



Per Andersen, Ditlev Tamm & Helle Vogt, eds., *How Nordic Are the Nordic Medieval Laws? Proceedings from the first Carlsberg Conference on Medieval Legal History*, 2nd ed., DJØF Publishing: Copenhagen, 2011. 248 pp.

In May 2003, a group of scholars gathered to discuss the question “*How Nordic Are the Nordic Medieval Laws?*” and inaugurated a series of conferences devoted to medieval legal history held annually at the Carlsberg Academy. The present volume is the second edition of the inaugural essays of the conference series. It celebrates the decennial of the series and also forms a backdrop for this year’s Carlsberg conference, which will revisit the same question to see how scholarship on the subject has changed over the last ten years.

The purpose of the inaugural gathering on the ‘Nordicness’ of Nordic laws was to examine medieval Nordic laws within a European context to see whether these laws were indeed as isolated from contemporary European developments as the traditional literature made them out to be. In discussing this question, these scholars join intense discussions about the place of the *ius commune* in European legal history that have occupied especially Italian, French and German historians over the last decades. Since Francesco Calasso popularized the notion of *ius commune* in his *Introduzione al diritto commune* (1934), traditions of national history have been progressively deconstructed in light of work showing the influence of Roman and canon law on these *leges particulares*. The work of Paul Koschaker and Helmut Coing from Germany, Adriano Cavanna and Paolo Grossi for Italy, Jacques Krynen and Gerard Giordanengo for France and Richard Helmholz for England can be mentioned to name only a very few scholars in a vast and ever-expanding field, while Peter Stein had dealt with the subject more generally.

Challenging traditions of national legal development that accrued over centuries must find its starting place in historiography. The volume is particularly successful in this regard. The entries throughout are in constant dialogue with the older tradition of isolated national legal historiography as well as with current scholarly discussions of the *ius commune* and its relationship with royal and local laws and customs. In addressing both Nordic legal scholars as well as those who are uninitiated in the legal or even political history of the Nordic countries, the

volume successfully opens a dialogue with European legal historians writ large. Bringing traditionally exceptionalist legal traditions into a broader conversation is a welcome and important approach and creates the opportunity for fruitful analysis and comparison.

The volume opens with a historiographical discussion by Ditlev Tamm titled, as the volume, 'How Nordic were the Nordic Laws?' Tamm provides a welcome overview of the national legal mythologies of the Nordic countries while also raising a number of issues key to contemporary scholars, such as the relationship of the Nordic laws to old Germanic law and its concepts, the similarities and differences between the laws of Norway, Sweden and Denmark, and to what extent new research on the *ius commune* can contribute to novel discussions on sources that have already been subject to so much study.

This discussion is followed by Peter Landau's article on 'The Importance of Classical Canon Law in Scandinavia in the 12th and 13th Centuries.' Landau seeks to show the importance of canon law to Norwegian law and politics despite the paucity of surviving manuscripts of canon law in the region due to destruction in the Reformation period. He examines evidence that canon law had come to Scandinavia before Gratian's *Decretum*, as well as evidence of synodal councils and papal legislation influencing secular law, and shows how this area is ripe for further exploration.

Dirk Heirbaut takes the discussion to the Low Countries with his article, 'The Germanic Character of the Oldest Laws of the Low Countries.' Heirbaut examines the extent to which older tensions between Romanists and Germanists have influenced the shape of legal historiography in the Low Countries, and notably how different political developments in Belgium and in the Netherlands have shaped different perspectives on the relevance of a Germanic legal past. He makes the important point, which is often overlooked, that rules that were non-Roman were not necessarily automatically Germanic—rather, these were often original medieval creations of princely and comital courts.

The following entry, Mario Ascheri's 'Some Dark Aspects of *Ius Commune*,' is a somewhat uneasy fit for this collection in that it does not address the question posed by the volume, but examines how the *ius commune* functioned in Italy in the early modern period, when the glue of religious unity was gone. He notes that the European *ius commune* is essentially a tradition of private law, gives a general view at how it managed to adjust to different times and places until the time of the modern codes.

Lars Björne devotes the next contribution, 'The Nordic Medieval Laws in the Legal History of the 17th and 18th Centuries,' to an examination of the period when the national legal mythologies of Denmark and Sweden began to form in earnest in the seventeenth and eighteenth centuries. As Björne argues, though modern scholars may be tempted to see some of the views of this period as naïve, the purpose of the legal history written at the time was not accurate description of the past, but was a historical pursuit intended to contribute directly to contemporary political aims.

Michael H. Gelting takes us to the oldest laws of Denmark, the *Book of Inheritance and Heinous Crimes* (1170), in his article, 'Pope Alexander III and the

Danish Laws of Inheritance.’ Gelting argues that the *Book* represented a complete and radical shift away from earlier rules of inheritance. While some concessions to earlier attitudes were made, this text was not an accurate representation of a coherent earlier customary law but the product of political reform undertaken by the archbishop of Denmark, with the pope’s support.

Per Andersen takes the discussion of the Nordic laws to an international setting in his ‘Three Kingdoms, Three Laws, One Ideology—A Starting Point Revisited.’ Looking beyond Roman and canon law doctrine, Andersen compares ideologies related to the king’s role as legislator through the use of the maxim ‘*rex imperator in regno suo*’ across the diverse settings of Denmark and Norway to the North, and Sicily and Aragon in the South. This permits Andersen not only to see a Roman legal maxim in use in Denmark and Sweden, but also allows him to show that this followed intellectual trends current amongst legal and clerical elites in continental Europe.

The following entry by Tore Iversen, ‘Property and Land Tenancy in Norwegian Medieval Laws and the European Learned Law,’ examines the extent to which Roman and canon law influenced twelfth-century Norwegian laws of land tenancy and property by examining this in rules expressed in the Gulathing Law, the Frostathing Law and the *Landslög*. Through a very detailed examination of the rules and terminology of property and land-tenancy in these laws, Iversen sees a correlation between the development of positive law and royal legislative power and an increasing influence of Roman and canon law.

Lars Ivar Hansen then presents a discussion of a concept traditionally seen as quintessentially Germanic, the *wergeld*, in his article ‘The Concept of Kinship According to the West Nordic Medieval Laws.’ The argument of this contribution is very interesting, though the analysis is written in a quite technical manner. Hansen shows how changes in *wergeld* scales were indexed to changes in the canon-law treatment of family structures that came with their particular reception of kinship rules developed in the Fourth Lateran Council in 1215, where the concept of kinship shifted from seven degrees to four.

Mia Korpiola then tests the proposition that the provincial laws of Sweden were a product of legislative policy spearheaded by the Archbishop of Lund, rather than a gradual autochthonous development towards greater uniformity, in her article ‘On Ecclesiastical Jurisdiction and the Reception of Canon Law in the Swedish Provincial Laws.’ She does this by examining the extent of uniformity in ecclesiastic jurisdiction across the different provinces by examining aspects of that jurisdiction such as clerical immunity, various acts of violence, perjury, sorcery, sexual crimes and matrimony. She demonstrates convincingly that the provincials laws varied significantly as to ecclesiastical influence and jurisdiction, and that the authority of the church alone was not enough to enforce the implementation of ecclesiastical norm and appealed to royal support on a number of occasions.

The final contribution to the volume is Kjell Åke Modéer’s final note, ‘Nordic Medieval Laws Revisited,’ which was the speech that punctuated the conference in 2003. Modéer brings together some of the themes captured by the volume’s contributors while also commenting on some larger themes, notably the power of legal mythologies, what we owe to legal historians who erected the

traditions what are now being deconstructed, and the place of medieval legal history in modern law faculties and thought, ending on a positive note by noting a renewed interest in medieval legal history.

There are two things that could have been usefully included either in the introduction or the volume's eponymous article. The first is a consideration of the term 'Nordic.' Ditlev Tamm provides very useful historiographical background, notably on the 'Germanic inheritance,' but does not explicitly evaluate how current scholars understand the term itself. Lars Björne is the only author who treats it, noting that in the seventeenth century Danes and Swedes were archenemies and would have been quite bewildered by a term like 'Nordic' that lumped them together in a common identity. Defining what exactly 'Nordic' means would be very helpful to seeing whether or not, or to what extent, the laws had something specifically 'Nordic' about them: is the term simply geographical or does it come with cultural characteristics that scholars can find implicitly or explicitly expressed in the laws? It would have been useful to have a brief discussion of what 'Nordic' means as an interpretative category in the medieval legal context, to what extent it encapsulates a coherent legal grouping, and how this category may be due some reevaluation based on exactly the sort of work that is contained in this volume.

The second is a related issue. The volume argues generally that the Nordic laws were not so isolated from contemporary legal developments on the continent. It would have been useful to know to what extent the legal developments treated in the volume reflected cultural and political history more generally. A few articles treat some aspects of this question within their specific context, but it would have been interesting to learn to what extent legal developments were occurring within contemporary changes in culture more generally, or whether they were occurring independently, precociously or belatedly. In other words, in light of the extent of cultural and political isolation or inclusion of the Nordic countries from the twelfth century on, should we expect the conclusion of this volume that the Nordic laws were not so isolated, or is this a departure or change that was occurring particularly within the field of law?

The volume treats an important topic and is a nice complement to other excellent volumes the Carlsberg conferences have produced, such as the ones on *Custom, Law before Gratian*, and *Law and Private Life*. It will be of interest to several types of readers. The attention paid to explaining the historiography makes the volume accessible to those not familiar with Nordic legal history, and provides a useful starting point for comparison between legal traditions of Scandinavia, England and Continental Europe. Also, historians who do not specialize in legal history might find individual articles of interest on such issues as the history of marriage, kinship, political structures or church history. I imagine it would also be useful to specialists of Nordic legal history in that it aims to push boundaries and ask new questions about how Nordic law should be seen and studied.

Overall, *How Nordic Are the Nordic Medieval Laws?* is a very welcome contribution to the general discussion about the *ius commune* in other European

countries as well as for comparison of the legal cultures in different polities during this period. It will be interesting to see what scholars have done with these questions and themes during the last decade in the 2013 Carlsberg conference, the proceedings of which will be a welcome companion volume to this one.

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