccupied with safeguarding the inheritance rights of their children or direct descendants; (ii) due consideration was given to the kin on both sides, with respect to their inheritance rights and possibilities, so that in case the kin line was not continued by the married couple having children of their own, the property would be taken over by the nearest kin. The struggle launched by Ingeborg Simonsdaughter in order to secure the Finne estate as her daughter's paternal inheritance is a striking example of the first option. On the other hand, the attention devoted to the interests of the other nearest kin is demonstrated by those marital contracts which stipulated that some of the property brought into the marriage by each spouse should be kept as separate property by each of them, and conveyed to their relatives—as in the case of Andres Paulsson and Ingegjerd Arnfinnsdaughter. The same goes for having the birth of children as a necessary condition for making joint property contracts. In any case, the actors appear to have thought and acted very strategically with respect to how the property would be transferred after their lifetimes.

Table 2 Transactions of Property Related to the "Asdal Estate"

Year	Transaction	Object:		
		Farms/farm shares:	Near Arendal	Movables:
1325	Conveyance of property by Arnfinn Eilivsson to Margrethe Pedersdaughter & Gunhild Pedersdaughter (dowry/inheritance from late father ?)	Near Mandal		
	Inheritance from Arnfinn Eilivsson to Ingegerd Arnfinnsdaughter	Halsaa, Haaland, Haddeland & Møl		167.5 marks of "fornigild" money
1340/50-1372	Marriage contract between Andres Paulsson & Ingegerd Arnfinnsdaughter, stipulating her separate property	Halsaa, Ime	Hisøy, Bie, Aasbie, Asdal, Hausland, Åmholt	
	Conveyance by Ingegerd Arnfinnsdaughter to her paternal cousin, Eiliv Brynjulvsson sen.	Halsaa, Ime	Hisøy, Bie, Aasbie, Asdal, Hausland, Åmholt	
1340/50-1372	Conveyance by Ingegerd Arnfinnsdaughter to her paternal cousin, Eiliv Brynjulvsson sen.	Halsaa		
before 1372	Conveyance by Andres Paulsson to Eiliv Brynjulvsson sen. of remaining part of Ingegerd Arnfinnsdaughter's separate property	Halsaa, Ime	Hisøy, deserted farms under Hisøy, Bie, Åsbie, Asdal (incl. mill sites), Hausland, Aamholt	
after 1372	Inheritance from Eiliv Brynjulvsson sen. to Brynjulv Eilivsson jun.	Halsaa, Ime	Hisøy, Bie, Aasbie, Asdal (incl. mill sites), Hausland, Åmholt	

Table 2 (*cont.*)

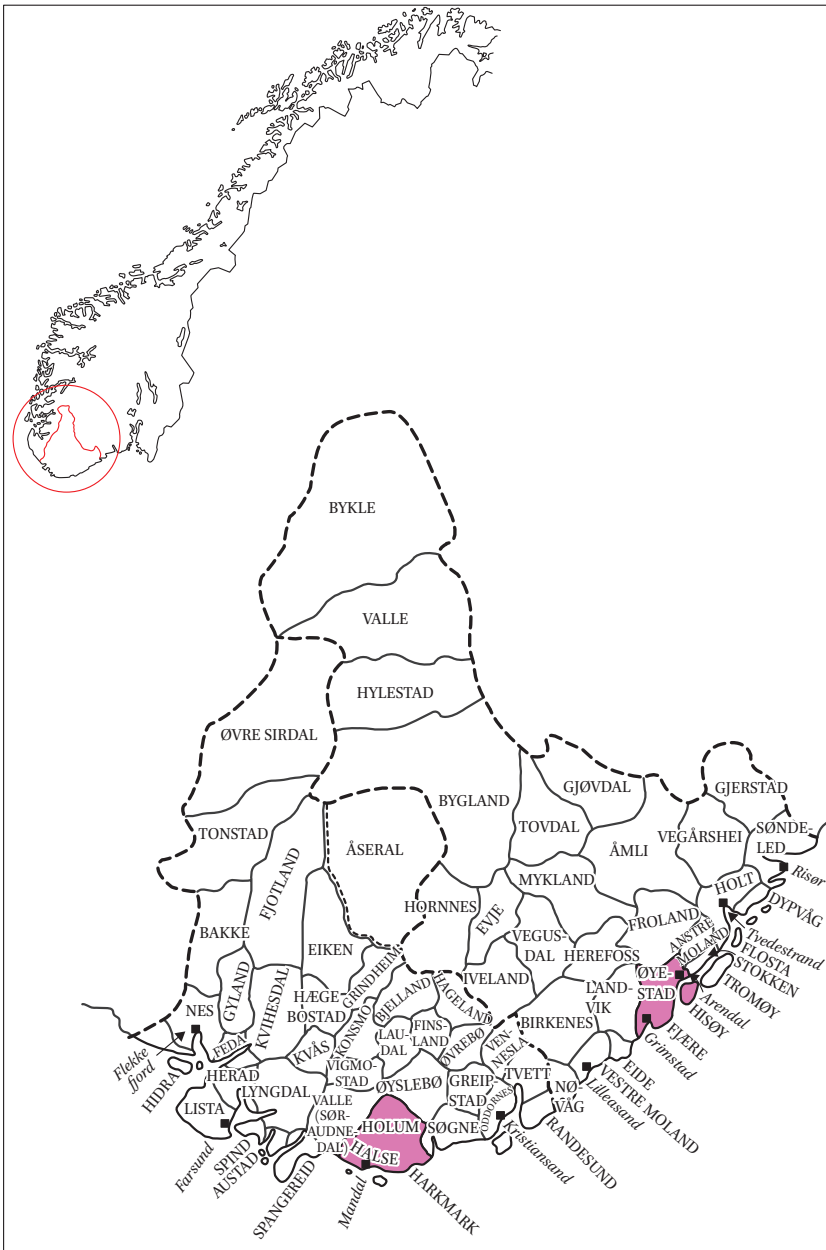
Year	Transaction	Object:		Movables:
		Farms/farm shares:		
		Near Mandal	Near Arendal	
1376	Marriage contract between Brynjulv Eilivsson jun. & Steinvor Toraldsdaughter, stipulating bipartite jointure of property on the condition that they had children			
1376	Conveyance of dowry from Torald Ulvsson to Steinvor Toraldsdaughter	Possibly: Jaabekk		80 marks of "formgild" money
1376	Counter gift from Brynjulv Eilivsson jun.		Hisøy	
1413	Dowry from Brynjulv Eilivsson jun. to his daughter Ragnhild Br.	Jaabekk, Ime	Trommestad	
after 1413	Inheritance from Brynjulv Eilivsson jun. to his son Ivar Brynjulvsson.		Skaregrøm, "2 1/2 deserted farms"	
after 1413	Inheritance from Brynjulv Eilivsson jun. to his son Eiliv Brynjulvsson jun.		Hisøy, Bie, Aasbie, Asdal (incl. mill sites), Hausland, Åmholte	
before c. 1450	Inheritance from Ragnhild Brynjulvsdaughter (died childless) to her brother Eiliv Brynjulvsson jun.	Jaabekk, Ime	Trommestad	

Table 2 (*cont.*)

Year	Transaction	Object:		Movables:
		Farms/farm shares:		
		Near Mandal	Near Arendal	
c. 1450	Conveyance of dowry by Eiliv Brynjulvsson jun. to his daughter Elin Eilivsdaugeter	Jaabekk, Ime		
after c. 1450	Inheritance from Eiliv Brynjulvsson jun. to Elin Eilivsdaugeter		Hisøy, Bie, Aasbie, Asdal (incl. mill sites), Hausland, Åmholt	
1453	Inheritance settlement after Ivar Brynjulvsson and his wife, Sigrid Anundsdaughter, between Ivar's sister, Elin Eilivsdaugeter, and the maternal nephew of Sigrid, Gunnar Kjetilsson		Skaregrøm, "2 1/2 deserted farms"	
1478	Purchase by Elin Eilivsdaugeter		Seldal	
c. 1450–c.1480	Conveyance by Elin Eilivsdaugeter's husband Torbjørn Halvorsen to his brother, Roald Halvorsen	Jaabekk, Ime	Trommestad	
after 1492	Inheritance from Elin Eilivsdaugeter to her daughter, Sigrid Torbjørnsdaughter		Hisøy, Bie, Aasbie, Seldal, Asdal (incl. mill sites), Bjorbekk, Hausland, Åmholt	

Table 3 Legal disputes between members of the families of Arnfinn Eilivsson and Eindride Kvite

Year	Contending parties		Object of dispute/ settlement	Type of legal action	Source:
	Plaintiff	Defendant			
1308	Eindride Kvite, on behalf of his wife, Birgit Baardsdaughter	Arnfinn Eilivsson	Kvamme in Borgund	Verdict by the Royal Judge in Bergen, in favour of Birgit Baardsdaughter	RN III, 456; DN I, 117
1350– 1352	Ingeborg Simonsdaughter on behalf of her and Viljalm's daughter Elin	Hallstein Josteinsson	Finne estate at Voss	Verdict by the Royal Judge of Gulathing Law district; assessment of 6 appointed jurors; court suit by Hallstein Josteinsson; etc.	RN V, 1248; DN I, 321–RN V, 1249; DN I, 317–RN VI, 23; DN I, 325–RN VI, 27; DN II, 308–RN VI, 88; DN II, 309–RN VI, 128; DN I, 330
1362	Botolv, son of Eindride Kvite		Kvamme in Borgund	Royal verdict in favour of Botolv Eindridesson	RN VI, 865; RN VI, 866
1365	Botolv, son of Eindride Kvite and his 1st wife, Elin Viljalmsdaughter	Ingeborg Simons daughter and her 3rd husband, Eiliv Brynjulvsson (nephew of Arnfinn Eilivsson)	Spildo, Teigen, Tole and the orchard Haustveit in Hardanger	Inheritance settlement after the death of Ingeborg Simonsdaughter's 1. husband, Viljalm	RN VI, 1057; DN I, 385
1389	Aasa Haavardsdaughter, the 2nd wife of Botolv Eindridesson, on behalf of her son with Botolv, Hallvard Botolvsson	Brynjulv Eilivsson, son of Eiliv Brynjulvsson	Spildo, Teigen, Tole and the orchard Haustveit in Hardanger	Verdict by the Royal Judge of Gulathing Law district and Bergen, in favour of Aasa Haavardsdaughter	RN VII, 1530; DN I, 516



PART THREE

COMPARATIVE PERSPECTIVES

THE FEELINGS IN THE FEUD:
THE EMOTIONAL TURN IN THE STUDY OF MEDIEVAL VENGEANCE¹

Stephen D. White

The vendetta! Yes, the vendetta
Is a pleasure for the wise;
To forget insults and outrages
Is always low and base.
With astuteness and acuteness,
With judgment and discernment,
I can do it. The case is serious;
But, believe me, I'll bring it off.

Dr. Bartolo, "La Vendetta"
Lorenzo Da Ponte, *Le nozze di Figaro* (1786)

The Feelings in the Feud

In a recent review of scholarship on feuding in medieval and early modern Europe, Jeppe Büchert Netterstrøm writes that "Feud and vendetta [have recently become] model themes of a new cultural history inspired theoretically and methodologically by narratology, social constructionism and micro-history." As a result of this trend, "Feud is no longer merely perceived as a structuring principle in societies with weak or no state organization. People [...] in feuding societies are seen as more than instruments of an established institution that compels them to act automatically." Rather,

They make choices and strategies. They construct the disorderly, the uncontrollable and the meaningless as order, control and meaning. They create feud narratives to explain their history and society. They have feelings. They sometimes take revenge when they should not and make peace when they, according to the expectations of modern observers, ought to take vengeance.²

¹ This article is dedicated to Claude Gauvard.

² Jeppe Büchert Netterstrøm, "Introduction: The Study of Feud in Medieval and Early Modern History," in *Feud in Medieval and Early Modern Europe*, ed. Jeppe Büchert Netterstrøm and Bjørn Poulsen (Aarhus: Aarhus University Press, 2007), 9–67 at 28.

By undercutting the tendency Netterstrøm finds in older scholarship “to functionalize, rationalize, legalize/legitimize feuding,” newer work emphasizes “dysfunctional and irrational behavior” in feuds, treating these conflicts as being driven by emotional impulses rather than rational calculation, though without reverting, Netterstrøm claims, to an even older historiographical tendency to associate feuding with anarchy and with “primitive” societies.³

In the conclusion to this paper, I question whether one can emphasize the emotional dimension of feuds and ignore their legal, political, and economic dimensions without implicitly primitivizing this practice; and whether one can posit that the emotional impulse to take revenge is built into the human brain without espousing what Marshall Sahlins has called the position of “vulgar sociobiology” that “innate human drives and dispositions . . . are realized in social institutions of a corresponding character.”⁴ In the main body of the paper, I lay the basis for addressing these questions by critically examining recent work on feuding by Paul R. Hyams and studies of vengeance by Richard W. Kaeuper and Daniel Lord Smail, all of whom claim that the emotional impulse to avenge wrongs is the cause of feuding and vengeance-killings, substantiate this argument by citing medieval literary texts, and suggest that this impulse is innate to humans. After critically examining the arguments of these three historians, I show that their arguments are undercut by close readings of two literary texts, *La mort le roi Artu* (c. 1240), the final section of the *Lancelot-Grail Cycle*, and *Raoul de Cambrai*, a *chanson de geste* dated to c. 1200.⁵

Three Approaches to the Study of Medieval Feuding and Revenge

In order to argue that the driving force behind medieval feuding and vengeance is the emotional impulse to avenge “perceived wrongs” rather than

³ Netterstrøm, “Introduction,” 11, 28.

⁴ Marshall Sahlins, *The Use and Abuse of Biology: An Anthropological Critique of Sociobiology* (Ann Arbor: University of Michigan Press, 1976), 4–5.

⁵ *Raoul de Cambrai*, ed. and trans. into English by Sarah Kay (Oxford: Clarendon Press, 1992) [henceforth R]; *Le mort le roi Artu: roman du xiii^e siècle*, ed. Jean Frappier, 3rd ed. (Geneva: Droz, 1996) (Henceforth cited as MA, followed by chapter and line numbers and page numbers.) Except where indicated, translated passages from MA follow “The Death of King Arthur” by Norris J. Lacy in *Lancelot-Grail: The Old French Arthurian Vulgate and Post-Vulgate in Translation*, gen. ed. Norris J. Lacy, vol. 4 (New York: Garland Publishing, 1995), 91–166 (Hereafter cited as DA.) I have also consulted *Raoul de Cambrai: Chanson de geste du xii^e siècle*, ed. Sarah Kay and trans. William Kibler, *Lettres Gothiques*, ed. Michel Zink (Paris: Livre de Poche, 1996).

rational calculation, Hyams, Kaeuper, and Smail must either ignore the forms of feuding in medieval Europe on which previous scholarship has focused or else reduce feuding to a series of reciprocal acts of vengeance and focus exclusively on cases of so-called hot-blooded vengeance, in which a killing or some other perceived wrong is avenged almost instantaneously. When using medieval French literary texts to study “the role of vengeance [...] within a dominant high and late medieval chivalric *mentalité*,” Kaeuper focuses narrowly on individual vengeance killings, largely without reference to the political contexts in which they take place—even though the texts he studies usually situate these killings in “wars” (*guerres, werrae*)⁶ which, in the case of those described in *chansons de geste*, have much in common with the so-called noble feuds that are the subject of the literature Netterstrøm characterises as “functionalist” and “rationalist.”⁷ Similarly, the study of emotions, vengeance, and the “somatic complex” in *Raoul de Cambrai* by Smail, whose work on emotions directly challenges the scholarship on feuding just mentioned, focuses so narrowly on revenge-killings that it overlooks the *guerre* between Raoul de Cambrai and the sons of Herbert of Vermandois, in which many of these killings take place.⁸ Although Hyams studies the practice of feuding as well as the

⁶ In this article I refer to these conflicts as “*guerres*,” the Modern French form of the term used in the *chansons de geste*, in order to sidestep the modern connotations of “war.” See below, for further discussion.

⁷ Richard Kaeuper, “Vengeance and Mercy in Chivalric *Mentalités*,” in *Peace and Protection in the Middle Ages*, ed. T.B. Lambert and David Rollason, Durham Medieval and Renaissance Monographs and Essays 1 (Toronto: Center for Medieval and Renaissance Studies, Durham University and Pontifical Institute of Medieval Studies, Toronto, 2009), 168–80 at 168. See also Kaeuper, *Chivalry and Violence in Medieval Europe* (New York: Oxford University Press, 2001); Kaeuper, “Chivalry and the Civilizing Process,” in *Violence in Medieval Society*, ed. Kaeuper (Woodbridge: Boydell Press, 2000), 21–35; and Kaeuper, “Literature as the Key to Chivalric Ideology,” *Journal of Medieval History* 5 (2006): 1–15. On “noble” feud, see Howard Kaminsky, “The Noble Feud in the Later Middle Ages,” *Past and Present* 177 (2002), 55–83; Stephen D. White, “Un imaginaire faidal: La représentation de la guerre dans quelques chansons de geste,” in *La vengeance, 400–1200*, ed. Dominique Barthélemy, François Bougard, and Régine Le Jan (Rome: École Française de Rome, 2006), 175–98. See also White, “Feuding and Peace-Making in the Touraine around the Year 1100,” *Traditio* 42 (1986): 195–263, repr. in White, *Feuding and Peacemaking in Eleventh-Century France* (Aldershot: Ashgate, 2005), chap. 1; and White, “Clotild’s Revenge: The Politics of the Merovingian Feud,” in *Portraits of Medieval and Renaissance Living: Essays in Memory of David Herlihy*, ed. Samuel K. Cohn Jr. and Steven A. Epstein (University of Michigan Press: Ann Arbor, 1996), 107–30, repr. in White, *Re-Thinking Kinship and Feudalism in Early Medieval Europe* (Aldershot: Ashgate Press, 2005), chap. 3.

⁸ On the poem generally, see Daniel Lord Smail, “Emotions and Somatic Gestures in Medieval Narratives: The Case of *Raoul de Cambrai*,” *Zeitschrift für Literaturwissenschaft und Linguistik* 138 (2005): 34–48 at 36; and Stephen D. White, “The Language of Inheritance in Raoul de Cambrai: Alternative Models of Fief-holding,” in *Law and Government in the Middle Ages: Essays in Honour of Sir James Holt*, ed. George Garnett and John Hudson

representation of it in Anglo-French literature, he comes close to reducing feuds to sequences of individual vengeance killings by postulating, first, that "Feud starts as an effort to avenge injury, generally violent injury, and often a killing" and, second, that vengeance for the injury is likely to lead to "further tit-for-tat from [the avenger's] enemies."⁹

Having identified feuds with sequences of alternating, retaliatory responses to "perceived wrongs," Hyams first maintains that because feuding involved "more than just a matter of rational calculation," the study of emotional impulses to take revenge "takes us beyond the straight rational analyses of [the parties'] motives," thereby implying that the rational analysis of their motives is worthwhile, though arguably less important than the study of their emotions.¹⁰ However, when he asserts that "Emotions both fuel the response [to perceived wrong] and determine its quantum and nature,"¹¹ he implies that understanding the feelings in the feud is the key to explaining individual acts of vengeance and, by extension, the feuds that are constituted by these acts. "When men and women felt themselves wronged (or men felt themselves wronged through their womenfolk)," he writes, "when they cast themselves as victims of wrong, their first thoughts were doubtless about protecting themselves against further harm. But their next impulse was to seek to get even, to avenge their wrong."¹² Indeed, "people who see themselves as having been wronged feel an almost insuperable urge to return the favour, if possible with added interest." This "urge to avenge wrongs was well nigh universal [in medieval Europe] and irresistible to all save the very saintly."¹³

(Cambridge, UK: Cambridge University Press, 1994), 173–97, repr. in White, *Re-Thinking*, chap. 5.

⁹ Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca: Cornell University Press, 2003), 8, 9. See also Hyams, "Feud in Medieval England," *Haskins Society Journal* 3 (1992): 1–21; Hyams, "Feud and the State in Late Anglo-Saxon England," *Journal of British Studies* 40 (2001): 1–43; Hyams, "What Did Henry III of England Think in Bed and in French about Kingship and Anger?" in *Anger's Past: The Social Use of an Emotion in the Middle Ages*, ed. Barbara H. Rosenwein (Ithaca: Cornell University Press, 1998), 92–124; Hyams, "Was There Really Such a Thing as Feud in the High Middle Ages?," in *Vengeance in the Middle Ages: Emotion, Religion and Feud*, ed. Susanna A. Throop and Paul R. Hyams (Farnham: Ashgate, 2010), 151–75; Hyams, "Afterword: Neither Unnatural nor Wholly Negative: The Future of Medieval Vengeance," in Throop and Hyams, *Vengeance*, 203–20.

¹⁰ Hyams, *Rancor*, 21, 34.

¹¹ Ibid., 8–9; and Hyams, "Afterword," 203 on feud as "a type of vengeance."

¹² Hyams, "Feud and the State," 43. According to Hyams, "Was There Really Such a Thing," 159, "Feud starts as an effort to avenge an act perceived as a wrong, generally violent injury and often a killing."

¹³ Hyams, "Was There Really Such a Thing," 170.

Like Hyams, Kaeuper emphasizes the emotional basis of revenge, but he does so by characterizing vengeance as a form of “lust” that ranks among “the most basic human emotions—after [the desire for] food and shelter, and perhaps standing closely tied with sex.”¹⁴ Similarly, by referring to a “compulsion” to take vengeance, Smail implies that it is not only irrational but virtually uncontrollable. Writing in reaction against the so-called functionalist and rationalist studies of feuding already mentioned,¹⁵ Smail maintains that

Vengeance may vary with its cultural settings, but the compulsion is the same wherever it is found. It is what you do to one who did you an injustice, trespassed the boundaries of your honor, pricked your self-esteem. It is the attempt to correct the imbalances that plague relations between people. Careful taxonomies once distinguished feud from vendetta from duel and so on, and the names have their uses, but let us not lose sight of the common hatred that is socialized, regulated, and stylized under a variety of epithets. The varying structures of differing societies yield differences in practice. Vengeance itself is universal.¹⁶

Elsewhere, Smail clarifies his position by asserting that acts of vengeance express “the cognitive experience of hatred.”¹⁷

To confirm their assumptions about the emotional basis of vengeance, Hyams, Kaeuper, and Smail all cite medieval literary texts, including *chansons de geste*, Old French romances, and Anglo-French and Middle English insular romances.¹⁸ In passages representing the emotions of imaginary characters who have suffered harm and who act on (or act out) these feelings by seeking vengeance against the imaginary characters they blame for harming them, all three historians see relatively transparent descriptions of the emotions that the historical counterparts of the imaginary characters seeking vengeance would have felt in response to being harmed and that they expressed by avenging these injurious acts. Literary texts, Hyams insists, give access to these emotions, not only because they are replete with “emotional language,” but because “Emotion discourse

¹⁴ Kaeuper, “Vengeance and Mercy,” 168, 175.

¹⁵ See Daniel Lord Smail, “Factions and Vengeance in Renaissance Italy: A Review Article,” *Comparative Studies in Society and History*, 38 (1996): 781–9.

¹⁶ *Ibid.*, 781.

¹⁷ Daniel Lord Smail, “Hatred as a Social Institution in Late-Medieval Society,” *Speculum* 76 (2001): 90–126 at 126.

¹⁸ For “emotion talk” in other texts from the same period, see Stephen D. White, “The Politics of Anger,” in *Anger’s Past: The Social Uses of an Emotion in the Middle Ages*, ed. Barbara H. Rosenwein (Ithaca, NY: Cornell University Press, 1998), 127–52, repr. in *idem, Feuding and Peace-Making*, chap. IV, 135–7.

proceeds from within the emotional process and is therefore formational, not merely descriptive."¹⁹ Hyams describes the Anglo-French and Middle English versions of "King Horn" and "Havelock the Dane" as "glowing with heated emotions." They "frequently seem to try to convey feelings that their audience have or could have experienced themselves"; and by showing "how these [feelings] might motivate people within a culture of vengeance,"²⁰ these literary texts reveal "a real life culture of vengeance within a thought world that accords vengeance a prominent place."²¹

Like Hyams, Kaeuper assumes that descriptions of characters' emotions in literary texts transparently represent how medieval nobles experienced, expressed, and acted out their emotional urges to take vengeance. After analyzing *Raoul de Cambrai* and sections of the *Lancelot-Grail Cycle* in order to determine the place of vengeance in chivalric culture, Kaeuper concludes that "Hot-blooded wrath animates revenge time and again," as one can see when "Knights say they will die if they cannot take vengeance or fear that they will die too soon and miss the chance."²² Smail, too, believes that literary emotion talk transparently describes the emotions experienced by nobles and takes the argument a step further by characterising emotions such as anger and hatred as the involuntary products of cognitive experience, which are expressed in what he calls "visible somatic gestures." In an article on "Emotions and Somatic Gestures in Medieval Narratives," Smail writes that in *Raoul de Cambrai*, descriptions of these gestures convey to the audience "an intimate sense of the characters' inner feelings."²³ After noting how frequently a character's emotions are conveyed through descriptions of weeping, flushing, fainting, quivering, sighing, and sweating, Smail argues that all of these somatic gestures result involuntarily from changes in blood pressure, which are themselves involuntary responses to external stimuli, notably the sight of blood. He also regards the same gestures as "unintended messages" that are "sent by the sub-cortex, the seat of emotional processing," and not by "the cognitive thinking brain," which he says is in a state of tension with "the non-cognitive sub-cortices."²⁴ In the poem's "somatic complex,"

¹⁹ On references to emotions in legal and administrative texts, see Hyams, *Rancor*, 39–41.

²⁰ Hyams, *Rancor*, 61, 62.

²¹ *Ibid.*, xvi; and on the two cultures, *ibid.*, 43–66.

²² Kaeuper, "Vengeance and Mercy," 168, 174.

²³ Smail, "Emotions and Somatic Gestures," 39.

²⁴ *Ibid.*, 40–1.

a character possessed *sens* (sense, reason, direction) when the body's *sans/sanc* (blood) was balanced and contained by the heart. Subjected to an insult or a similar shock, the body's blood shivered, resulting in one of the most frequent expressions in the poem: "he felt his mind flip" (*le sense quide changier*) [...]. In *Raoul's* somatic complex, the loss of sense/reason was then revealed in the face by flushing or pallor as the flipping or shaking of the body's blood caused coloration [in the face] to change.²⁵

According to Hyams, Kaeuper, and Smail, literary texts not only describe the emotional impulses that drive their imaginary characters and their historical counterparts to take vengeance, but also prescribe them by showing their audiences what feelings they ought to experience if they are harmed and how they ought to express these feelings in acts of vengeance. At this point, Culture finally enters the discussion—although its role is not to reinforce or limit vengeance in ways that are set by law or considerations of practical politics, but to determine the acceptable forms of revenge into which involuntary emotional urges to avenge injuries should be channeled. According to Kaeuper, medieval French romances and epics valorize and legitimate vengeance in the form of "acts of prowess aimed at wiping out shame (often while in a state of wrath). Wrongs disorder the world and stain the individual (and his kin) with shame. Blood calls for blood, wrong for wrong. Vengeance wipes the slate clean and reorders a disordered world."²⁶ Accordingly, Kaeuper reads *Raoul de Cambrai* as "a poem of vengeance, repeatedly proclaimed as a virtue and exultantly described," which reveals "the deep-seated commitment of knighthood to hot-blooded vengeance."²⁷ Smail proposes a similar reading of *Raoul de Cambrai*. Although he finds traces in the poem of a Christian discourse condemning somatic gestures and the vengeance they stimulated, he argues that for the most part, *Raoul de Cambrai* celebrates "emotional volatility [as] the very stuff of nobility." According to Smail, the poem posits "a strong correlation between nobility and somaticism" by creating characters—notably Raoul de Cambrai himself and his squire Bernier—who "were admired precisely because their bodies were so easily moved despite their will."²⁸ The poet also contrasts these honourable characters with dishonourable ones such as King Louis, who, Smail points

²⁵ Ibid., 38. For an insightful discussion of anger in *Raoul de Cambrai*, see Richard Barton, "'Zealous Anger' and the Renegotiation of Aristocratic Relationships in Eleventh- and Twelfth-Century France," in *Anger's Past*, ed. Rosenwein, 153–70 at 168–70.

²⁶ Kaeuper, "Vengeance and Mercy," 170.

²⁷ Ibid., 171, 172.

²⁸ Smail, "Emotions and Somatic Gestures," 42–3.

out, is “never described as experiencing the somatic reactions felt by other noble characters.” Instead, the king “[exerts] such control over his body that the emotions have no chance to express themselves except as words and insults.”²⁹

Hyams’s view of vengeance is different from Kaeuper’s and Smail’s, though not as different as it initially appears to be. Instead of treating vengeance as the unmediated expression of hatred or some other emotional response to perceived wrong, Hyams asserts that it

proceeds from a clear and/or passionate sense of wrong and seeks to restore not merely the status quo ante but the way things *ought* to have been. In other words, inherent in vengeance is its own view of justice, which sometimes coincides with that of official law, or at other times presents an alternative that challenges the official view.

However, since the urge to avenge perceived wrong is “in some sense hard-wired into us as an instinctive reaction” and since “non-human animals can recognize vengeance and some even incorporate it into their normal activities,”³⁰ the sense of wrong from which the urge to take vengeance proceeds is totally independent of “official law” and of culture.³¹ Moreover, the limits on the expression of the impulse to avenge wrongs in acts of medieval vengeance were not determined by morality (as we would ordinarily understand it), culture, religious teaching, law, or politics, or by rational calculation of any kind. On the contrary, Hyams suggests that the limits were set by psychology and ultimately by physiology, when he writes, that “The basic principle that justice is about leveling things (the *talion*) may indeed be universal among humans”;³² and that in medieval writings on vengeance, the “goal of balance, or fit or leveling the score” is so constantly articulated as to suggest that it is “instinctual.”³³

Finally, Kaeuper, Smail, and Hyams also share the view that the attitudes towards revenge of medieval nobles—or, in Hyams’s case, of lay people of all classes—differed radically from the attitudes of Christian authorities, which, they imply, had a rational basis. According to Kaeuper, medieval French romances showed that the chivalric ethic that valorized and legitimated hot-blooded vengeance was opposed by a Christian ethic of restraint in taking vengeance, though a “Romance Compromise” between

²⁹ Ibid., 44.

³⁰ Hyams, “Afterword,” 204.

³¹ Ibid., 217.

³² Ibid., 209.

³³ Hyams, *Rancor*, 39.

the two ethics could be achieved if a knight satisfied his own emotional urge to take vengeance by defeating and humiliating his enemy, and then showed Christian mercy by refraining from killing him.³⁴ Hyams, too, distinguishes a “secular” model of vengeance from an “ecclesiastical” one, while Smail contrasts the celebration of emotional volatility by nobles with its condemnation by Christian authors, who believed that emotions took possession of the body and nullified the will. Still, Smail finds traces of the Christian discourse in *Raoul de Cambrai*, whose author occasionally condemns characters whose lack of moderation (*desmesure*) makes them “fall victim to their bodies,” because their “blood sloshes around rather too freely; it is too easily disturbed by signs, gestures, or other sensory inputs.”³⁵

The Feelings in the Feud Reconsidered

When Hyams, Kaeuper, and Smail argue that the emotional urge to avenge injuries was the driving force behind medieval vengeance and, by extension, feuding, their goal is not simply to supplement previous scholarship that emphasised the rationality of these practices, but to supersede it by arguing for the practices’ irrationality. These scholars therefore rule out the possibility that either feuds or vengeance-killings in medieval Europe could have been determined at least in part by the legal, political, and economic considerations that I have discussed in connection with the feud-like *guerres* waged by nobles in medieval France.³⁶ At the same time, they also reject the multi-dimensional approach to the study of feuding and revenge in medieval Iceland taken by William Ian Miller, who writes that “the bloodfeud is frequently moral, often juridical, and always political” and that “revenge was constitutive of much of [the] public, personal, and moral order” of medieval Icelanders.³⁷ In treating vengeance as the product of emotional, irrational impulses, they directly challenge the views of Claude Gauvard, who writes of the violent revenge taken for violations of honour by men and women in medieval Europe:

³⁴ Kaeuper, “Vengeance and Mercy,” 168–9, 170, 178–9.

³⁵ Smail, “Emotions and Somatic Gestures,” 44.

³⁶ White, “Un imaginaire faidal.”

³⁷ William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990), 181; Miller, “In Defense of Revenge,” in *Medieval Crime and Social Control*, ed. Barbara A. Hannawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 70–89 at 70.

Cette violence-là n'est pas viscérale: elle se nourrit de l'échange. Ces hommes et ces femmes ne sont pas vindicatifs par nature, mais leurs pratiques sont vindicatoires, parce que leurs valeurs sont fondées sur les règles de l'honneur.³⁸

Their arguments, however, are vulnerable to six main objections. First, either by ignoring the feud-like medieval conflicts that medieval French texts call “wars” or else by reducing them to sequences of individual acts of vengeance, Kaeuper and Smail, and Hyams make it impossible to provide full-scale analyses of literary texts such as *Raoul de Cambrai* and *Le mort le roi Artu*, which usually situate acts of vengeance in such *guerres*. These conflicts—as represented in both literary and historical texts—are best understood as feuds; and because they generally arose out of disputes over landed property, not homicides and were waged by groups, not individuals, they cannot be understood without taking account of their political, economic, and legal dimensions.³⁹ Second, even if every medieval *guerre* was initially triggered by the emotional urge of a single individual to avenge a perceived wrong, such urges and acts of vengeance in a war must have been “mediated by political processes that are marked by displays of emotion and colored by emotion talk but [that] are not reducible to emotions or expressions of emotional impulses.”⁴⁰ This was because the waging of a *guerre* was impossible without the support of other men who were recruited on the basis of kinship, friendship, and clientage and whose participation in the conflict mainly involved plundering an enemy’s lands and peasants;⁴¹ a practice which is vividly described in *chansons de geste* such as *Raoul de Cambrai*.⁴² Third, to assume that literary texts transparently conveyed the “feelings that their audience have or could have experienced themselves” in response to injuries⁴³ is to overlook the implications of the finding that in medieval French, as in Medieval Latin, the emotion words most commonly used in stories about feuding and vengeance—anger, ill-will, hatred, enmity—did not necessarily stand for

³⁸ Claude Gauvard, “Avant-Propos,” in *Le règlement des conflits au moyen âge*, Société des Historiens Médiévistes de l’Enseignement Supérieur Public, Série Histoires Ancienne et Médiévale, vol. 62 (Paris: Publications de la Sorbonne, 2001), 7–9 at 8. See also Gauvard, “*De grace especial: Crime, état et société en France à la fin du moyen âge*” (Paris: Publications de la Sorbonne, 1991), vol. 2, 753–88.

³⁹ On the representation of *guerres* in *Raoul de Cambrai* and three other *chansons de geste*, see White, “Un imaginaire faidal.”

⁴⁰ White, “Politics of Anger,” 150–1.

⁴¹ White, “Un imaginaire faidal,” 182, 185.

⁴² *Ibid.*, 198–99.

⁴³ Hyams, *Rancor*, xvi.

feelings or sentiments at all. "Enmity," according to Robert Bartlett, "was an institution, at least in the sense that [...] it was a generally recognized relationship hedged by ritual, expectation and sanction."⁴⁴ So was anger, which carried legal implications for the relationship between the person who expressed it and the person against whom it was directed.⁴⁵ The same is true of hatred, which Smail characterizes as a "social institution" but which could also be considered a legal one.⁴⁶ If the displays of anger, enmity, and hatred that are so often described in medieval French literature carried political and legal meaning, then they cannot be properly interpreted out of relation to the political and legal contexts in which the displays occur.⁴⁷ "To display anger about an action publicly is to construe the action as an injury, as a wrongful act causing harm, damage, or loss, as an offense against a person's honor."⁴⁸ To display anger at and hatred of another person is to identify him or her as bearing legal liability for the wrong and being a legitimate target for revenge.

However, this is not to say that authors of *chansons de geste* and romances necessarily celebrated displays of anger or acts of hot-blooded vengeance. Studies of the representation of anger have consistently shown that the authors of literary texts routinely distinguished between "good" anger and "bad" anger.⁴⁹ By identifying a character as a traitor or felon, they implicitly indicated that his anger and hatred were intrinsically evil, particularly when he acted secretly against his enemies. A similar rhetorical objective was achieved by representing characters' anger as "mad" (*fol*), animalistic, uncontrolled and uncontrollable, or as "fury"; by showing characters rejecting wise counsel; by showing other characters denouncing them; by showing how the characters' anger drove them to commit or to command acts of vengeance that were wildly out of proportion to the acts to be avenged; and by showing that the character's anger could never be appeased.⁵⁰

⁴⁴ Robert Bartlett, "Mortal Enmities" (Aberystwyth: University of Wales, 1998), repr. in *Feud, Violence, and Practice*, ed. Tuten and Billado, 197–212, at 198.

⁴⁵ On royal anger and ill-will, see J.E.A. Jolliffe, *Angevin Kinship*, 2nd ed. (New York: Barnes and Noble, 1963), 101, 102.

⁴⁶ Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca: Cornell University Press, 2003), 90–1 and 91 n. 4.

⁴⁷ White, "Politics of Anger," 139.

⁴⁸ *Ibid.*, 140.

⁴⁹ See White, "Politics of Anger"; White, "La colère de Guillaume d'Orange"; Barton, "Zealous Anger."

⁵⁰ See White, "La colère de Guillaume d'Orange."

Fourth, although the authors of literary texts sometimes place a favourable construction on the emotional urges of irate nobles to take vengeance for injuries they have suffered and on "hot-blooded vengeance" itself, they certainly do not do so consistently. On the contrary, in *Raoul de Cambrai*, *La mort le roi Artu*, and many other French epics and romances, hot-blooded vengeance is strongly condemned either by the author himself or by characters clearly identified as good counselors.

Fifth, although Christian authority figures such as hermits, abbots, or the pope are sometimes represented in French romances and epics as advising nobles to restrain their own emotional impulses to avenge injuries, nobles receive virtually the same advice from their fellow nobles as well. On these occasions, the primary rationale for this advice is not that the nobles who have been injured should forgive the person who has injured them, but rather that they have no right to take vengeance, because the person who injured them did so by "misadventure" or "mis-chance," and not knowingly.

Finally, although the emotional dimension of medieval feuding and vengeance is undeniably important, as is the value of literary texts in illuminating medieval emotions, the main support for the new tendency to explain these practices by citing the emotions that supposedly impelled individuals to take vengeance comes from the theoretical postulates of evolutionary psychology that will be briefly discussed in the conclusion.

The Desire for Vengeance in La mort le roi Artu

La mort le roi Artu (c. 1240) is an important text for the study of wars, vengeance, and emotions because it provides a detailed account of the *guerre* that ultimately brought down Arthur's kingdom and includes numerous episodes in which characters respond angrily to being injured by seeking to avenge the injury on the character they blame for it. However, instead of routinely justifying either the emotional impulse of nobles to take vengeance or "hot-blooded vengeance," the author represents them favourably or unfavourably, depending on whether the injury to be avenged was inflicted knowingly or unknowingly, whether the avengers' vengeance is proportional to the injury inflicted upon them, and whether the avenger is fighting on the side of right in "the war that will never have an end."⁵¹

⁵¹ DA, 120, 121; MA, 89.9 (p. 114), 90.87–8 (p. 118).

At the most superficial level, the driving force behind this *guerre*—which takes up the second half of the story—is the hatred felt toward Lancelot by Agravain, brother of Gawain and nephew of King Arthur, who learns of Lancelot's illicit love for Queen Guinevere early in the story and is happy about it, “more for the harm that might befall Lancelot than for the possibility of avenging the offense to the king.”⁵² However, Agravain's hatred for Lancelot would not have led to a great *guerre* if he had not gained support for entrapping the lovers from his brother, Guerrehet; from King Arthur himself; and from Arthur's natural son, Mordred,⁵³ and if the exposure of Guinevere and Lancelot's illicit love had not led Arthur's court to condemn Guinevere to death for treason—which led, in turn, to Lancelot and his men's ambushing the knights of Arthur's who were going to execute the queen in the meadow outside Camelot, in which ambush Lancelot's cousin Bors killed Guerrehet and Lancelot killed Agravain and Agravain's brother Gaheriet.⁵⁴ Only then do King Arthur and his surviving nephew, Gawain, both of whom hate Lancelot because of the killings of Gawain's brothers (Agravain, Guerrehet, and Gaheriet), decide to wage war against Lancelot, along with Lancelot's brother, Hector, and his cousins, Bors and Lionel. And it is only after Arthur and his army have left his kingdom of Logres to attack Lancelot that Mordred persuades Arthur's barons to make him king and give him Guinevere in marriage, by spreading the false rumor that Arthur was dead.⁵⁵ Later, Gawain is to die from a wound received from Lancelot when the two men fight a judicial duel to determine whether Lancelot had killed Gawain's brothers by treason. In a battle to be considered shortly, King Arthur succeeds in killing Mordred, who gives Arthur a reciprocal blow from which he eventually dies. The *guerre* ends, and so does Arthur's kingdom.

Even though the story frequently represents its leading characters as responding angrily to perceived wrongs and seeking to avenge them, virtually the only acts of vengeance that the author treats as justifiable are the killings of Agravain and Guerrehet in the skirmish outside Camelot just mentioned and two other killings, one by Arthur and the other by Yvain, in a battle between Arthur's forces and Mordred's at the end of the story. In the skirmish outside Camelot, Lancelot kills Agravain after warning him that he will attack him, calling him a coward and traitor, and

⁵² DA, 91–2; MA, 4.10–5.4 (pp. 3–4).

⁵³ For the entrapment, see DA, 118–21; MA, 85.39–90.84 (pp. 107–18).

⁵⁴ DA, 122–3; MA, 92–4 (pp. 119–24).

⁵⁵ DA, 135–6; MA, 134–6 (pp. 171–3).

then hitting him “so hard that no armor could prevent the spear from penetrating his body.” Next, Lancelot’s cousin Bors calls on Agravain’s brother Guerrehet “to be on his guard, for he was threatening him with death. He [...] struck him with such force that no armor could prevent him from thrusting the steel through his opponent’s chest.”⁵⁶ Even though the story makes clear that Lancelot hates Agravain and that Bors hates Guerrehet, these homicides do not qualify as hot-blooded vengeance; instead, they are vengeance killings, committed in retaliation for the treason of Agravain and Guerrehet, who had both participated in the entrapment of Guinevere and Lancelot and supported the queen’s condemnation for treason, and were trying to ensure that she would be executed by burning.

When considered in isolation from the rest of the battle between Mordred and Arthur’s army, Yvain’s killing of an anonymous knight of Mordred’s and Arthur’s killing of Mordred himself appear to show how the author of *La mort le roi Artu* celebrated hot-blooded vengeance of the sort that Kaeuper treats as the product of a visceral impulse to avenge affronts to honour.⁵⁷ When Mordred’s knight knocks Arthur off his horse, Yvain is angered by this affront to his king, as well as about the previous killing of another knight of Arthur’s, and kills Mordred’s knight. Later, after Mordred strikes another knight of the Round Table called Sagremor “so hard within the sight of the king, that he sent his head flying across the field [of battle],” Arthur immediately retaliates by striking Mordred “so hard that he ripped apart the links of [his hauberk] and thrust the steel of his lance through his body.” Arthur’s killing and Yvain’s both have the look of vengeance killings, committed by men driven by the irresistible impulse to avenge harm done to them or to their associates. But the author of the story does not represent either killing as “crazed, uncontrolled, subjective, individual, admitting of no reason, no rule of limitation.”⁵⁸ Note that Yvain kills Mordred’s knight not only to avenge the knight’s affront to Arthur, but also to avenge the death of a knight of the Round Table called Gelgantin, whom Mordred has just killed and whom Arthur was trying to avenge when he was knocked off his horse by Mordred’s knight. When Arthur kills Mordred, he is taking vengeance on him not only for killing Sagremor, Gelgantin, and Yvain, but also for all the other treasonous

⁵⁶ DA, 123; MA, 94 (pp. 123–4).

⁵⁷ For the battle, see DA, 149–54; MA, 176–90 (pp. 225–45).

⁵⁸ Miller, “In Defense of Revenge,” 73.

acts that make him “the worst traitor in the world,” including abducting Guinevere and usurping Arthur’s kingdom.⁵⁹

Moreover, though the author has much to say about the anger and hatred expressed by the men who are fighting in the battle between Arthur and Mordred, he does not represent the battle as the bloody encounter that it would have been had he intended to represent the rage of the fighters as truly uncontrolled. Instead, he totally abandons any pretense of representing the battle naturalistically by situating the killings in what one might call a “fantasy feud,” in which a small group of fighters on each side exchange killings and counter-killings in accordance with a model of feuding characterized, in Miller’s terms, by “balance and reciprocity.”⁶⁰ In other words, the author of this story, like the author of *La chanson de Roland* and other *chansons de geste*, represents a battle, not as it could possibly have occurred, but as it ought to have happened in order to conform to conventionalized understandings of how a *guerre* should proceed.⁶¹

Here, in outline form, is how the killings just discussed are presented as elements of an exchange in which members of Mordred’s group (B) harm members of Arthur’s group (A), who avenge these wrongs in accordance with a model of balance and reciprocity.⁶²

- B. Mordred kills Arthur’s knight, Gelgantin.
- A. Arthur attacks Mordred.
- B. Mordred’s knight unhorses Arthur.
- A. Yvain helps Arthur remount and kills Mordred’s knight in retaliation for the knight’s affront to the honour of Yvain’s king and for Mordred’s killing of Arthur’s knight Gelgantin.
- B. Mordred takes vengeance on Yvain for helping Arthur and killing Mordred’s knight. Later, Mordred also kills another knight of Arthur’s called Sagremor.
- A. Arthur avenges Sagremor’s death by killing Mordred.
- B. While Mordred is dying, he gives the king what turns out to be his deathblow.

⁵⁹ DA, 153–4; MA, c. 189 (pp. 242–3).

⁶⁰ Miller, *Bloodtaking*, 182.

⁶¹ On a battle in *La chanson de Roland*, see Stephen D. White, “Protection, Warranty, and Vengeance in *La chanson de Roland*,” in *Peace and Protection in Medieval Europe*, ed. Tom Lambert and David Rollason (Toronto: Pontifical Institute of Medieval Studies & Durham Centre for Medieval and Renaissance Studies, 2009), 155–67 at 155–6.

⁶² The outline is modeled on the outline of an Icelandic feud in *Njal’s Saga* in Miller, *Bloodtaking*, 183.

This sequence of killings and counter-killings is devised in such a way as to show that the A-team's killings to avenge perceived wrongs are fully justified, because the wrongs that the avengers perceive are truly wrongs. However, other episodes in *La mort le roi Artu* are carefully constructed so as to contrast one character's irate, irrational, and unjustifiable response to a perceived wrong and the character's impulse to avenge it with a cooler appraisal of the perceived wrong, which shows that the perceived wrong ought not to be avenged. The reason why the wrong ought not to be avenged is not that the author espouses a Christian ethic of restraint in taking vengeance, but because the perceived wrong turns out to be no wrong at all or, at least, not one meriting vengeance, which would violate the implicit norm of balance and reciprocity already mentioned because the act perceived as a wrong was not committed "knowingly" but rather by "misadventure" or "mischance."⁶³

To establish this point, I consider four episodes from the story, starting with the simplest and ending with the most complex.

(1) A huntsman of King Arthur's wounds Lancelot: While lying asleep in a forest, Lancelot is seriously wounded by an arrow shot by one of King Arthur's huntsmen. Enraged, Lancelot identifies the wound as a wrong meriting vengeance by calling out to the huntsman, "Worthless scoundrel, what have I done to you to cause you to wound me in my sleep? You shouldn't have done that, and you'll live to regret it!" Later, however, Lancelot is persuaded not to take vengeance on the huntsman. When he explains to a hermit "under what circumstances he had been wounded," he is told that that the wound he suffered was "a very great misfortune (*mescheance*)," but not, by implication, a wrong that merited vengeance.⁶⁴

(2) Bors wounds Lancelot: When Lancelot is seriously wounded by his cousin Bors, as they are each fighting in disguise on opposite sides at a tournament and are unable to recognize each other, Lancelot is enraged.⁶⁵ According to the author, "no act of kindness ever done by [the man who wounded him] would ever be repaid as promptly as this treacherous deed, if it was within Lancelot's power."⁶⁶ A month later, Lancelot is still intent

⁶³ For "*mesaventure*" see MA, 21.12, 57.20, 62.37, 174.34; for *mesavenir*, see MA cc. 60.79; 63.2; 65.8; 170.38, 170.41. For *mescheance*, see MA, cc. 3.17, 21, 26; 62.53, 58, 78, 83; 65.27; 71.48; 77.28; 90.27; 103.12; 110.53; 177.1.

⁶⁴ DA, 111; MA, 64.27–65.50 (pp. 79–81).

⁶⁵ DA, 95; MA, 19.4–7, 22–32 (p. 15).

⁶⁶ DA, 95–6; MA, 22 (p. 19).

on avenging the wound. When he meets Bors, his other cousin Lionel, his brother Hector, and King Arthur's nephew Gawain, he tells them,

if I can find out [who wounded me] and if I should happen to meet him at some tournament, nothing he ever did would be so promptly repaid; for before he left, I would show him whether my sword cuts through steel. And if he drew blood from my side, I would draw as much or more from his head.

However, as soon as Lancelot learns from Gawain that it was Bors who had wounded him, he abandons his quest for vengeance. For his part, when he asked, "Bors, was it you who wounded me?" Bors "was so anguished that he did not know what to say, for he dared not admit it and could not deny it."

Instead, he said, "Sire, if I did it, I am sorry, but I shouldn't be blamed for it. For at the time Sir Gawain says I did it, you—if you were the one I wounded—were disguised so that I would never recognize you with those arms, for they were those of a new knight, whereas you have been bearing arms for twenty-five years. That's why I failed to recognize you, and so it's my opinion that you shouldn't hold it against me."

Lancelot immediately agrees, "since that was the way it had happened," and tells Bors, "you'll never hear me speak of it again, and I forgive you."⁶⁷

(3) Gaheris the White is poisoned by eating a fruit given to him by Queen Guinevere: While Arthur's queen is feasting in a hall at Camelot with many knights of the Round Table, a knight called Avarlan, who is eating in an adjacent hall, decides to kill Arthur's nephew Gawain, whom he hates for reasons that are never explained. He dispatches a servant to give Guinevere a poisoned fruit, which, he assumes, the queen will not eat herself and will instead pass to her particular favourite, Gawain, who will eat it and die. After Guinevere gives the fruit instead to Gaheris, who dies from eating it, no one at Arthur's court either investigates the homicide or accuses the queen of killing Gaheris. Instead, the knights of the Round Table decide "by common consent" to place on his tomb an inscription reading "Here lies Gaheris the White of Carahew, the brother of Mador [de la Porte], whom the Queen caused to die by poison."⁶⁸

⁶⁷ DA, 104–5; MA, 46 (pp. 53–4).

⁶⁸ DA, 110–11; MA, 62–3 (pp. 77–8). In the text above, I give my own translation of the inscription, which reads: "Ici gist Gaheriz li Blancs de Karaheu, li freres Mador de la Porte, qui la reïne fist morir par venim" (63.11–13).

When Mador returns to Camelot, no one tells him about his brother's death, "for they knew that he was such a courageous knight that as soon as he learned the truth, he would never give up until he took revenge to the best of his ability."⁶⁹ However, when he chances on his brother's tomb, reads the inscription, and learns from a fellow knight that what the inscription says is true—which it is, since it indicates that the queen caused Gaheris's death, not that she did so knowingly—Mador says that his death is a great loss (*domages*), since "I loved [my brother] dearly, as one brother should love another, and I'll seek vengeance any way I can."⁷⁰ He does so by making an appeal against the queen for having killed his brother "treacherously" (*en traïson*), and undertakes to prove his appeal in battle.⁷¹ Guinevere denies that she killed Gaheris "treacherously and knowingly," but no one at Arthur's court will defend her.⁷² After warning her that if found guilty as charged, she will be executed, Arthur allows her forty days to find a champion.⁷³ On the day of battle the queen's defense is finally taken up by Lancelot, who has hitherto been absent from Camelot and has learned of Mador's accusation only through a chance encounter in the forest with an anonymous knight, who had been eating in the same hall as Gaheris and the queen and who relates the circumstances of the former's death to Lancelot.⁷⁴ Appearing at Camelot in disguise and at the last possible moment, Lancelot responds to Mador's charge that Guinevere had killed Gaheris "disloyally and treacherously" by offering to prove by battle that the queen had never contemplated "disloyalty or treason."⁷⁵ By defeating Mador, who is ignorant of the queen's champion's identity and does not grasp the meaning of his defense of Guinevere, Lancelot secures the queen's acquittal and pleases Arthur, who, after hearing Lancelot's defense, says that he hopes for Mador's defeat. Meanwhile, Mador is shamed. He accepts Lancelot's mercy and his help in securing Guinevere's forgiveness and Arthur's pardon.

⁶⁹ DA, 112–13; MA, 67.16–68.38 (pp. 83–7).

⁷⁰ DA, 112; MA, 67.16–43 (pp. 83–4). "Great harm" is my own translation for "grant *domages*."

⁷¹ DA, 113; MA, 67.64–68 (p. 85).

⁷² DA, 112; MA, 67.95 (p. 86): "en traïson et a mon escient."

⁷³ DA, 113; MA, 68.13–21 (p. 86).

⁷⁴ See DA, 115–16; MA, 74–5 (pp. 92–7).

⁷⁵ For the entire scene, see DA, 116–18; MA, cc. 76–85 (pp. 99–108). I give my translations of "desloiaument et en traïson" (MA, 83.3) and "ni pensa onques desloiauté ne traïson" (MA, 83.4–5).

(4) Lancelot kills Gaheriet, the brother of Agravain, Guerrehet, and Gawain: Shortly after Lancelot kills Agravain and Bors kills Guerrehet in the skirmish outside Camelot already mentioned, Lancelot kills Gaheriet, but under very different circumstances. His death differs from the deaths of Agravain and Guerrehet, both because he did not participate, as they did, in the entrapment of Guinevere and Lancelot or willingly join the band of knights—which Agravain led and Guerrehet joined—who took the queen outside Camelot to have her executed for treason, and because Lancelot kills him without recognizing him. Gaheriet dies in a ride-by killing.

The back-story runs as follows: When Gaheriet “saw his two brothers struck down” dead, he was “enraged [and] charged Meliaduc the Black, who was doing all he could to help Lancelot and to avenge the king’s disgrace.” Gaheriet killed Meliaduc and another knight of Lancelot’s, at which point Lancelot’s brother Hector decided to kill Gaheriet before he could do them further harm. After Hector struck Gaheriet, knocking off his helmet, Lancelot, who was riding by and did not “recognize” Gaheriet, “struck him on his head with such force that he split it right down to the teeth.”⁷⁶ King Arthur—who knew nothing about the precise circumstances under which his three nephews died—was overcome by grief when he found the dead bodies of Agravain and Guerrehet; and as he looked at Agravain’s body, he declared that “‘he who deprived my kinsmen of such a knight as you has inflicted terrible grief on me.’” A little later,

When the king saw the body of [Gaheriet, whom] he had loved so dearly, his grief knew no bounds, and he ran to the body as fast as he could and embraced it with all his strength. He fainted, and all his men were afraid he would die before their eyes. His faint lasted longer than it takes a man to go half a league.⁷⁷ Addressing Gaheriet, the king says, “‘cursed be the day that the sword was forged that struck you, and cursed be the man who struck the blow, for he destroyed me and my lineage.’”

Hearing Arthur and his men loudly lamenting the death of Gaheriet, Gawain thinks that “the queen was dead and that the lamentations were for her,” since “it did not occur to him that these lamentations were for his brothers.” When Gawain learns of Gaheriet’s death from Arthur and then sees his brother’s dead body, his heart fails him and he faints. Regaining consciousness, he leaps up, runs to Gaheriet’s body, takes it from Arthur,

⁷⁶ DA, 123; MA, 94.35–55 (p. 124).

⁷⁷ DA, 124; MA, 99.14–29 (p. 129).

and kisses it. Again, his heart fails him. He falls into a faint even longer than the preceding one. Regaining his senses (though without knowing anything about the precise circumstances under which Gaheriet died), Gawain addresses Gaheriet, declaring that “the man who struck you hated you mortally” and that he wishes to live “just long enough to avenge myself on the traitor [*desloial*] who did this to you.”

However, there is more than a little irony in the descriptions of Arthur's and Gawain's responses to the death of Gaheriet, because the author has already represented the killing in such a way as to provide three reasons for doubting that Gawain and Arthur are justified in seeking to avenge it. (1) The killing is committed when Lancelot and his knights are rescuing Guinevere from being burned to death as a punishment for her disloyalty to Arthur, who had learned of it through the machinations of the traitor Agravain. (2) Lancelot kills Gaheriet without recognizing him. (3) He kills him, moreover, to avenge one of his own knights, whom Gaheriet had just killed. Any doubts about whether Gawain and Arthur are justified in angrily seeking to avenge Gaheriet's death are dispelled during the remainder of the story. Ultimately Gawain receives his death blow from Lancelot in a judicial duel that they fight to determine whether Lancelot killed Gawain's brothers by treason and that Lancelot wins. Until then, however, Gawain remains so enraged by the killings of his brothers that he insists on avenging them by continuing to wage war against Lancelot and by fighting Lancelot to prove the truth of his accusation that Lancelot killed Gaheriet and Gawain's other two brothers by treason. At the same time, Lancelot and his kinsmen provide grounds for contesting this accusation, while others repeatedly condemn Gawain for refusing to make peace with Lancelot. Only when Gawain is about to die does he acknowledge what had been obvious since he and Arthur undertook to avenge the deaths of Gaheriet: that Gawain's anger at Lancelot is both excessive and unjustifiable. The acknowledgement comes when Gawain first asks Arthur to ask Lancelot to forgive him and then says that he wishes to be buried with Gaheriet and to have inscribed on their tomb, “Here lie Sir Gawain and Gaheriet, whom Lancelot of the Lake killed through Gawain's [excessive rage].”⁷⁸ Why? The reason is not that Gawain has been won over at the end of his life to an ethic of restraint, mercy, and forgiveness, but rather that he is no longer blinded by the rage and hatred that the

⁷⁸ DA, 149; MA 175.16–18 (p. 224); “Excessive rage” is my own translation for “*outrage*.”

sight of his dead brothers' bodies had provoked in him, and now realizes that pursuing his war against Lancelot was an "outrage."

The Feelings in the feud in Raoul de Cambrai

Raoul de Cambrai provides even less support than *La mort le roi Artu* does for the arguments of Hyams, Kaeuper, and Smail about emotions, feuding, and revenge. To be sure, the poem represents nobles who are angered by the injuries they believe they have suffered, feel powerful urges to avenge them, and act on those urges by taking—or trying to take—violent revenge against their enemies. But the author usually shows that their anger is unjustified or that they unleash it against the wrong people in the wrong way. As a result, *Raoul* does not celebrate emotional volatility or hot-blooded vengeance, but often condemns them even more forcefully than does *La mort le roi Artu*. Moreover, because *Raoul*, like other *chansons de geste*, situates the anger and vengeance of individual knights in the context of a lengthy *guerre* in which two large groups of fighters participate, its account of this conflict does not support Smail's contention that Raoul de Cambrai's anger drives the action or Hyams's view that in feuding, "Emotions both fuel the response [to perceived wrong] and determine its quantum and nature."⁷⁹ Although the poem exaggerates and dramatizes the role of blood revenge in wars of the sort that it represents, it still shows that the conflict it describes was waged by groups whose members were recruited on the basis of clientage as well as kinship and whose goals included the acquisition of movable wealth by plundering the lands and peasants of their enemies⁸⁰ and the conquest or reconquest of territory to which the leaders of the two groups claimed right.⁸¹ With rare exceptions, blood vengeance is taken only in highly stylized battle scenes resembling the one in *La mort le roi Artu* discussed above, or in melees.

Like other *chansons de geste*, *Raoul de Cambrai* makes heavy use of emotion talk, including the phrase that Smail uses in constructing his model of the poem's "somatic complex," which corresponds, he maintains, to scientific models of how the human brain works. In a poem of 8,542

⁷⁹ Hyams, *Rancor*, 8–9; Hyams, "Was There Really Such a Thing," 100; Hyams, "Afterword," 203, 206.

⁸⁰ On plundering in "noble feuds," see White, "Un imaginaire faidal," p. 179 and the literature cited in nn. 9 and 10, and p. 180 and the literature cited in nn. 13, 15, 16.

⁸¹ See White, "Un imaginaire faidal."

lines, he finds about a hundred examples of emotion talk, including more than twenty examples of the phrase, "*le sens quide changier*," which Smail translates as, "he feels that his mind flipped" and which, he says, would have been hard to distinguish, when heard, from the phrase, "*le sans quide changier*" (he felt his blood flip).⁸² Because the first phrase is often associated with references to anger, Smail has grounds for arguing that getting angry was thought to be closely related to losing one's mind and, conceivably, to the "flipping" of one's blood as well.⁸³ In *Raoul*, moreover, anger is repeatedly represented *both* as a response to a perceived wrong *and* as a stimulus to taking vengeance, just as it is in other literary texts and in historical texts as well.⁸⁴ Finally, there is no doubt that *Raoul*, *La mort le roi Artu* and many other French literary texts, sometimes place a favourable construction on vengeance taken in a state of anger that has been triggered by an injury, a wrong, or an offense to honour.⁸⁵

Nevertheless, *Raoul de Cambrai* does not consistently celebrate either the hot-blooded vengeance of nobles or their emotional volatility. An examination of numerous passages in which the poet represents characters favourably, when they angrily take blood vengeance on their enemies almost instantaneously, shows that he does so only when the avenger is fighting on the side the author favours in a large-scale battle and takes vengeance in accordance with the same implicit model of balance and reciprocity that is built into the account of the final battle in *La mort le roi Artu*. In these battle-sequences, a noble, upon seeing an *ami* cut down by an enemy, loses his senses and immediately attacks and kills the enemy, at which point a kinsman of the slayer's who sees him being cut down loses his senses and immediately takes blood vengeance on the avenger of the initial killing. Several more such vengeance killings may ensue. In feuds of this kind, the avenger's anger—which is better represented as battle-rage—is totally justifiable, because he has seen his kinsman killed and seen an enemy shedding his kinsmen's blood, and is compelled by circumstance, as well as his own emotional response to the killing, to take blood vengeance immediately, usually by slicing through the enemy's helmet, head, and body and his horse's body, so that the blood of both

⁸² Smail, "Emotions and Somatic Gestures," 37, 38.

⁸³ See White, "La colère de Guillaume d'Orange," 252.

⁸⁴ For similar phrases, see *ibid.*, pp. 251–2 and nn. 17, 18, 22, 23; and White, "Politics of Anger," pp. 132–3 and nn. 14–18.

⁸⁵ On favourable representations of the anger of the epic character William of Orange, see White, "La colère de Guillaume d'Orange."

flows and the blood continues to flow and drip from the victim's wounds.⁸⁶ Although conceivably the anger that nobles display in these literary episodes resembled the anger that audiences had experienced themselves, it is more plausible to assume that experiencing this kind of anger vicariously through the mediation of poetry was an element in the fantasy life of the aristocracy.

Elsewhere in *Raoul de Cambrai*, the author generally refrains from celebrating an aristocratic ethic of revenge or the emotional volatility of noblemen. Indeed, only as the story commences does he show that the central character's anger and his impulse to take vengeance are driving him in the right direction. At the beginning of the poem, King Louis of France sets the stage for the war that takes up the first half of it by giving to a warrior called Giboin of Mans the honour of the deceased Raoul de Cambrai the elder. In this way, the king disinherits the elder Raoul's posthumous son, Raoul de Cambrai, who, when he comes of age, angrily seeks to avenge the shame of disinheritance by trying to recover his father's fief. However, when Raoul accepts from King Louis as an exchange for his father's honour of Cambrai the honour of the recently deceased Herbert of Vermandois—who has left four grown sons—and then tries to wrest the Vermandois from the sons of Herbert, his irate responses to perceived wrongs are repeatedly shown to be unjustified and unjustifiable, as are his efforts to avenge shame.

To explain in greater detail why *Raoul de Cambrai*, like *La mort le roi Artu*, cannot plausibly be interpreted as celebrating either hot-blooded vengeance or the emotional volatility of nobles, I first consider how the poet represents Raoul's disinheritance and his efforts to recover his father's honour of Cambrai. I then discuss Raoul's war with the sons of Herbert, the killing of Raoul by his former squire Bernier, and the efforts of Raoul's nephew Gauthier to avenge his uncle's death.

(1) Raoul's Disinheritance: When King Louis gives the honour of Cambrai, previously held by Raoul's deceased father, to Giboin of Mans, he also proposes to give Giboin in marriage his own sister, Alice, who is young Raoul's mother. The king's gift enrages Raoul's uncle, Guerri, who angrily challenges it and says that he will fight to prevent Giboin from taking

⁸⁶ Stephen D. White, "Protection, Warranty, and Vengeance in *La chanson de Roland*," in *Peace and Protection in Medieval Europe*, ed. Tom Lambert and David Rollason (Toronto: Pontifical Institute of Medieval Studies & Durham Centre for Medieval and Renaissance Studies, 2009), 155–67 at 155–6.

possession of Raoul's inheritance (R 176.viii–ix) and will kill him if he enters the Cambrésis (R 185–6). At the same time, the king's plan to marry his sister Alice to Giboin causes her grief (R 214), and she rejects the marriage. Guerri is in a great rage (R 202); and the poet observes that he and Raoul will prevent Raoul from losing land (R 239–42). Guerri's irate responses to the king's gift are entirely justified, as the poet makes clear by stating that King Louis is wrong to make it and will be blamed for it (R 117); and that he has acted badly (R 176.v) and committed "an act of great folly (*grant foliage*) by taking away his nephew's heritage" (R 135–6). Moreover, Giboin's acceptance of the gift is blameworthy (R 117); it is a "great outrage" for him to want someone else's land; and he has acted "foolishly" in expecting to marry Alice (R 130). Years later, when Raoul grows up and does service to the king, Guerri angrily goads him (R 481) into angrily demanding (R 505) that Louis give him his inheritance, his father's lands, because, Raoul says, the "honour" of the father ought to pass to the son (R 525–6), and he would suffer shame if he continued to allow another man to hold his land (R 528–30). When the king refuses, the poet makes it clear that Raoul has a right to be angry, as well as having good grounds for attacking and killing Giboin and even for making war on King Louis or abandoning him for another lord.

(2) However, once Raoul accepts the king's offer to give him the honour of whichever baron in the realm will be the next to die, the poet consistently represents his angry outbursts and irate efforts to avenge perceived wrongs as blameworthy. Here, the poet shows that accepting the gift is not only unwise, but wrong, since it is likely that the baron will have an heir, just as Raoul's father had when he died. Worse yet, when Herbert of Vermandois dies leaving four grown sons (Ernaut, Wedon, Louis, and Ybert, whose illegitimate son by Marcent, abbeſs of Origny, becomes Raoul's squire but abandons him to fight against him on the side of his father and three uncles), Raoul angrily demands that the king grant him Herbert's fief; and when Louis initially refuses, Raoul nearly goes out of his mind (R 680) and angrily leaves the king's hall (R 682–5). In the end, Louis gives Raoul Herbert's lands, while refusing to warrant them (R 730–4); and when Raoul hears his mother Alice angrily advising him to give up the lands, make peace with the sons of Herbert, and then join with them in making war on the king, he nearly goes out of his mind with anger—anger that is totally unjustified (R 911–22).

(3) After entering the Vermandois with a large group of followers, who immediately start plundering the borderlands, Raoul comes to the town of Origny, where Herbert and his sons have founded a nunnery and installed

Marcent, mother of Raoul's squire Bernier, as abbess. Raoul orders his followers to pitch his tent and stable his horses in the nunnery as a way of shaming his enemies, the sons of Herbert, whose family patronized the community; and when he finds that his soldiers have failed to execute his orders, he angrily insults them (R 1085), loses all moderation (R 1093), angrily insults them some more (R 1094), and, ignoring Guerri's warnings that he has lost all measure (R 1098), encourages them to attack the town and the nunnery, and insults the abbess when she protests. Although Raoul and Marcent make a truce, three scoundrels from Raoul's army break it by trying to steal from the townspeople, who kill two of them and wound the third. After the survivor mendaciously tells Raoul that without any provocation, the townspeople have broken the truce by killing his two companions and wounding him, Raoul flies into a rage, demands vengeance for the two killings and the wounding, and angrily commands his men to attack the townspeople, whose resistance to his soldiers' attack enrages him (R 1272, 1284) and causes his mind to flip (R 1246). He has all the streets torched and the fire consumes the nunnery of Origny, killing Bernier's mother, Marcent (R 1299–1317).

(4) Bernier responds to the burning of his mother with grief (R 1318, 1339) and anger (R 1334); he also justifies his anger (R 1471–4) and his desire to avenge his shame (R 1517–19). Upon hearing Bernier's justification, Raoul is enraged and loses his mind, and insults Bernier (R 1474–5). A little later, Raoul angrily (*par maltalant*) strikes Bernier, drawing blood (R 1537–40). Upon seeing the blood, Bernier goes out of his mind and angrily grabs Raoul (R 1541–3). Finally acknowledging Bernier's anger, Raoul asks for advice from his men, who tell him that Bernier has a right to be angry. Bernier defies Raoul and abandons him in order to join his father, Ybert son of Herbert, and his three uncles, Ernaut, Wedon, and Louis, even though Raoul voices his regrets about striking his squire and offers to undergo a humiliating ritual in order to appease him.

(5) During a battle between Raoul's army and the army of the sons of Herbert, Raoul angrily kills a one-armed man, but not before blaspheming God by saying that neither God nor the saints could save the man from death. When Bernier meets Raoul in the battle and the two men angrily attack each other, Bernier angrily kills Raoul, thereby committing the first act of blood revenge in the poem that the poet represents in a completely favourable light. After Raoul is killed, his men cut open his body and take out his heart, which is so much larger than other human hearts that it is compared to the heart of an ox plowing a field. Smail assumes that the comparison is made for the purpose of demonstrating

Raoul's great nobility and celebrating his "emotional volatility." However, if the poet had wished to praise Raoul in these ways, why would he have compared his heart in such a literal, anatomical way to that of an ox—a castrated beast associated with menial labor and power without brains—rather than making the obvious metaphorical comparison with the heart of a noble lion?

*Conclusion: The Emotional Turn in the Study of
Medieval Feuding and Vengeance*

One conclusion to be drawn from the preceding analyses of *La mort le roi Artu* and *Raoul de Cambrai* is that their authors made a clear distinction between, on the one hand, legitimate vengeance animated by righteous anger based on a clearheaded legal appraisal of acts to be avenged as "wrongs," and on the other, illegitimate vengeance driven by animalistic fury and an unrestrained emotional impulse to avenge shame. Only in the heat of battle, or in cases where the avenger has seen harm inflicted and immediately avenges it, is it acceptable to react without first making a clearheaded appraisal of the act to be avenged. But even here, the avenger incurs blame if he misunderstands the harm he seeks to avenge. Clearly, understanding the literary representation of feuding and revenge demands close attention to how norms and emotion talk are encoded together in narratives. Another conclusion to be drawn from the study of the *guerres* narrated in *Le mort le roi Artu* and *Raoul* is that feuds of this kind cannot be understood only by reference to the emotional impulses that are sometimes represented in literary texts (and in historical ones as well) as driving them. To ignore the legal, political, and economic dimensions of these conflicts is to revert to the antiquated argument that medieval nobles engaged in incessant quarrels over trivial causes, because they could not repress their rage or controlling their emotional surges and urges to take revenge.⁸⁷

What accounts for the emotional turn in the study of medieval feud, which amounts to a U-turn in the representation of this practice? Although there is no necessary connection between the emotional turn in the study of medieval feuding and revenge and the turn one can see in the writings of Smail and Hyams, at least, to evolutionary bio-psychology,

⁸⁷ For this way of representing medieval feuds, see White, "Politics of Anger," 127–31.

the use of the latter to buttress the former is arguably a more noteworthy historiographical development than the much-feared, but remarkably ill-documented corruption of the intellectually innocent world of modern medieval studies by the alien theories of anthropology. By all appearances, the emotional turn in the history of medieval feuding is influenced by a materialist view of emotions that is closely associated with historical psychology and sociobiology. The influence is obvious in Smail's work and is also evident in the writings of Hyams, who recently argued that "one of the prime challenges of our day for history and the social sciences is surely to assimilate the best of the biological approaches through the so-called evolutionary psychology with the best of the textual and other insights of postmodernism and other brands of culturalism, while gently abandoning the associated lunacies."⁸⁸

The clearest signs of this influence are assertions that the emotional urge to take vengeance is comparable to the urge to have sex (Kaeuper), universal among humans (Smail), and "hard-wired" into the human brain and possibly into non-human brains as well (Hyams). Why do medieval historians believe that any of these propositions is true? Part of the basis for making them may come from the writings of anthropologists such as Christopher Boehm, who writes that "The taking of blood revenge may not be universal to all human cultures, but in the recent natural history of our species it has been very widespread indeed." According to Boehm, "a strong pattern of lethal vindictiveness between families goes back for at least 50,000 years."⁸⁹ To help explain the pattern, Boehm identifies the blood feud as the "practice of actively killing in response to an earlier killing" and the force "driving such retaliation" as "a deeply-felt, aggressive need to avenge the death of a loved one." He goes on to claim that "In this context, grief, anger, and aggressiveness [in males] seem to have some deep connections within human nature." As a result, "one reason to kill is for emotional satisfaction."⁹⁰ It is not, however, the only reason, according to Boehm, who argues on the basis of anthropological fieldwork that in practice, "revenge killing" is often "highly rule bound" and involves not only "deep emotions that stem from human nature," but "practical calculations of group political advantage." Because no such argument about the importance of studying rules and political calculation, as well as emotions,

⁸⁸ Hyams, "Afterword," 217–18.

⁸⁹ Christopher Boehm, "The Natural History of Blood Revenge," in Netterström and Poulsen, *Feud*, 189–203 at 189.

⁹⁰ *Ibid.*, 189.

ever figures in studies of the feelings in feuding and revenge by Hyams, Kaeuper, or Smail,⁹¹ the main basis for taking the emotional turn is probably to be found instead in the writings of sociobiologically-minded evolutionary psychologists such as Steven Pinker, who has addressed problems in the history of emotions, vengeance, and violence directly.

Here is Pinker on emotions:

Each human emotion mobilizes the mind and body to meet one of the challenges of living and reproducing in the cognitive niche. Some challenges are posed by physical things [...]. Others are posed by people. The problem in dealing with people is that people can deal back. The emotions that evolved in response to other people's emotions [include] anger, gratitude, shame, and romantic love.⁹²

And on anger:

Anger protects a person whose niceness has left her vulnerable to being cheated. When the exploitation is discovered, the person classifies the offending act as unjust and experiences indignation and a desire to respond with moralist aggression: punishing the cheater by severing the relationship and sometimes by hurting him. Many psychologists have remarked that anger has moral overtones; almost all anger is righteous anger. Furious people feel they are aggrieved and must redress an injustice.⁹³

Anger is therefore linked closely to vengeance, which Pinker identifies as a form of "lust" and as an emotion which, like all other emotions, is experienced by all humans. Further, "even within a modern state society where it serves no purpose, the emotion of vengeance cannot easily be turned off." In certain contexts, however, vengeance has an important, indeed necessary function, according to Pinker: "The emotion strikes us as primitive and dreadful because we have contracted the government to settle our scores for us. But in many societies *an irresistible thirst for vengeance* is one's only protection against deadly raids."⁹⁴

In *The Better Angels of Our Nature: Why Violence has Declined* (2011), Pinker presents a fuller account of revenge, which he describes as "an easily pushed button in everyone's brain [that] is, quite literally, an urge."

The neurobiology of revenge begins with the Rage-circuit in the midbrain-hypothalamus-amydala pathway, which inclines an animal who has been hurt or frustrated to lash out at the nearest likely perpetrator. In humans the

⁹¹ Ibid., 191, 193.

⁹² Steven Pinker, *How the Mind Works* (1997; re-issue ed., New York: Norton, 2009), 374.

⁹³ Ibid., 404.

⁹⁴ Ibid., 413; italics added.

system is fed by information originating from anywhere in the brain, including the temporoparietal junction, which indicates whether the harm was intended or accidental. The Rage-circuit then activates the insular cortex, which gives rise to sensations of pain, disgust, and anger. (Recall that the insula lights up when people feel they have been shortchanged by another person.) None of this is enjoyable, and we know that animals will work to turn off electrical stimulation of the Rage system.⁹⁵

What happens next? If I understand Pinker correctly, another part of the brain—the one at the core of “the Seeking System”—lights up as the brain shifts from “an aversive anger to a cool and pleasurable seeking, the kind that guides the pursuit of delectable food.” Or, it turns out, the craving for “nicotine, cocaine, or chocolate.” Or revenge. However, “Revenge requires the disabling of empathy, and that too can be seen in the brain.” When revenge is finally taken, it does more than provide personal satisfaction for the avenger (which we could see in his brain, if we had the proper equipment on hand). Far from having only harmful social effects, “the drive for revenge has a thoroughly intelligible function: deterrence. [...] The necessity of vengeful punishment as a deterrent is not a just-so story but has been demonstrated repeatedly in mathematical and computer models of the evolution of cooperation.”⁹⁶

In modern Western societies, Pinker implies, vengeance lives on, since it cannot be eradicated from the brain. Although it no longer serves the function that it did in early human societies (this function having been taken over by the state) and therefore takes relatively innocuous forms such as petty acts of revenge that avenge petty wrongs, slights to honour, insults, and personal betrayals, vengeance is still the same. What happened to the twin emotions of anger and vengeance during the long intervening period in world history? In medieval Europe, vengeance may have been functional for certain groups, such as aristocratic lineages. However, it was dysfunctional for society as a whole, since feuding, according to Pinker, leads to anarchy. In the late Middle Ages, he sees signs of things to come, since vengeance was contained by the power of rising medieval states and repressed, to some extent, by a watered-down version of Norbert Elias’s “civilizing process,” which is one of the *dei ex machinae* that Pinker invokes, along with the Enlightenment and the Rise of the State, to explain declines in violence, including violent revenge.

⁹⁵ Steven Pinker, *The Better Angels of Our Nature: Why Violence has Declined* (New York: Viking, 2011), 530–1.

⁹⁶ *Ibid.*, 7–8.

If we situate the arguments of Smail, Kaeuper, and Hyams about the feelings in medieval feuding in relation to Pinker's arguments about emotions and, in particular, the "emotion" of vengeance that is always lurking in a particular part of the human brain, what can we learn about the emotional turn in the study of feuding? First and foremost, that it takes over from Pinker's brand of evolutionary psycho-sociobiology "the idea of a fixed correspondence between innate human dispositions and human social forms," which Marshall Sahlins identified thirty-five years ago in *The Use and Abuse of Biology* as "a weak link, a rupture in fact, in the chain of sociobiological reasoning."⁹⁷ One of the most obvious ways of establishing a fixed correspondence of this kind is to reduce diverse human social forms to a single form, which is precisely what Smail does when he claims to have shown that "vengeance is universal" simply by first positing an identity among a diverse set of social forms and then positing that they "vary" in different "cultural settings." Another way, of course, is to culturalize the human brain, so to speak, by inventing a human disposition—in this case, Anger/Hatred/the impulse to Revenge—that can be represented as expressing itself in the human social form—namely vengeance—that we have already invented by reducing diverse social forms to a single one.

A related point about the fallacies involved in treating "war" as a form of "aggression" and "aggression" as the expression of innate "aggressiveness" is neatly articulated by Sahlins in the following passage:

It is evident that the people engaged in fighting wars—or for that matter, any kind of fighting—are by no means necessarily aggressive, either in the course of action or beforehand. Many are plainly terrified. People engaged in wars may have any number of motivations to do so, and typically these stand in some contrast to simple behaviorist characterizations of the event as "violence." [...] Compassion, hate, generosity, shame, prestige, emulation, fear, contempt, envy, greed—ethnographically, the energies that move men to fight are practically coterminous with the range of human motivations. And that [*sic*] by virtue of another commonplace of anthropological and ordinary experience: that the reasons that people fight are not the reasons wars take place.⁹⁸

Why engage in this kind of historico-pycho-sociobiological hyper-reductionism, which, when taken to extremes, amounts to nothing more than intellectual sleight-of-hand? What is achieved by doing so? The technical

⁹⁷ Sahlins, *Use and Abuse of Biology*, 7.

⁹⁸ *Ibid.*, 7–8.

problem of determining empirically which part of the human brain is the seat of the emotional impulse to abandon the study of feuding and revenge as multi-dimensional processes that vary cross-culturally and historically and, instead, take the emotional turn in studying them is best left to Pinker and other specialists. The actual and potential effects of taking the turn are worth considering closely, however, particularly since more and more scholars may be tempted to espouse the historico-psycho-sociobiological approach to the study of revenge and, by implication, “violence,” which is the elephant in the room (or, rather, in the brain) whenever vengeance is discussed. Because locating the impulse to avenge injuries (or wrongs) in the human brain has the effect of universalizing and naturalizing the impulse and treating it as something that virtually all humans experience, doing so appears to have the further effect of universalizing vengeance itself as a “behaviour” in which all humans engage. But is vengeance really the same, wherever and whenever it is practised? If vengeance, in Smail’s words, is “what you do to one who did you an injustice, trespassed the boundaries of your honor, pricked your self-esteem” but the vengeance that we take is infinitely less violent than the vengeance that medieval people—and, in particular, medieval nobles—took, what is the point of treating our vengeance as essentially the same as their vengeance? In Pinker’s case, at least, the point seems to be to show that although all people’s emotional impulses to take revenge are the same, only some of us have both learned and been compelled by state governments to repress our impulses or at least channel them into innocuous forms of revenge, while others—including the peoples of medieval Europe—have freely acted on them by practising the most flagrantly irrational and violent forms of it. And although, as quoted above, Pinker describes revenge as “an easily pushed button in everyone’s brain [that] is, quite literally, an urge,” the underlying assumption is that the urge leads people in some societies to commit petty acts of vengeance and leads people in other societies to kill, pillage, and plunder. Isn’t it possible, then, that (*pace* Netterstrøm) the emotional turn in the study of medieval feuding and vengeance will take us back to the view of René Girard that the waging of bloodfeuds is what distinguishes “primitive societies from our own”?⁹⁹ That is where Pinker’s emotional turn has taken him in *The Better Angels of Our Nature*, where he writes, “Feuding and anarchy go together.”¹⁰⁰

⁹⁹ René Girard, *La violence et le sacré* (Paris: Hachette, 1972); trans. as *Violence and the Sacred* by Patrick Gregory (Baltimore: Johns Hopkins University Press, 1977), 14.

¹⁰⁰ Pinker, *Better Angels*, 538.

THE RULES OF CONFLICT AMONG THE WARRIOR ARISTOCRACY OF THE HIGH MIDDLE AGES

Gerd Althoff

In what follows I will take as my theme the relationship of the warrior aristocracy of the high Middle Ages to violence. I think this is a topic that, in the European view of history, is connected with rather fixed ideas. For a long time, the development from barbarity to civilisation was examined according to the paradigm of violence.¹ Roughly speaking, this posits that procedures of civilisation were gradually constructed by which people's otherwise unlimited potential for violence was restricted, made subject to sanctions, suppressed, and regulated by the state's monopoly of violence. Before these procedures, there existed the "Dark Ages," a time in which Europe was born from the "spirit of violence," as a German publisher saw fit to translate the title of a book by Robert Bartlett.² In fact there is evidence enough from this period of blind, senseless, uncontrolled, and inhuman violence, whose existence was either simply accepted or not effectively kept in bounds. Nevertheless, while I do not want to gloss over anything, in my opinion this characterisation of the Middle Ages is insufficient, if not misleading. The Middle Ages were not as barbaric as those assumptions suggest, just as our time is not as civilised as we like to think. This has been proven often enough in Europe and other parts of the world during the twentieth and twenty-first centuries.

I would like to show you a different image of medieval warrior society by demonstrating which rules governed the use of violence, and which strategies were known and used to avoid or contain violence. My comments only claim validity for parts of medieval society. I want to stress that in advance. But these are vital parts—because they include the noble warriors, their vassals, and retainers, who had the monopoly of violence

¹ The work of Norbert Elias has been particularly influential in this respect: *Über den Prozess der Zivilisation. Soziogenetische und psychogenetische Untersuchungen*, vol. 2 (1939; repr. with added introduction, Bern & Munich: Francke, 1969).

² Robert Bartlett, *The Making of Europe: Conquest, Colonisation and Cultural Change 950–1350* (London: Penguin Adult, 1993) was translated and published in German with the title *Die Geburt Europas aus dem Geist der Gewalt. Eroberung, Kolonisation und kultureller Wandel von 950 bis 1350* (Munich: Beck 1996).

during the High Middle Ages and who claimed the right to employ force, a right that they used in countless feuds and conflicts. They, however, observed a number of rules during their conflicts, which taken together permit the conclusion that we can observe here a conscious, even cautious use of violence which, in my opinion, requires a revision of that image of the barbarous Middle Ages mentioned above. Such rules, however, only applied to conflicts within these social strata—on the social level of noble warriors and their retainers. Members of the lower classes, serfs, and peasants were frequently victims of unrestricted violence and were slaughtered—as the sources say—like cattle.³ Moreover, when fighting against pagans and heretics one did not feel bound to adhere to those rules. That too led to atrocities that are in part responsible for the popular image of the violent Middle Ages.

The rules within the warrior society—this must also be stressed from the outset—were never written down during the high medieval period. They were habits according to which this society organised its communal life, agreed upon again and again in council. The fact that they were not written down should not lead one to the conclusion that they did not have a strong claim to validity, and so were not binding. But because they were never in written form, the existence of such rules can only be proven—a further important presupposition of my comments—by collecting and analysing the many cases where the conduct of warriors during conflicts is described, appraised, and criticised; and reconstructing from the descriptions and evaluations the rules that governed this conduct. I will use two sorts of sources for my attempt: first, sources that are supposed by historians to depict reality; second, literary sources, in this case the famous *Nibelungenlied*, a poem that is famous not least because the reported acts of violence are especially cruel and inhuman.⁴

In what follows, I would now like to depict for you warriors' conduct that followed the above-mentioned rules during conflicts. I will do this in the light of concrete sources and proceed, so to speak, chronologically by considering conduct that occurs, first, during the outbreak of conflicts and then, during the course of events; finally I will examine techniques of

³ See for example Gadi Algazi, "Herrengewalt und Gewalt der Herren im späten Mittelalter. Herrschaft, Gegenseitigkeit und Sprachgebrauch," *Historische Studien* 17 (1996); with an interdisciplinary approach, Manuel Braun and Cornelia Herberichs, eds. *Gewalt im Mittelalter: Realitäten, Imaginationen* (Munich: Wilhelm Fink Verlag, 2005).

⁴ Jan Dirk Müller, *Spielregeln für den Untergang. Die Welt des Nibelungenliedes* (Tübingen: Niemeyer, 1998).

ending those violent disputes amicably. I will repeatedly consider examples from the *Historia Welforum*—written about 1170—the oldest example of historiography that concentrates solely on the history of a single noble family, and that consequently refers repeatedly to the outbreak, pursuit, and settlement of feuds.⁵ In each of the cases I have selected as examples, behaviour is described that is also mentioned in other cases. That permits me to see this behaviour as conforming to rules, and to deduce from these cases the rules of conflict within the warrior society. On the whole, the *Historia Welforum* offers a realistic insight into medieval feuds and their development, since it treats the devastation of entire regions through robbery and fire as well as the razing of castles to the ground quite frankly as stories of success. However, it betrays clear emphases with respect to warriors' behaviour.

Let us begin with typical behaviour before the outbreak of violent conflict. In 1163, the honour of Duke Welf VI could not of course suffer that Hugo, count palatine of Tübingen, had had a servant of Welf's hanged for robbery while leaving his own retainers unpunished. The duke did not resort to force, however, but addressed the count with his demand for satisfaction (*satisfactio*) for the wrong done to him. When he received a humble response (*humile responsum*), he initially turned his attention to other things, though without regarding the matter as closed.⁶ Before the taking up of arms, there were therefore contacts aimed at eliminating the problem without violence. In a moment we will see that those negotiations for an appropriate *satisfactio* were a regular feature of medieval conflict regulation, initiated either by the protagonists themselves or by mediators.⁷ In this case the duke's son, Welf VII, took over. "He renewed the complaint and accused the count palatine again and again (*saepius et*

⁵ *Historia Welforum/Schwäbische Chroniken der Stauferzeit*, Latin/German dual language edition, ed. and trans. Erich König (1938; rept., Sigmaringen: Thorbecke, 1978) (hereafter cited as *Historia Welforum*). For background on the *Historia Welforum* see Bernd Schneidmüller, *Die Welfen—Herrschaft und Erinnerung* (Stuttgart: W. Kohlhammer Verlag, 2000).

⁶ *Historia Welforum*, chap. 30, p. 60: "Interea Hugo palatinus comes de Touingen in comitatu, quem a patre istius possederat, quosdam de ministerialibus eius iniusto, ut aiunt, iudicio dampnatos patibulo suspendit. [...] Pro quo dux Gwelfo queremonia eum impetens et pro satisfactione humile ab eo responsum recipiens, ut erat mansuetissimus, ab impetitione, licet querimoniam non deponeret, cessavit."

⁷ Gerd Althoff, "Genugtuung (*satisfactio*). Zur Eigenart gütlicher Konfliktbeilegung im Mittelalter," in *Modernes Mittelalter*, ed. Joachim Heinzle (Frankfurt: Insel, 1994), 247–65. On the role of mediators see Hermann Kamp, *Friedensstifter und Vermittler im Mittelalter* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2001).

saepius)." The case now escalated, for a precisely described reason: "He [the count palatine], however, relying not so much on his own power or that of his followers as on that of Duke Frederick [a Staufer], who moreover was urging him on in this—seemingly envying Welf's fame and disparaging the latter's honourable deeds—proffered instead of satisfaction an insulting and threatening answer, through which not only did he incite the young man's will to take up arms against him, but they contrived the accursed misfortune and terrible devastation of the whole of Swabia."⁸

According to this depiction, the dispute escalated as a result of very conscious actions: instead of giving satisfaction, the protagonists resorted to provocation because each of them believed himself to be in the stronger position. But the reaction of the young Welf towards this provocation also followed the rules of conflict: "Welf, presenting to his friends, relatives, and followers (*fidelibus*) the wrong done to him, secured to himself (*ascivit*) the dispositions of everyone towards supporting him with the greatest will."⁹ Relatives, friends, and followers, i.e. vassals, represent precisely those three groups whose help a noble warrior could claim during the Middle Ages—but not without prior counseling.¹⁰ As the quoted excerpt illustrates, Welf had first to present his case, and after that a decision was made as to whether and how support was to be given. We know of examples where the request for help in combat was refused.¹¹ Even if we can assume a general readiness to answer an attack on an associate with violence, we have to take into account that there was counseling about the appropriate reaction. The demand for satisfaction for an injustice suffered, as well as taking counsel with the *familiares* about further actions, demonstrate that the warrior society knew steps and measures

⁸ *Historia Welforum*, chap. 30, p. 60: "Sicque factum est ut recedente patre Gwelfo praefatam querimoniam renovaret et palatinum illum pro satisfactione saepius ac saepius impeteret. Ille autem non tam in suis suorumque viribus quam in Frederici ducis [...] confidens, qui et eum ad hoc impellebat, quasi bonae famae Gwelfonis invidens et honestis actibus eius detrahens, responsionem contumacem ac minacem pro satisfactione obtulit, per quam et animum iuvenis ad rebellandum sibi incitavit et toti Alamanniae execrabile infortunium et infaustam depopulationem machinabantur."

⁹ *Ibid.*: "Gwelfo enim illatam sibi iniuriam amicis, cognatis et fidelibus suis exponens omnium animos in adiutorium sui cum optima voluntate ascivit."

¹⁰ See in general Gerd Althoff, *Family, Friends and Followers: Political and Social Bonds in Early Medieval Europe*, trans. Christopher Carroll (Cambridge: Cambridge University Press, 2004).

¹¹ Wipo gives a famous example: *Gesta Chuonradi II imperatoris*, ed. Harry Bresslau (MGH SSRG 61) (Hannover/Leipzig: impensis bibliopolii Hahniani, 1915), chap. 20, p. 40.

that either made violence unnecessary or used it consciously as a last resort after due consideration of whether it was justifiable or necessary.

But even the decision to answer supposed injustice with violence did not automatically lead to battles' being fought. Instead, military threats were regularly employed over longer periods of time, with the aim of forcing the opponent to yield at the last moment in the face of one's power and determination. The *Historia Welforum* describes this procedure in great detail several times. In the case of the feud of Tübingen it recounts that:

Then more than two thousand two hundred armed men came together [three bishops and a number of counts and margraves had provided Welf VII with their levies] and making camp not far from Tübingen on the evening of the sixth of September, they decided to spend the following Sunday in peace and quiet. However on the other side Duke Frederick, along with everyone he had been able to incite by favour or fear [...] and as many others as were possible had quartered their collected forces in the castle [Tübingen]; and during that entire night some devoted themselves to prayer, others anxiously considered reparations and amicable settlement.¹²

We regularly hear of this kind of situation, in which one party is encamped threateningly outside the castle of another. But first and foremost this is supposed to indicate a willingness to fight if the other party does not decide to give in. Giving in at an early stage—before first blood—was regularly rewarded with favourable terms when it came to making amends. If, however, the decision to yield came only when the military situation had become hopeless, the victor dictated harsher conditions. It should be obvious that such rules of the game contributed to checking violence. Such threatening gestures—which offered time for taking counsel—could continue for weeks and months. Sometimes we hear that after a certain time such a “siege” was intensified, and merchants and other persons were no longer permitted into the castle—thus demonstrating that things were now getting serious.

A regular feature of this phase of threatening is again described in detail in the *Historia Welforum* in the case of another feud between the

¹² *Historia Welforum*, chap. 30, p. 62: “Conveniunt [...] in duobus milibus et ducentis armatorum et eo amplius, et castra non longe a Touingen circa vesperam sabbati VIII. Idus Septembris ponentes dominicum diem in quiete et otio deducere statuerunt. In adversa autem parte Fridericus dux cum omnibus, quos amore vel terrore excitare poterat [...] ac alii quam plures erant et militem suum coadunatum secum in castro locaverant; totaque illa nocte alii oratio incumbabant, alii de satisfactione et compositione anxie tractabant.”

Welf Henry the Proud and the Bishop of Regensburg (1133). The first steps of the feud are identical with the one mentioned above:

Throughout the whole of Lent the bishop, calling together his relatives and friends, effected this, that if the duke once again were to enter his possessions, he should be ignominiously driven from his lands. Now, while the duke is busy besieging the castle [Wolfratshausen], the bishop approaches [...] with his collected forces; and on the plain by the river Isar they set up camp. On the other side the duke forms his line of battle, moves the infantry into position, and orders that the siege be given up only in the utmost extremity.¹³

The potential for threats has been exhausted in this case. Everything now speaks for battle. But something entirely different happens.

In the meantime the Count Palatine [of Wittelsbach] Otto, a man gifted with discretion who has been allowed access to both sides, surveys the deployment of both armies and informing the others that ours is the stronger, excites great fear; and pondering by what means he may induce an amicable peace, pressing his relative, the advocate Frederick, with promises and threats, he urges him towards capitulation (*deditio*). He [Frederick], having been deserted by all his people, acquiesced to the counsels of the count palatine, and going with him together into the duke's camp and throwing himself at the duke's feet receives his grace. After the count palatine has achieved this, he urges his son-in-law Otto to surrender and make amends because of the disaster threatening his family.¹⁴

Thus, battle is avoided through the actions of a mediator, and an amicable settlement between the duke and the bishop is established. At first sight, the story may sound unbelievable. But if we take into account how often an amicable end to a feud was reached by subjection and satisfaction shortly before the imminent outbreak of violence, and how often

¹³ Ibid., chap. 22, p. 40: "Episcopus enim, per totam quadragesimam cognatos et amicos suos conveniens, hoc agebat, ut ducem de finibus suis, si amplius eos hostiliter invaderet, ignominiose fugaret. Morante igitur in obsidione ducem, episcopus [...] coadunato milite appropinquat; et castra in plano prope Ysaram fluvium ponunt. Econtra dux acies suas informat, pedites suos loco suo exordinat, obsidionem tamen non nisi in extremo discrimine positus relaxandam confirmat."

¹⁴ Ibid.: "Interea Otto palatinus, vir sapientia praeditus, cui ad utramque partem accessus patuit, utriusque exercitus apparatus contemplatur illisque nostrum copiosiore esse denuntians terrorem incutit; cogitansque, quomodo ad bonum pacis perducatur, Fridericum advocatum, cognatum suum, promissionibus ac minis circumveniens ad deditionem hortatur. Ille, utpote omnibus suis destitutus, consiliis palatini acquievit et assumpto eo in castra ducis veniens et ad pedes eius se humilians gratiam eius recepit. Quo perpetrato Ottonem quoque generum suum ad deditionem et satisfactionem, exponens ei miseras suorum, compellit"

“trustworthy mediators” with access to both parties can be observed in similar attempts at persuasion, then we can reasonably interpret the development of this conflict as characteristic and typical.

But even if the mediators failed to end the conflict before the parties took to weapons, this did not mean that violence was now used wantonly and without rules. This is again proven by a report from the *Historia Welforum* about a battle during the feud of Tübingen that took place rather accidentally:

Around midday some of our men carelessly rush out of the camp without thinking of the consequences and without the knowledge of the others who wanted to spend the day in peace. Our men get into a scuffle with some of the enemy's knights who had ventured forward with the same rashness, close to the castle under the eyes of our opponents. As a result [...] our men jump up and take to their weapons, everybody tries to beat the others to it. [...] Meanwhile the enemy left the castle, choosing a particularly safe position, thereby leaving our men only a very difficult access that leads like a canyon from the riverbank. [...] Still all who reached the battle fought extremely bravely for two hours, although with one exception no one fell on either side. For they were all so well protected by their armour that they were taken prisoner rather than killed. While thus only part of our people got into the scuffle the others take to flight. Thereby they leave an undeserving victory to the enemy and burden themselves and their descendants with eternal shame. [...] They drive them in front of them like sheep from the meadow to the sheepfolds and, all in all, take nine hundred prisoners and enormous spoils.¹⁵

This report warns us against imagining battles in medieval feuds as fights to the last drop of blood. It is not only in this case that the warriors made use of the possibility of surrender and let themselves be taken prisoner.

¹⁵ Ibid., chap. 30, pp. 62–63: “Quidam enim de nostris minus providi ac parum prae-meditantes eventum rei, ceteris ignorantibus et diem otio deducere volentibus, e castris circa horam sextam prorumpunt et cum quibusdam de hostibus, qui simili temeritate a suis prodierant, prope castrum sub oculis inimicorum congregiuntur. [...] [N]ostri pro-siliunt, arma arripiunt, quique alios in quo poterant praevenire satagunt. [...] Interim et hostes de castello non minus properantes locum tutiorem sibi eligunt et nostris aditum difficillimum super ripam fluminis in modum vallis eminentem praesignant. [...] Fortis-sime tamen ab his, qui congressi sunt, per spatium duarum horarum pugnatum est, licet nullus utriusque partis, excepto uno, corruisset; adeo enim armis omnes muniti erant, ut multo facilius capi quam occidi potuissent. Itaque illis, ut dictum est, conflictum habenti-bus, ceteri fugam arripiunt hostibusque immeritam victoriam dantes sibi ac posteris suis perpetuum obprobrium accumulunt. [...] [V]elut oves de pascuis ad caulas propellentes, [...] nongentos captivos cum maxima praeda adducunt.”

Consequently, a central theme of such feuds is the topic of ransom.¹⁶ Financial ruin or indeed self-enrichment was far more common than losing one's life. Surrender is a similarly important topic when it comes to the siege of castles. Usually the siege did not last until the storming of the castle—the garrison bargained for a safe conduct in exchange for the castle's peaceful surrender.

With respect to all these negotiations between the disputing parties we hear repeatedly of the work of one or more mediators. Medieval scholarship has only recently discovered the institution of mediators—and their relevance for conflict settlement during this period. Ethnologists and anthropologists, on the other hand, have known about them for a long time.¹⁷ Mediators are a fitting topic for an intercultural comparison, because they share certain common features in pre-constitutional societies: they are characterised by a similar working method; they are recruited from similar social groups; and their work has a comparable relevance. During the European Middle Ages the mediator or mediators maintained communication between disputing parties, and where possible, they ascertained and created the readiness to abstain from violence by negotiating about reparations that could serve as a basis for an amicable end to the conflict. Their working method was confidential; moreover, they usually required binding assurances from the parties as to how the conflict could be ended and what compensation should be given. For their office the mediators required prestige, and so were normally high-ranking persons. Power was equally helpful, as we can see from the fact that we often encounter as mediators kings who were able to enforce the willingness to refrain from violence by threatening to withdraw their favour. Ultimately, however, the mediators' authority resulted less from the measures of compulsion they could employ than from society's acceptance of this institution, which was the only one that could lead back from conflict to peace. Refusing the advice—not the judgement—of the mediators was therefore difficult, and it isolated those who attempted to do so. This explains the readiness, reported again and again, to let oneself be persuaded by the

¹⁶ On the obligations and rights of mediators see Hermann Kamp, "Geld, Politik und Moral im hohen Mittelalter," in *Frühmittelalterliche Studien* 35 (2001): 329–347, n. 7 and *passim*.

¹⁷ See the classic approaches: Simon Roberts, *Order and Dispute: Introduction to Legal Anthropology* (New York: Penguin, 1979); William I. Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990).

mediator's arguments, as we have just seen in the example quoted from the *Historia Welforum*.

Over centuries, a central element of giving satisfaction in the course of ending armed conflicts was practised again and again: the subjugation ritual, or *deditio*,¹⁸ which required one party to prostrate themselves before the other in public. This *satisfactio* could be answered in various ways ranging from total forgiveness, symbolised by raising the opponent from the ground and offering the kiss of peace, to the imprisonment of the opponent. These conditions were fixed and guaranteed by the mediators, but unknown to the audience at the moment of the public ritual. In each individual case the course the action took depended on the circumstances of the conflict and the strength of the networks into which each party was bound. Yielding in the early stages of the conflict resulted in more favourable conditions than surrender in a desperate situation. In the case of the Tübingen feud that I have taken as an example, the *Historia Welforum* reports briefly but precisely about this subjugation ritual:

Soon the stubbornness of the count palatine was brought down. On Shrove Tuesday (1166) at a great council at Ulm in the presence of Duke Henry the Lion, our sovereign (Welf VI), and under the gaze of the emperor himself and Duke Frederick, the same Hugo came to submit himself to the younger Welf (VII), and prostrating himself at his feet did not refuse to be arrested and led away in chains. He was kept in prison until the death of this Welf one and a half years later.¹⁹

The account does not explain how the count palatine's willingness to participate in this shameful act was obtained. To my knowledge this is the only case where a noble was bound and lead away to imprisonment as

¹⁸ Gerd Althoff, "Das Privileg der *deditio*. Formen gütlicher Konfliktbeendigung in der mittelalterlichen Adelsgesellschaft," in *Nobilitas. Funktion und Repräsentation des Adels in Alteuropa*, ed. Otto Gerhard Oexle and Werner Paravicini (Göttingen: 1997) 27–52; repr. in Gerd Althoff, *Spielregeln der Politik im Mittelalter* (Darmstadt: Primus, 1997), 99–125.

¹⁹ *Historia Welforum*, chap. 31, p. 66: "Humiliata est autem et ilico eiusdem palatine contumacia. In feria enim tertia capitis ieiunii sub generali curia Ulmae habita in praesentia ducis Heinrichi, domini nostri, sub oculis quoque ipsius imperatoris ac Friderici ducis idem Hugo Gwelfoni iuniori ad deditionem venit ac se pedibus eius prosternens custodiae mancipari et vinctum abduci non respuit sic in captivitate usque ad obitum ipsius Gwelfonis, per annum scilicet et dimidium, tenetur." Unlike Mathias Becher ("Der Verfasser der 'Historia Welforum' zwischen Heinrich dem Löwen und den süddeutschen Ministerialen des welfischen Hauses," in *Heinrich der Löwe. Herrschaft und Repräsentation*, ed. Johannes Fried and Otto Gerhard Oexle, Vorträge und Forschungen 57 [Ostfildern: Thorbecke, 2003], 347–80, esp. 368ff.), I understand *domini nostri* as referring not to Henry the Lion, but to Duke Welf VI, because the latter is referred to several times in the surrounding chapters as *dominus noster* without mention of his name.

part of the ritual. A different report mentions that he even had to repeat the prostration twice more.²⁰ We can assume that Hugo's compensation was so substantial and shameful because the damage to his enemy's honour during the feud had been so extensive. Remember the nine hundred prisoners that the count palatine had taken—obviously, his opponent's loss of honour had to be redeemed. It is very likely that the emperor, who was present at the ritual, had acted as mediator. He could not afford a dispute with the Welf at that time and thus probably ended the feud with his authoritative mediation.

As regards the possibility of comparing the shaping of this ritual with others where much care was taken not to violate the honour of those subjugating themselves, we should strongly stress one point: the very details of those rituals were fashioned according to the individual case. And we can presuppose that medieval warrior society had a keen understanding of the meaning of such details. It was no accident when there were negotiations as to whether the ritual had to be performed barefoot or with shoes. Some participants were even ready to pay considerable sums of money to keep their shoes on.²¹ On the other hand the parties of those feuds were sometimes ready to make considerable concessions to their opponents, material or otherwise, to receive the appropriate satisfaction of a barefooted prostration as part of the ritual. Many sources allow us to judge how theatrically this ritual could be fashioned. I refer to only one example of many, the subjugation of the citizens of the town of Tivoli to Emperor Otto III in 1001. The subjugation had been negotiated by Pope Sylvester and Bishop Bernward of Hildesheim:

On the next day the bishops returned to the emperor, followed by a renowned triumphal procession. For all of the principal citizens of the previously mentioned town followed them, only clad in a loin cloth, in their right hand carrying a sword, in their left a rod, and they moved in this manner to the palace (shouting): They and all they owned, even their very lives, were forfeit to the emperor; he could execute with the sword whomever he viewed as guilty and could have whipped with rods on the pillory whom-

²⁰ Otto von St. Blasien, *Chronik*, ed. Adolf Hofmeister (MGH SSrG 47) (Hannover/Leipzig: 1912), chap. 19, p. 22: "Qui (sc.[Hugo]) tribus vicibus coram duce Welf in teram corruens, ipso suscipere dedignante, tandem receptus capitur captusque in exilium Reciam Curiensem ad castrum Nuinburch transportatur."

²¹ See the famous Milanese example reported in the *Vincentii Pragensis annales*, ed. Wilhelm Wattenbach (MGH SS 17) (Hannover: 1861): 654–83 at 675: "licet enim plurimam offerrent pecuniam quod eis calciatis hanc satisfactionem facere liceret, nullomodo tamen obtinere potuerunt."

ever he pitied. . . . The emperor was full of praise for the peace makers, the pope and Bishop Bernward, and in response to their entreaty he granted the trespassers forgiveness.²²

With this ostensibly unconditional surrender the honour of the monarch was restored. Countless conflicts of the European Middle Ages were resolved this way. The rules established for the pursuit of conflicts pressured all parties into going in this direction. This is not the place to go into detail as to how contested this form of peaceful conflict resolution was in different periods. More important is the fact that it held its ground again and again against many attempts to replace it in favour of more severe measures, even though the emphasis did shift from mildness to rigidity.²³

Let me then turn to the field of medieval literature. The field of research we are dealing with here offers excellent opportunities for cooperation between scholars of history and literature, since medieval literature cannot avoid referring to these rules of the game when describing scenes of conflict and violence. Alongside historical sources in the more narrow sense, historiography in particular, literature offers rich evidence for the regulated nature of medieval behaviour. On the other hand, literature is a more difficult genre for historians to work with than many annals, chronicles, or other historiographical works. Some years ago I tried to address this problem with this question: do poets play with society's rules of the game?²⁴ Already in the Middle Ages, literature can be seen as a space similar to a laboratory, where reality is idealised, commented upon ironically, caricatured, exaggerated, or made problematic for the sake of experimentation. To take an example from the *Nibelungenlied*: here the treatment of prisoners is idealised. When Siegfried and the Burgundians return to Worms with Danish and Saxon prisoners, including kings, they heap gifts and honours upon them. The ransom offered for their release is

²² Thangmar, *Vita Bernwardi*, ed. Georg Heinrich Pertz (MGH SS 4) (Hannover: 1841): 754–82, p. 769f.: *Postera namque die, nobilitrumpo subsequente, episcopi imperatorem adeunt. Nam cuncti primarii cives praescriptae civitatis assunt nudi, femorabilibus tantum tecti, dextra gladios, laeva scopas ad palatium praetendentes; imperiali iure se suaque subactos; nil pacisci, nec ipsam quidem vitam; quos dignos iudicaverit, ense feriat, vel pro misericordia ad palam scopis examinari iubeat. . . . Imperator pacis conciliatores, papam et domnum Bernwardum episcopum, magnifice gratando extollit, atque ad illorum nutum reis veniam tribuit.*

²³ Gerd Althoff, *Die Macht der Rituale* (Darmstadt: Primus, 2003), 145ff.

²⁴ Gerd Althoff, "Spielen die Dichter mit den Spielregeln der Gesellschaft?" in *Mittelalterliche Literatur und Kunst im Spannungsfeld von Hof und Kloster*, ed. Nigel F. Palmer and Hans-Jochen Schiwer (Tübingen: Niemeyer, 1999), 53–71.

magnanimously refused.²⁵ If we consider the intensive haggling over ransoms in reality, as mentioned everywhere in contemporary sources, then we might interpret the scene as a mirror in which the audience could contemplate the sad realities of their behaviour and thereby be persuaded to change it. In any case, previous experience in this research field indicates that we must count on the poets' doing more than just letting their characters act unthinkingly according to the relevant rules. On the contrary, we can expect them to show where the stubborn exercising of such rules leads in a given case, to create suspense by having these rules be broken, or to reveal their contradictory nature by constructing situations in which following the rules of the game leads to disaster. All of this is, as I am about to show, observable in the *Nibelungenlied*:nd not just in the *Nibelungenlied*, by the way, but also in other works of medieval literature.

In the many interpretations of the *Nibelungenlied* it is often overlooked how many of the characters' activities were aimed at preventing the escalation of armed conflict by means of peaceful agreement, reparations, acknowledgment of wrongs, and a mediated resolution. In this respect the poem reflects practices of medieval dispute settlement very directly.²⁶ When the *Nibelungenlied* poet constructs situations where peace is no longer successfully re-established, he in no way idealises violence, but critiques particular rules of the game or shows how following them too simplistically leads to disaster. In the *Nibelungenlied* we can see this particularly well from the point when events at Etzel's court seem to be determined only by violence, treachery, and revenge. I will just review, without claiming comprehensiveness, the most important attempts made at Etzel's court to bring the escalation of violence under control by means of appropriate measures. Similar attempts can be observed in countless real conflicts of the Middle Ages.

Already in the thirty-first *Aventiure*, Etzel's appearance is devoted to an attempt at arbitration, when he notices that the Burgundians are going to dinner armed.²⁷ He immediately interprets this as a sign that the

²⁵ *Das Nibelungenlied. Nach der Ausgabe von Karl Bartsch*, ed. Helmut de Boor, 22nd ed. (Wiesbaden: F.A. Brockhaus, 1996) (hereafter cited as *Nibelungenlied*), p. 47f., strophes 245–255.

²⁶ Cf. Gerd Althoff, "Das Nibelungenlied und die Spielregeln der Gesellschaft im 12. Jahrhundert," in *Der Mord und die Klage. Das Nibelungenlied und die Kulturen der Gewalt*, ed. Gerold Bönnen and Volker Gallé (Worms: Stadtarchiv Worms, 2003), 83–102. I repeat here some of the examples from this article.

²⁷ *Nibelungenlied*, p. 293, strophe 1861: "Do der künece rîche / sus gewafent sach / die künige und ir gesinde / wie balde er do sprach: / ,wie sihe ich friunde mine / under helme gan? / mir ist leit uf mine triuwe, / und hat in iemen iht getan."

Burgundians must have been insulted, and makes an offer: "I would like to provide you with the recompense you believe is right. I am ready to do anything you ask of me to make up for this insult."²⁸ Exactly as in real conflict situations, the lord offers his services as a mediator and arbitrator, who makes no authoritarian decision, but offers to lend his weight to demands the parties might make. The path to successful conflict resolution is not successfully taken here only because Hagen does not take Etzel into his trust and remains silent about the true reason for the arms-carrying. Hagen explains the Burgundians' weapons by saying that in Burgundy it is customary to be armed for the first three days of a celebration. In this *Aventiure*, Etzel is involved as an active mediator a second time, after Volker kills a Hun in the tournament. In this case he successfully prevents, sword in hand, the escalation of violence.²⁹ Etzel's behaviour precisely matches the expectations placed on such a mediator. Here the poet follows the rules of the game very precisely.

Even in the thirty-sixth *Aventiure*, after Krimhilt's activities have caused the butchery to take on unimagined proportions, the Burgundian squires to be murdered, Etzel's son to be killed by Hagen, and many knights to lose their lives in the subsequent fighting, the *Nibelungenlied* depicts the protagonists' person-to-person negotiations. In a long conversation, the three Burgundian kings Gunther, Gernot, and Giselher on the one side, Etzel and Krimhilt on the other formulate their respective positions and justify their behaviour.³⁰ Similarly, we know of many instances of these kinds of negotiations in real conflicts of the aristocracy—the sources like to use the phrase "*colloquium secretum*."³¹ Such negotiations were aimed at exhausting all the possibilities for a diplomatic solution. So here too the *Nibelungenlied* closely organises its narrative according to how conflict was customarily conducted.

Even the Burgundians' arguments in this negotiation are to be found in surviving historical texts. Thus, just as Gunther argues that the Burgundians only acted as they did out of great need, in the tenth century, according to Widukind of Corvey's report, Duke Liudolf had tried to justify

²⁸ Ibid., strophe 1862: "Ich solz in gerne bûezen, / swie si dunket guot, / hat iemen in beswaeret / daz herze und ouch den mout. / des bringe ich si wol innen, / daz ez mir ist vil leit. / swaz si mir gebietet, / des bin ich alles in bereit." Here and below, the English translations are my own.

²⁹ Ibid., p. 298, strophes 1894–1897.

³⁰ Ibid., p. 327ff., strophes 2089–2107.

³¹ See Gerd Althoff, "Colloquium familiare—colloquium secretum—colloquium publicum: Beratung im politischen Leben des früheren Mittelalters," *Frühmittelalterliche Studien* 24 (1990): 145–67, repr. in Althoff, *Spielregeln*, 157–84.

his behaviour in his conflict with his father Otto the Great with the same argument, as did the Milanese their behaviour against Frederick Barbarossa in the twelfth.³² So we can say that the *Nibelungenlied* uses standard arguments from real rounds of negotiation, arguments people used to justify their own behaviour and make it easier to come to a peaceful agreement with the enemy. It is just that in the *Nibelungenlied* the standard arguments do not have any decisive effect, because no one wants peace. Even at this advanced stage of escalation, Gunther thinks that a peaceful agreement is still possible and the best solution. Etzel objects first and foremost with the argument that the disgrace he has suffered demands that the Burgundians pay with their lives. Here too the listeners or readers are required to reflect and judge. The *Nibelungenlied* poet makes no decisions for them.

Yet the search for solutions is by no means over with this exchange of words, just as in comparable historical cases we are constantly hearing of how even small details are negotiated and debated. It is the same in this scene: Gernot, for example, demands that he at least be allowed to fight in the open so that the end will come more quickly. Krimhilt refuses, claiming that the Burgundians' armour would thus cool off and they would instead have better conditions.³³ She on the other hand also makes a comparable, if somewhat treacherous, suggestion: if the Burgundians hand over Hagen to her, she will not exclude the possibility that she will then let her brothers live. But she will only consult with her counsellors about this possibility after Hagen is handed over.³⁴ This condition is also realistic and can be found in historical cases when a party in a conflict was negotiating from a very superior position. But in the real world, binding guarantees were as a rule demanded before a resolution was accepted. The fulfilment of these promises was secured by oaths and guaranteed by mediators. In this case it is obvious that the Burgundians can only reject

³² See Widukind von Corvey, *Rerum gestarum Saxoniarum libri tres*, ed. Paul Hirsch and Hans-Eberhard Lohmann (MGH SSrG) (Hannover: 1935) book 3, chap. 32, p. 119: "Si in hac parte culpabilis predicator, sciat me omnis populus hoc non voluntarie, sed ultima necessitate coactum fecisse"; for the Milanese argumentation, see Otto von Freising and Rahewin, *Gesta Frederici*, ed. Franz-Josef Schmale (Darmstadt: 1965) book. 3, chap. 51, p. 502: "Ad hec illi summisso vultu, supplici voce pauca pro delicto suo verba faciunt: se non hostili animo nec ad obpugnandum imperium arma cepisse, sed terminos patrum suorum, iure belli omni modo suos factos, vastari a gentilibus pati nequisse."

³³ *Nibelungenlied* (n. 25), pp. 328–329, strophes 2096–2100.

³⁴ *Ibid.*, p. 329, strophe 2104: "Welt ir mir Hagenen einen / ze gisel geben, / sone will ich niht versprechen / ich welle iuch lazen leben, / wande ir sit mine bruoder / unde einer mouter kint: / so red ich ez nach der suone / mit disenhelden, die hie sint."

the offer to hand over their loyal retainer. The journey to destruction continues. As a result Krimhilt orders that the hall where the Burgundians are holding out should be set alight at each corner.

I will deal with Rüdiger's intervention in a moment, but even after further butchery, when Dietrich of Bern arms himself for the, so to speak, final battle against Gunther and Hagen, a peaceful resolution is still considered a real option. Even at this late stage Dietrich makes the Burgundians a very extensive offer: "Give yourself and your retainer up to me. I will then protect you as well as I can, so none of the Huns will do anything to you. I give you my word and faithfully promise that I will ride with you to your country. I will escort you, as honour requires, or I will die. I am ready to forget my great distress for your sake."³⁵ It is Hagen who turns down this offer with the argument that surrendering would be improper for Gunther and himself. Yet surrender in armed conflict was for the warriors of the Middle Ages very much a viable option, which they often made use of. One has only to compare the many knights captured in battle with the small number of casualties which were lamented to realise that here Hagen represents a point of view which was in no way a matter of general consensus, let alone an ideal. In medieval eyes not he, but Dietrich may well have been the hero of this scene.

In short, we can say that the *Nibelungenlied's* depiction of the course of the conflict is very close to the conduct of real conflict, insofar as there are numerous and intensive attempts at a non-violent resolution of the matter. That they all fail is not a result of the tendency to glorify violence. In part, the failure results from the decisions of individuals, on which the poet does not pass judgment. Mainly, however, it stems from the complex situations in which the characters find themselves, from which society's usual rules of the game offer no escape. A situation of this type can be seen very clearly in the parts of the work where Rüdiger of Bechelaeren is the protagonist. The Burgundians' battle with the Huns at Etzel's court puts Rüdiger in an especially difficult position because he has developed important responsibilities and connections to both sides. He is responsible to Etzel as a vassal and to Krimhilt because of a personal oath. At the same time, he is related to the Burgundians, and these connections are

³⁵ Ibid., p. 365, strophe 2337: "Ergip dich mirze gisel, / du und ouch din man. / so will ich behüeten, / so ich aller beste kann, / daz dir hue zen Hiunen / niemen niht entuot. / dune solt an mir niht vinden / niwan triuwe unde guot. (2340) Ich gibe iu mine triuwe / und sicherliche hant / daz ich mit iu rite / heim in iuwer lant. / ich leit iuch nach den eren / oder ich gelige tot / und will durch iuch vergezzen / der minen groezlichen not."

strengthened by the betrothal of Giselher to Rüdiger's daughter Dietlint when the Burgundians are guests at Rüdiger's court. The strength of the connection and the readiness of both sides to carry out the resulting duties has been expressed in rich gift-giving.³⁶ On top of this, Rüdiger has escorted the Burgundians to Etzel's court, whereby he has taken on the responsibility to bring them home safe and sound. A tighter net of relationships could not be created.

Given these relationships, the conflict brings up the difficult question of how Rüdiger should behave. Implicitly the question is about whether there was a hierarchy of these duties, and thus whether in this situation kin relationships matter more than feudal ones or the other way around, whether an oath is more important than the responsibilities of an escort, and so on. Rüdiger faces problems of which the aristocratic warriors of the twelfth and thirteenth centuries were certainly very aware, because too often they themselves had to make such judgments in real conflicts. For example, the countless efforts to give loyalty to the king precedence over all other duties serve as evidence of attempts to establish rules in this area. But such attempts were not in the least successful. In the light of this question's relevance to the poem's audience, it is hardly surprising that it is discussed in a major scene, where Etzel and Krimhilt finally persuade Rüdiger to intervene on their behalf. Yet this scene deals with the rules of the game in a way whose closeness to reality is striking. It takes place in the thirty-seventh *Aventiure*, so at a point at which the fighting has already lasted a long time and the escalation is at an advanced stage.

Rüdiger enters the scene with the declared intention of wanting to act as a mediator. To this end he sends messengers to Dietrich of Bern, who is supposed to find out what possibilities there might be of resolving the conflict peaceably.³⁷ Rüdiger behaves in this respect exactly as in reality people did who had connections to both parties: he remains neutral and looks for ways to bring about a solution. Dietrich, however, sends Rüdiger a curt message to say that Etzel wants no arbitration.³⁸ The poet, as almost always, has no comment on this answer. Still, it is questionable whether parties in a conflict could simply refuse an offer of arbitration. This certainly was not easy; there had to be very good reasons for such a refusal. The reader or listener is thereby once more required to decide

³⁶ Ibid., p. 268, strophes 1694ff.

³⁷ Ibid., p. 334f. strophes 2136ff.

³⁸ Ibid., p. 335, strophe 2137, 4: "ez enwil der künece Etzel / niemen scheiden lan."

whether Etzel's refusal is justified, a decision which certainly needed to be made frequently in real conflicts of the period.

Because of his neutrality, Rüdiger is accused by a Hun of cowardice, since the great power he has been given by Etzel must oblige him to fight for the king. The Hun says this directly to Krimhilt. Enraged, Rüdiger strikes him dead.³⁹ But this is the catalyst for a verbal exchange with Etzel and Krimhilt in which all the arguments for and against Rüdiger's intervention in this conflict are aired. To evaluate the drama of this verbal conflict correctly, it must be taken into account that virtually from the start of the discussion both Krimhilt and Etzel are kneeling before Rüdiger.⁴⁰ So the royal couple argue from a kneeling position, while throughout the entire exchange there is no mention of their standing up again. Argumentation and pleading are thus depicted as a unity. Far from being a flight of poetic fancy, such a gesture of self-subordination on the part of a superior was also well known in real communication. A request that was supported by such a gesture was more or less impossible to refuse, because the superior put his entire prestige at stake for this request. The most famous, if anomalous case of this kind is Frederick Barbarossa's prostration before Henry the Lion in Chiavenna, with which the emperor tried to acquire Henry the Lion's help for an Italian campaign. Allegedly, Henry refused the request despite the prostration, which is a serious charge against the Lion, since such a self-subordination of a ruler in fact forced the fulfilment of the request.⁴¹ It is hardly to be doubted that these rules of real communication are being used here by the poet to increase the drama of the scene.

Krimhilt begins her argument with a general reference to the oath that Rüdiger swore to her. Rüdiger counters this by saying that he has sworn to risk life and honour for her, but not his soul. He says he has brought the Burgundian princes to this celebration, and so given them escort. He uses this to justify his neutrality. For the time being, this argument is not dealt with in the exchange. Instead, Krimhilt reminds Rüdiger of the exact formulation of the oath: to "take vengeance for all my harm and sorrow."⁴² That is in fact the promise that Rüdiger made, presumably

³⁹ Ibid., p. 335, strophes 2138–2142.

⁴⁰ Ibid., p. 337, strophe 2152, 2: "do buten si sich ze füezen / beide für den man."

⁴¹ Cf. Knut Görich, *Friedrich Barbarossa. Eine Biographie* (Munich: C.H. Beck Verlag, 2011), 483ff.

⁴² *Nibelungenlied*, p. 337, strophe 2151: "daz du den schaden min / immer woldest rechen / und elliu miniu leit."

formulated intentionally in such a way that Rüdiger would be under obligation. For this reason he has only a general objection to this argument: "I have never refused you anything."⁴³ Then, when Etzel also starts to plead on his knees, Rüdiger tries to escape from the situation another way: he wants to give everything back which Etzel has ever given him, and leave the country on foot. Yet Etzel counters in turn by offering to give Rüdiger everything as his own personal property and to make him into a powerful king too. Now Rüdiger yet again lists all his duties towards the Burgundians: they have been invited into his house; they have eaten and drunk together, exchanged gifts, and bound themselves as kin. All of these are certainly good reasons not to fight against them. Yet Krimhilt's appeal to have mercy on her suffering decides the matter. She thereby implicitly recalls Rüdiger's oath.⁴⁴

The tension of the scene results from the fact that it addresses real problems of medieval conflict management, using all verbal and non-verbal means. Yet the situation is ultimately caused by a network of relationships that leads to tragic consequences. According to the logic of the story, it is in the end the formulation of the oath that forces Rüdiger to fight against his kin, friends, and wards. This implicitly underlines Krimhilt's systematically planned revenge, since she herself has formulated the oath for Rüdiger. At the same time the story requires critical reflection on the meaningfulness of rules that demand such actions. It in no way offers an uncritical description of violence, let alone its glorification. We can much better speak of an appeal to reconsider rules that cause or allow something like this to happen.

I have only been able to sketch out on the basis of a few examples what consequences there are for the interpretation of the *Nibelungenlied* when a historian reads it from the standpoint of how it handles society's rules in conflicts. Instead, I have asked about the patterns of behaviour according to which the characters of the *Nibelungenlied* orient their actions. The answer, which can be explicated here on the basis of only a few examples, is relatively unambiguous: they very frequently act according to the real rules of the game of twelfth-century society. The more interesting discovery is that these actions also serve to problematise the rules of behaviour.

⁴³ Ibid., p. 337, strophe 2151, 4: "ich han iu selten iht verseit."

⁴⁴ Cf. the arguments of both sides pp. 338–339, strophes 2158–2165. Rüdiger's oath is mentioned for the first time on p. 203, strophe 1257: "si sprach: so swert mir eide, / swaz mir iemen getuot, / daz ir sit der naehste, / der bueze miniu leit."

The consequences of decisions are presented to the readers or listeners, but they are thereby apparently required to examine the reasons for these decisions critically and to consider whether these were the only possible actions, or if there were others. The construction of situations in which the usual rules of the game no longer help positively demands a critical perspective on these rules.

In sum, an interpretation of this kind results in a new view of the story's relationship to violence. In the *Nibelungenlied* we are given no celebration of loyalty until death, no glorification of honour and obligation to avenge until the point of ruin, but instead an interpretation in which the mechanisms used by the real society of the twelfth century to avoid violence are clearly depicted. That precisely these mechanisms are ineffective and attain no peaceful end is explicable in part as the result of individual people's decisions, but mainly is due to the poet's invention and construction of events in which the usual rules no longer offer any solution. I think this is a reading that is very compatible with the concerns of recent German studies. The question of the rules of the game does indeed seem to be suitable for uniting the different medieval disciplines, at least in a discussion about the same texts and topics.

Time considerations force me now to summarise and to outline once again what precisely concerns me. By highlighting the fact that during the European Middle Ages armed conflicts followed certain rules, I want to argue against the popular cliché of the violent, and therefore dark and barbaric, Middle Ages. The existence of the rules presented here, with their obvious tendencies to suppress violence, is—on the whole—undisputed amongst medievalists. The range of their validity and the extent to which they were obeyed is certainly open to discussion, and it is worth stressing again here that the rules applied only to members of the warrior aristocracy, not to the lower social levels, pagans, infidels, or heretics. I have deduced these rules by analysing the conflicts in the Frankish-German realm. I have found them again in medieval literature, as the examples taken from the *Nibelungenlied* show. I cannot and will not claim that they applied in a similar way in other European countries, however. There are signs of regional particularities, such as a greater harshness and acceptance of violence in Norman South Italy, for example.⁴⁵

⁴⁵ Theo Broeckmann, *Rigor iustitiae: Herrschaft, Recht und Terror im normannisch-staufischen Süden (1050–1250)* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2005).

In the warrior aristocracy of "Old" Europe, in any case, people knew how to use violence very carefully, warning by unambiguous threats of its possible use long before it became imminent, and thereby providing time and opportunity to yield. They had at their disposal ways and means to end conflicts peacefully by replacing violence with finely tuned compensation measures. That those rules were also broken and violated, that the measures and ways to avoid violence were not sufficient in certain cases, I accept unreservedly. Still, they do not thereby lose their value as a characteristic feature of a warrior aristocracy that did not blindly indulge in violence.

LEGAL HISTORY AND THE HISTORY OF DISPUTES

John Hudson

A volume as rich as the present one opens up many possibilities, both for future scholars and for a concluding essay. Crucial issues in the study of disputes are treated in new and interesting ways. Stephen D. White's essay raises questions about a current trend in feuding scholarship that emphasizes the emotional, irrational component of feuds and vengeance.¹ Hans Jacob Orning suggests that the concentration of political power may increase violence, disrupting a prior balance that included an element of "peace in the feud."² Thereby, in their different ways, both of these essays question evolutionary assumptions about disputing.

However, what I wish to concentrate upon in this concluding essay are possibilities for comparative approaches to the study of dispute. One obvious effect of this volume is to provide a profoundly researched and highly stimulating basis for comparison between Scandinavia and other regions. Such comparison can now be pursued further through careful selection of comparable primary sources. The most obvious of these sources are charters, as we see them employed in Part II of the present volume. Catharina Andersson, for example, adds to our understanding of gifts to religious houses by showing how they were used in Sweden to organise social interactions, including the resolution of conflicts.

An alternative form of comparison is between levels of society. The essays by Orning, Gerd Althoff, Lars Hermanson, and Auður Magnúsdóttir are concerned very much with the top level of society, above which there was no superior authority. Disputes at this level were in part guided by what Althoff and, following him, Orning call "the rules of the game."³ But breaches of these rules could not be dealt with from above, at least

¹ See White, 281–282. The thematic nature of this concluding essay, not any judgement on quality, explains why I concentrate largely on a limited number of the pieces in the volume. As ever, I owe much to the comments of Steve White and Bill Miller on this paper, and to years of conversation with them. Helle Vogt added further insights.

² See esp. Orning, 45–46: "My hypothesis is that conflicts should not primarily be viewed as interruptive, but rather as integrative, partly because they very seldom developed into large-scale war, and more fundamentally because a function of conflict in this type of decentralized society is to regulate power relations."

³ See Orning, 73.

when the participants were claimants to the highest authority. How far can conclusions from this level of society be projected downwards? Generally those studies of medieval disputes which most emphasize the political and strategic elements of behaviour draw upon anthropological studies of "stateless societies," or at least societies with weak institutionalised authority; and in some cases they also examine medieval literary texts concerned with the activities of kings and the highest aristocracy. Yet the world examined in particular by Kim Esmark, Helle Vogt, and Lars Ivar Hansen is one in which the possibility of disputes going to law courts, presided over by higher authorities, was very real. This contrast renders hazardous the downward projection of models derived from analysis of disputes at the top of society. Even in Iceland, a society with weak superior authority, laws and accounts of disputes show the interplay of in-court and out-of-court activities that may be absent in competition for rulership.⁴ Likewise, White reasserts the cultural determinants of disputing practice according to social level, distancing the impulses from what some have presented as 'hard-wired' emotions and an undifferentiated desire to avenge affronts to honour.⁵

A third axis of comparison is chronological. This approach is especially clear in the essays of Orning, Vogt, and Esmark. Orning's study concentrates on changes in the functioning of politics at different periods, whereas Vogt and Esmark focus on the ways in which disputes were processed and court cases were conducted. Both Vogt and Esmark see an increase in the use of litigation as a means of treating disputes in the thirteenth century, and they associate this with the increasing role of learned law, Roman and canon.⁶ A combined geographical and chronological comparison with England might suggest that timing was important here: in England procedural developments essential to the development of the Common Law took place in the twelfth century, before the learned laws could have extensive practical influence.⁷ By contrast, in Scandinavia

⁴ See esp. W.I. Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990). The very possibility of having to bring a case to court increased the likelihood that a case would need to be formulated through appeal to legal as well as other norms.

⁵ Note also G. Algazi, "Pruning Peasants: Private War and Maintaining the Lords' Peace in Late Medieval Germany," in *Medieval Transformations: Texts, Power and Gifts in Context*, ed. Esther Cohen and Mayke de Jong (Leiden: Brill, 2000), 245–74.

⁶ See Vogt, 180; Esmark, 199–200.

⁷ Note the rather different position taken by, e.g., R.H. Helmholz, "The Early History of the Grand Jury and the Canon Law," *University of Chicago Law Review* 50 (1983): 613–27.

legal change came later, at a time when the learned laws could have very considerable effect. However, it should also be noted that when Vogt and Esmark emphasize the effect of Roman and canon law, it is primarily upon procedure. On matters of substance, of the sort discussed for a later period by Hansen, the effect is less clear. Further exploration of how far dispute narratives indicate that the earliest Scandinavian legislative texts were preserving or developing existing custom, rather than innovating, will be of great interest.⁸

Such issues involving legal norms raise broader historiographical and interpretative questions. At the start of his essay Esmark comments that

the international reorientation of traditional legal history associated with “legal anthropology” or “medieval dispute studies”—with its emphasis on process, strategy, transaction, negotiation, arbitration, ritual, compromise, out-of-court settlements, feuding, etc.—has only just begun to make an impact [in Scandinavia].⁹

As Esmark argues in his essay, what this should involve is not the replacing but the supplementing of the concerns of traditional legal history with those of dispute studies, the two intersecting to their mutual benefit.¹⁰ This is particularly clear from Hansen’s essay, where the importance of legal norms in the making of family property arrangements is very clear even outside the context of disputes.

At the same time the essays encourage a comparative approach to the difficult question of the changing role of legal norms within disputes, and the changing nature of those norms. The essays of Esmark and in particular Vogt bring into question the tendency to extrapolate from the low proportion of cases decided by court judgment the conclusion that legal norms therefore had no role to play. Even when disputing was going on outside court, legal norms might play some part, for example when a party was seeking support for his or her cause. When assessing the relative strength of disputants, not merely their physical power and support but also the

⁸ Note e.g. Esmark, in this volume.

⁹ See Esmark, 181. Adjudication does of course receive significant treatment by some anthropologists; see e.g. S. Roberts, *Order and Dispute* (Harmondsworth: St Martin’s Press, 1979), 139–43.

¹⁰ See Esmark, 196: “Dispute settlement by ‘private’ mediation, for instance, gradually came to incorporate elements from learned law and adjusted to rules and regulations established by written codes.”

nature of their case carried weight.¹¹ Procedures in court, even in cases where other factors intruded, reveal the importance of legal norms.

In a famous Anglo-Saxon case concerning land at Fonthill, some legal norms of correct land transfer and of female landownership are made clear in the oath that the ill-doer Helmstan has to make in order to prove his right to the contested land: "that he had it as Æthelthryth had sold it into Oswulf's possession at a suitable price; and she had told Oswulf that she was entitled to sell it to him because it was her 'morning-gift' when she married Æthelwulf."¹² Similarly, common forms of settlement, whether in or out of court, rested on accepted legal forms, for example the grant of tenure for life to a party that surrendered its claim of right to a piece of land. Such a qualification of the distinction in the role of norms in court judgments and in compromises is reinforced by the fact that compromise settlements might be ordered by a person or persons in authority, rather as a modern judge may give a firm indication to parties or their lawyers that they should settle, rather pursue the matter to a judgment which the judge can ensure will satisfy neither side.¹³

Furthermore, the role of legal norms is clear in many of the situations that led to disputes. For example, the holding of land "in fee"—widespread in some parts of Europe, if unknown in high medieval Denmark—must be an idea conceived of in terms of legal rules, for example regarding service and succession, even if those rules do not always determine cases. A dispute might therefore operate within a framework of accepted norms of landholding, but over an issue of fact within this framework; or at a point where the clarity of the framework broke down, even though many basic rules were accepted—for instance over distant inheritance claims rather than those by sons.¹⁴ Such are the types of norms that Hansen discusses both within and outside the context of disputes.

Why, then, has there been a tendency in some dispute studies to underplay the role of legal norms, a tendency to which essays in this volume provide a powerful corrective? In part it has been a reaction to forms of

¹¹ Such processes are made particularly clear in the Icelandic sagas, but also in other forms of literature.

¹² *Select English Historical Documents of the Ninth and Tenth Centuries*, ed. and trans. F.E. Harmer (Cambridge, 1914), no. 18. See also S.D. White, "Inheritances and legal arguments in western France, 1050–1150," *Traditio* 43 (1987): 55–103.

¹³ See also Vogt, 163, 167.

¹⁴ This issue arises e.g. in the discussion of cases in P.J. Geary, "Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050–1200," in his *Living with the Dead in the Middle Ages* (Ithaca: Cornell University Press, 1994), 125–60.

legal history that did not take into account extra-legal elements when considering disputes. Other approaches, particularly those influenced by anthropology, have provided a useful and attractive reorientation. However, further explanations may be possible. Even in some instances where authors discuss modern jurisprudential problems or studies of modern dispute-processing, underlying the arguments about the medieval period appears to be an idealised, positivist view of the workings of legal rules in modern law-cases: cases should be determined by discrete and identifiable legal rules, enforced by legally recognised superior authority.¹⁵ Yet this view of ideal law is not held even by writers on jurisprudence who would identify themselves as legal positivists. Working from his own philosophical background, H.L.A. Hart concentrated primarily on linguistic uncertainty to reveal what he described as the open texture of legal rules.¹⁶ His current successor as Professor of Jurisprudence at Oxford, John Gardner, contends that legal positivism is just a way of identifying the validity of rules of law.¹⁷ It is, he says, "a distinctive thesis about law" which is sometimes mistaken for "a comprehensive theory of law."¹⁸ Gardner too emphasizes that even for a legal positivist there will be gaps in coverage by rules:

When I speak of "gaps" [...] I do not mean that the law is silent regarding some cases. Closure rules (such as "everything not forbidden by law is permitted by law") are perfectly capable of preventing legal silence. Rather, the gaps I have in mind arise (i) in cases in which a given legal norm is neither applicable nor inapplicable, but rather indeterminate in its application, and (ii) in cases in which valid legal norms conflict so that two rivals (e.g. one forbidding a certain action and the other requiring the same action) are both applicable at once and there exists no third legal norm that resolves the conflict. No closure rule, however ingenious, can guarantee to eliminate these latter types of gaps. They are endemic to law, in all legal systems, thanks to the positivity of law. This makes it inevitable that if judges are to

¹⁵ Note how some studies of dispute-processing occasionally slip between arguments for the significance or non-significance of courts and the significance or non-significance of law, without putting forward arguments about the relationship between courts and law. Vogt's essay in the present volume provides an important corrective; it may be significant that she is the only contributor based in a Law Faculty.

¹⁶ H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961).

¹⁷ J. Gardner, "Legal Positivism: 5½ Myths," *American Journal of Jurisprudence* 46 (2001): 199–227. At 201 he writes: "In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits (where its merits, in the relevant sense, include the merits of its sources)."

¹⁸ *Ibid.*, 223; see further 223–4, 227.

decide all cases validly brought before them, they will sometimes have to go beyond the mere application of posited (including legal) norms.¹⁹

A belief in the inevitable indeterminacy of legal rules therefore is not the preserve of, for instance, legal realists or proponents of critical legal studies.²⁰ The issue for historical or other cross-cultural study might then be reconceptualised in terms not of the presence or absence of law, but of the degree of determinacy of legal norms, or—to put it in different terms, with a nod to Oliver Wendell Holmes—of how accurately legal norms act as predictions of what courts will decide. If one is willing to accept indeterminacy as a general feature of legal rules, one may be more, not less, willing to accept a significant role for law in medieval disputing.²¹

One might emphasize three further points. First, our best medieval accounts of cases tend to be extensive because the case was for some reason a difficult one: disputes where the issue was simple, and possibly most clearly determined by norms, would not be recorded, or certainly not recorded at such length. Second, different types of norm might be of different determinacy in particular situations. A complicated inheritance situation might not be determined by clear substantive norms, but one party might be unable to establish their right or even bring a claim if unable to meet the procedural norms concerning proof. Third, even if legal norms do not determine the outcome of cases, they may determine what the parties do not argue, because any such argument would be trumped by appeal to the norm.²²

Worry may arise here, quite properly, as to whether the difference in determinacy of legal norms between societies is just quantitative or is in some sense qualitative. Are we dealing with fundamentally different categories of norm, or something with sufficient similarities to allow comparison? Let us turn to a related problem: whether writers referring to “the law” see it as just the collectivity of legal norms, or as something more. Is the law made up of institutions and norms, although not of all the institutions and all the norms that may influence disputing? Or is some

¹⁹ Ibid., 212.

²⁰ Consideration of rabbinical argument might be particularly illuminating.

²¹ Such ideas may lead one to ponder further questions, for example how those considering pursuing their claims out of court did so in the light of predictions of how courts would treat them, as a result of both the legal norms relating to the case and other considerations.

²² Cf. the focus of J.L. Comaroff and S. Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981).

intermediate position preferable, allowing one still to think of institutions applying the law, even though conceptualisation of law simply as the collectivity of legal norms is insufficient? These issues merit consideration, in part for their own sake, in part because they relate to the issue of determinacy. Brian Simpson, in his very pertinent essay on “The Common Law and Legal Theory,” wrote that:

The predominant conception today is that the common law consists of a system of rules; in terms of this legal propositions (if correct) state what is contained in these rules. I wish to consider the utility of this conception, and to contrast it with an alternative idea—the idea that the common law is best understood as a system of customary law, that is, as a body of traditional ideas received within a caste of experts.²³

Such a view pinpoints one of the possible vulnerabilities of legal positivism, its stress on the source as the basis of the validity of a legal rule but the difficulties, at least in Common Law, of identifying that source. It may also, incidentally, set us worrying away at differences between customs and legal rules.²⁴ More immediately, Simpson’s emphasis on the caste of experts, and the way in which their reception of ideas is part of law rather than an influence upon law, is again very helpful for comparative purposes. To take an exemplary non-medieval instance, in Mark D West’s “Lovesick Japan,” “Law” may come at the end of the subtitle, after the more enticing trio “Sex, Marriage, Romance,” but in the book itself, chapters on “Love,” “Coupling,” “Private Sex,” “Commodified Sex,” and “Divorce” are preceded by one on “Judging,” an examination of the personal and professional formation of the Japanese judiciary, conducted in part through comparison with the U.S judiciary.²⁵

If we look at those who receive a body of traditional ideas, be they experts or not, and compare their statements and activities with the practices of courts or the processes of dispute, we may be able to take

²³ A.W.B. Simpson, *Legal Theory and Legal History: Essays on the Common Law* (London: Hambledon Press, 1987), 359–82 at 361–2. See also e.g. J.H. Baker, *The Law’s Two Bodies: Some Evidential Problems in English Legal History* (Oxford: Oxford University Press, 2001); P. Bourdieu, “The Force of Law: Toward a Sociology of the Legal Field,” *Hastings Law Journal* 38 (1987): 805–53.

²⁴ Notably S.F.C. Milsom’s thought-provoking statement that “a custom is something that happens before it becomes a rule”; *The Legal Framework of English Feudalism* (Cambridge: Cambridge University Press, 1976), 120.

²⁵ Mark D. West, *Lovesick Japan: Sex, Marriage, Romance, Law* (Ithaca: Cornell University Press, 2011).

some further steps towards understanding the role of law within disputing. And we may uncover the emergence of the ideal of, or aspiration towards, determinacy of legal rules in, for example, Gratian's *Concordance of Discordant Canons* or the arguments in *Glanvill's Treatise on the Laws and Customs of England*. But we will be warned away by the different circumstances of the production of these texts, and still more so by *Grágás* in the far northwest, from assuming that a single pattern of cultural or political development will explain the development of the ideal, let alone the growing practical extent, of determinacy of legal rules.

Such ruminations may finally also bring us back to re-examine the notion of "the rules of the game," as applied to political activity. The various controls, and the various behaviours, covered by that metaphor may benefit if various distinctions are made. How far are the regular behaviours in fact the result of rules rather than, to continue the sporting metaphor, managerial choices? How far are such managerial choices free, and how far are they responsive to outside pressures? The manager who brings on to the field an attacking player when his team is losing narrowly and the game is drawing towards its end is making a tactical choice, but one also formed by the expectations of his team, his employers, and the supporters. A special manager, or one who believes himself special, might play with these expectations in order to act unpredictably, to the benefit, he would hope, of his team and of himself. Second, within the various types of "rules of the [political] game," some may be more binding than others. As Althoff points out, the rules were not always followed, and ways could be found to explain why they were not binding in a particular case. Third, to reiterate a point made in a different context, it matters whether the rules of a game are set by a ruling body or are simply what might be called "house rules," resting on acceptance by the players. Fourth, it matters who the enforcement agencies are. And finally, even "rules of the game" set by a governing body and enforced by its supposedly impartial appointees are open to the kind of debate we have seen in the field of law. The complexity of the jurisprudence of the "rules of the game" is encapsulated in a story most frequently told of decisions by baseball umpires, but much more widely applicable. The distinction in its common form is between balls that the batter does not swing at and that count towards his being out ("strikes"), and balls that the batter does not swing at but that do not count towards his being out, because they are too far away from him ("balls"). The first umpire says, "Well, a lot of them are balls, and a lot of them are strikes, but I always calls 'em as I sees 'em." The second umpire

says "Hmph. I calls 'em as they *are*." The third umpire slowly looks at his two colleagues and declares "They ain't *nothin'* until I calls 'em."²⁶

The focus of this concluding essay has been deliberately restricted, but it is worthy of comment that the stimulating intersection of legal history and disputes studies, together with the issue of the role and nature of legal norms, is a feature that the present collection shares with other recent studies, for example those of Wendy Davies on early medieval Spain and the excellent collection *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages* edited by Alice Rio.²⁷ Such studies will be crucial to developing comparative analyses of the issues involved. At the same time a further layer of study can be added by more extensive analysis of the economic circumstances of dispute, both local—in terms of competition over specific resources—and much broader—in terms of social differentiation and domination through competition for resources. Awareness of the former issue is again very apparent in the essays of Vogt and Esmark.²⁸ The latter has largely been neglected as a result of the move away from any forms of Marxist or Marxisant legal history, yet its questions remain important.²⁹ Exploring the local and the broad economic situation of disputes, just like the development of comparative studies, will be a time-consuming task. However, the present volume is a major contribution to the Stakhanovite labours required.

²⁶ Note also L. Rosen, *The Anthropology of Justice* (Cambridge: Cambridge University Press, 1989), 1–2.

²⁷ E.g. W. Davies, "Judges and Judging: Truth and Justice in Northern Iberia on the Eve of the Millennium," *Journal of Medieval History* 36 (2010): 193–203; *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages: Proceedings of the 2008 Byzantine Colloquium*, ed. A. Rio (Centre for Hellenic Studies, King's College London, 2011).

²⁸ See above the articles by Vogt and Esmark. Particularly profitable conflicts to study might be those over mills, tithes, and freedmen.

²⁹ See esp. E.P. Thompson, *Whigs and Hunters* (London: Allen Lane, 1975); D. Hay et al., *Albion's Fatal Tree* (London: Pantheon Books, 1975); M. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, Mass.: Harvard University Press, 1977). The thorough-going critique of the last by A.W.B. Simpson, "The Horwitz Thesis and the History of Contracts," *University of Chicago Law Review* 46 (1979): 533–601, is to a large extent concentrated on execution rather than the questions being asked.

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