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RECYCLING MEDIEVAL LAW

1-2 DECEMBER 2021

PROGRAMME & ABSTRACTS

UNIVERSITY OF BERGEN



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The **venue** for the workshop is Grand Hotel Terminus, at Zander Kaaes gate 6, 5015 Bergen, Norway. Grand Hotel Terminus is centrally located in Bergen, next to the railway station and *Bystasjonen*, the bus station. From Bergen International Airport (BGO), the hotel can be easily reached by using the Light Rail, and by exiting at the penultimate stop named *Nonneseter*.

For those interested, a legal history-based **city walk** will be provided by the organisers Brage Thunestvedt Hatløy and Sören Koch on Wednesday, 1 December, 18.00 CET. The city walk will last for about an hour and starts at Grand Hotel Terminus.

The **dinner** for the workshop (speakers only) is scheduled for the same day (1 December), 19.30 CET, at *Restaurant 1877*, at Kjøttbasaren, Vetrilidsallmenningen 2, 5014 Bergen.

The *Recycling Medieval Law* workshop is **co-organised** by the *Transformations of Medieval Law* project, the *Research Group for Legal Culture, Legal History and Comparative Law*, and individual researchers from the University of Bergen. In addition to the *Transformations of Medieval Law* project and the *Research Group for Legal Culture, Legal History and Comparative Law*, it is **presented** by the *Research Group for Medieval Philology*, and the *Research Group for Law and Culture in the Pre-Modern North*, as well as the *Medieval Research Cluster* at the UiB.

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Programme

Wednesday, 1 December 2021

10.00 Opening of the Workshop

Session 1: Law in New Contexts – Recycled Law?

Chair: Brage Thunestvedt Hatløy (University of Bergen)

10.20 **Helen F. Leslie-Jacobsen** (University of Bergen): Recycling the Prologue to the *Landslog*

10.50 **Andrew Simpson** (University of Edinburgh): (Re-) Inventing the Medieval Legal Heritage: Chalmer's Compendium of the Laws of Scotland (1566)

11.20 *Coffee break*

11.35 **Sören Koch** (University of Bergen): The Fate of the Four Daughters of God in Christian IV's Norwegian Code of 1604

12.05 *Lunch*

Session 2: '(Re-)Cycling' Medieval Law – A Contextual Approach

Chair: Helen F. Leslie-Jacobsen (University of Bergen)

13.00 **Anders Winroth** (University of Oslo): European Jurisprudence in the Nordic Countries: Copies, Translations, and Uses

13.30 **Julián Eduardo Valle** (University of Bergen): How Icelandic were the Norwegian Laws? The Political Context of the Introduction of *Járnsíða* and *Jónsbók* According to *Árna saga biskups*

14.00 **Jens Eike Schnall** (University of Bergen): Medieval Law and the Order of Time: Perspectives on *Jónsbók* and *Sachsenspiegel*

14.30 *Coffee break*

14.45 **Anna Elisa Tryti** (Vestland County Council): Exploring Early Conciliarism in the Archdiocese of Nidaros in 1280–1351

15.15 **Stefan Drechsler** (University of Bergen): *Project Application Presentation*: Cultural Adaptation and Integration of European Arts and Legal Traditions in Western Scandinavia in 1217–1387

18.00 *City walk* (starting at Grand Hotel Terminus)

19.30 *Dinner* (speakers only, at Restaurant 1877)

Thursday, 2 December 2021

Session 3: Recycling as a Mode of Norm Production

Chair: Stefan Drechsler (University of Bergen)

10.00 **Már Jónsson** (University of Iceland): Tradition and Renewal in Magnús Hákonarson's Legislation until 1274

10.30 **Brage Thunestvedt Hatløy** (University of Bergen): Restructuring Medieval Commercial Law: Evolution of the Structure of the Section of Trade

11.00 **Ole-Albert Rønning Nordby** (University of Bergen): *Bréfabrot*: The Construction of a Legal Concept and the Administrative State

11.30 *Coffee break*

Session 4: Recycling and Creatively Compiling Legal Documents

Chair: Jens Eike Schnall (University of Bergen)

11.45 **Patricia Pires Boulhosa** (University of Cambridge): *Grágás* Compilations and Ideas of Codifications

12.15 **Anna Catharina Horn** (University of Oslo): When Text Meets Text: The Dynamics of a Composite Manuscript

12.45 *Lunch*

Session 5: Textual Mobility and Legal Change

Chair: Sören Koch (University of Bergen)

13.40 **Elizabeth Walgenbach** (Árni Magnússon Institute): Manuscript Contexts of the *Kristinréttir Árna Þorlákssonar* in the Fourteenth Century

14.10 **Adelyn Wilson** (University of Aberdeen): Textual Moveability and Manuscript Transmission in Early-Modern Scotland

14.40 *Coffee break*

14.55 **Stefan Drechsler** (University of Bergen): Single Leaves as Carriers of Law Amendments (*Réttarbætr*) in Medieval Norwegian Law Manuscripts

15.25 Conclusion of the Workshop

Abstracts

Session 1: Law in New Contexts – Recycled Law?

Recycling the Prologue to the *Landsløg*

Helen F. Leslie-Jacobsen (University of Bergen)

The prologue to the *Landsløg* had several guises during the period in which the *Landsløg* was in force. The prologue to the *Landsløg* is important because it at once anchors the *Landsløg* in Norwegian legal tradition and in wider Scandinavian legal tradition, whilst at the same time providing an obvious point of connection to wider European legal traditions through its structure and contents. The medieval versions of the *Landsløg* have the original prologue written in the voice of Magnus Lagabøte, while the Danish translations of the *Landsløg* from the 16th and 17th centuries contain several different constellations of prologue. This paper will explore how some of the manuscripts containing Danish translations of the *Landsløg* recycle Magnus Lagabøte's original prologue, sometimes presenting the prologue in Old Norwegian, in Danish translation, or both, or by providing an additional, learned prologue built upon, for example, Cicero's writings. Ultimately, the paper argues that the prologue is one key to understanding the connections between the *Landsløg* and learned literature in medieval and Early Modern Norway, and that recycling text has been instrumental to the development of the prologues that we find transmitted with the law code.

(Re-)Inventing the Medieval Legal Heritage: Chalmers’ *Compendium of the Laws of Scotland* (1566)

Andrew Simpson (University of Edinburgh)

On 22nd July 1566, David Chalmers of Ormond presented a book to his monarch, Mary, Queen of Scots. Chalmers was a judge in the College of Justice, the supreme Scottish court in civil matters. He described his book as “ane schort compend of all lawes, akis, statuts and ordinances that hes beyn sen the first beginning of any kingis within this realme”. An edition of his book is currently being prepared for publication by Winifred Coutts, Julian Goodare and Andrew Simpson under the title of Chalmers’s *Compendium of the Laws of Scotland*. A paper on Chalmers’s *Compendium* will hopefully be of interest to a workshop on recycling medieval law because of what Chalmers wanted to achieve in writing the book.

This paper will show that Chalmers’s basic aim was to render the confused texts and materials of the medieval Scottish common law more accessible to his intended readers, who were the judges and men of law who pleaded in the College of Justice. Yet what is most interesting for the purposes of this workshop are the questions of *why* and *how* he sought to do this. In arguing for the relevance of the materials, Chalmers married contemporary juristic thought and well-known assumptions about Scottish political history to articulate the authority of the laws of the realm. He then proceeded to explain a way of extracting or “inventing” materials from those laws for use in legal argumentation in developing the “practicks” or decisions of the College of Justice. Like many others, he relied on organising materials into “places” (*loci*) or “common places” (*loci communes*) to facilitate invention; but the elements of his approach were quite distinctive. It will be suggested that Chalmers’s thinking on the

subject was shaped by relatively recent reflections on the use of common places to organise thought in contemporary continental Europe. However, he owed little to the methods of scholars working in Bourges who are often associated with “legal humanistic” assumptions and goals. Rather, it will be suggested that the inspiration for his work lay elsewhere and – just possibly – in the writings of Philip Melanchthon. Overall, the paper will attempt to explore the ways in which one writer sought to utilise renaissance patterns of argumentation and organisation of thought in order to facilitate the transformation of the medieval legal heritage in the practice of the Scottish supreme court in civil matters.

The Fate of the Four Daughters of God in Christian IV's Norwegian Code of 1604

Sören Koch (University of Bergen)

The appearance of the four daughters of God in King Magnus Lagabøtes Code from 1274 is one of the most prominent examples for the impact of theological thinking on the medieval legislation. Book IV-18 contains a rule establishing the underlying principle governing the relationship between courts, judges and the law, taking an explicit stand against the dominant ideal of 'jus strictum' promoted by the famous jurist Bulgarus in the learned discourse of the continent. The revision of the Code by the lawmen at the end of the sixteenth and early seventeenth century has been described as a mere compilation and translation of the Code into Danish. Looking more closely reveals however, that the legislative commission did make deliberate changes to the content of the legislative framework which seem to be motivated by political and cultural changes in the early modern period. The rule on the judges' competences to set aside legislation in case of a conflict with the court of conscience is an illustrative example.

Session 2: '(Re-)Cycling' Medieval Law – A Contextual Approach

European Jurisprudence in the Nordic Countries: Copies, Translations, and Uses

Anders Winroth (University of Oslo)

Teachers and students at the several law schools of medieval Europe did not only compile the many collections of laws that we know as the two *corpora iuris*, but they also produced much jurisprudence in the form of short or long handbooks, summaries, and commentaries. These works, which pre-digested the stodgy diet of the actual law books, made it much easier to approach the law. While the law books existed in many copies in the Nordic countries, we see much more direct Nordic engagement with the jurisprudence. Passages from handbooks by famous lawyers such as Raymond of Penyaforte and Goffredus of Trano were excerpted into other works and also translated into Old Norse. Scandinavians used jurisprudence from Bologna and elsewhere to create their own legal handbooks, such as the Bergen *Ordo iudiciarius*, local Christian laws, and possibly even some of the sections on procedure in vernacular law. This paper aims to throw some lights on this kind of recycling of European legal materials and raises the question whether it is in this context we should primarily think of European influence on Nordic legal culture.

How Icelandic were the Norwegian Laws? The Political Context of the Introduction of *Járnsíða* and *Jónsbók* According to *Árna saga biskups*

Julián Eduardo Valle (University of Bergen)

In 1262–1264, Iceland became part of the Norwegian kingdom as the result of an agreement between the Norwegian crown and the Icelandic Alþingi. This understanding is traditionally considered to have been preserved in at least two separate agreements (*Gissurarsáttmáli* and *Gamli sáttmáli*) that include amongst their items the demand for “peace and Icelandic laws”. The present paper explores the extent to which laws were understood as “Icelandic” or foreign, and how much this depended on the political context during the introduction of the laws or on their actual content. I will analyse the political context in Iceland in the 1270’s and 1280’s by using the narrative presented in *Árna saga biskups*. According to chapters 18-20 of the saga, *Járnsíða* was accepted over three years, in a relatively peaceful manner, as a consequence of an agreement between King Magnus VI Hákonsson and Bishop Árni. Chapters 62 and 63 cover the adoption of *Jónsbók*, that seems to have raised a much more heated debate but was accepted *in toto* in one year. In this paper, I will concentrate on one of the main points of contention with *Jónsbók* as presented in *Árna saga*, which was the harshness of the legislation over unattonable crimes (ON *óbótamál*). While this concept was introduced already in *Járnsíða*, I would like to analyse to what extent it was considered harsher due to changes in the law and not to the political conditions in 1280.

Medieval Law and the Order of Time: Perspectives on *Jónsbók* and *Sachsenspiegel*

Jens Eike Schnall (University of Bergen)

My paper exemplifies a methodological approach to compilation by analyzing framing techniques in two groups of medieval Icelandic law-manuscripts. Apart from their main text, *Jónsbók*, one contains the opening words of the Gospel of St. John, the other a short text on the Egyptian days (*dies mali* or *dies Aegyptiaci*). My main focus is on the order of time as both an element and a pattern within the compilation of framing passages of the manuscripts in question. The findings will be compared to similar elements and structures in manuscripts of the 13th century Low German *Sachsenspiegel*.

Exploring Early Conciliarism in the Archdiocese of Nidaros in 1280–1351

Anna Elisa Tryti (Vestland County Council)

The year is 1280. Magnus Lagabøte has died, and his 12-year-old son Eirik has been crowned king. Archbishop Jon has summoned his bishops to the provincial council in Bergen, ready to fight against the secular aristocracy and their effort to limit the power of the church, which has claimed extensive ecclesiastical jurisdiction. The period from 1280 until 1351 is what we might call the Age of the Church Councils in the Medieval Arctic fringe of western Christianity. While the Papacy is experiencing crises, the Nidaros province is undergoing consolidation and an expansionary legislative phase. A corpus of statutes is preserved from at least ten synods.

I am going to contextualise the process of law-making and jurisdictional practice, with special emphasis on the statutes and a Registrum with diplomas from the Bishopric of Bergen. The Norwegian law culture was developed by scholars educated in Bologna, Paris and Orleans. Learned bishops were educated in both Roman and Canon law. Chapters balanced the jurisdiction (*regimen*) of the bishops, with *concilium* or *consensus*, through either collaboration or conflict. When Pope Clement V opened the General Council in Vienne in 1311, the newly consecrated archbishop Eilif Arnesson attended, as did the bishops of Bergen and Oslo. It was not only the condemnation of the Templars that made the council dramatic – the fact that the papacy had been weakened, encouraged the delegates to question the supremacy and legitimacy of the pope.

Recycling earlier legal textual entities and rediscovering ideas were important aspects of law-making in the thirteenth and fourteenth centuries. The main conciliar doctrines had already been formulated in canonistic glosses of the twelfth and

thirteenth centuries, and the sources of Law included papal letters from the early Roman church. The question of whether a general council is superior to the Pope, emphasising the equal power of all bishops, might have been heavily discussed in Vienne when the bishop of Mendes, Guillaume Durandus, presented his *De modo celebrandi concilii et corruptelis in Ecclesia reformandis*. He attacked the abuses of the Church and claimed that a church council could limit the supremacy of the papacy.

It took a hundred years before the conciliarists had their breakthrough at the Council of Constance in 1414–1418, issuing the decree *Sacrosanta*, affirming that the authority of a general council supersedes that of the pope and that frequent councils are essential for the proper governing of the church. My concluding question is whether and how we can trace this debate in what I have called the Age of Church Councils in the Nidaros province.

Cultural Adaptation and Integration of European Arts and Legal Traditions in Western Scandinavia 1217– 1387 *(Project Application Presentation)*

Stefan Drechsler (University of Bergen)

The aim of this project is to provide new and interdisciplinary insights into the international contacts of western Scandinavian cultures as reflected in the materiality and mediality of vernacular law manuscript production in 1217–1387. During that time, Norway reached an international level of recognition, where the kingdom largely imported and adapted cultural impulses from the medieval world through vastly expanding international trade and ecclesiastical networks. This project will study legal circumstances and artistic adaptations of this internationalisation by combining methodological approaches from the fields of Old Norse philology, art history and medieval history. It is claimed that the Scandinavian internationalisation is not only reflected in compilations of vernacular law codes and legal reforms related to the establishment of international trade. It had also strongly influenced the Nordic artistic landscapes.

Session 3: Recycling as a Mode of Norm Production

Tradition and Renewal in Magnús Hákonarson's Legislation until 1274

Már Jónsson (University of Iceland)

My argument will be that the Icelandic *Járnsíða* of 1271 and the Norwegian *Landslög* of 1274 were independently based on a text produced in Norway between 1267 and 1270 as some sort of a compromise between the older provincial laws of Gulapíng and Frostapíng. This text was first appropriated for extensive use in Iceland for all aspects of the law except for the use of natural resources. Subsequently it came to be used when *Landslög* was composed. The contours and contents of this document can be revealed by a close comparison of the relevant parts of *Járnsíða* and *Landslög* – and probably the latter lawbook preserves it better than the former. I will also contend that it will not be possible to determine whether this text indeed was a coordinated law for the whole of Norway, first promulgated at the Gulapíng in 1267 – as Ebbe Hertzberg claimed in 1890 – or a preliminary version put together by the king's good men as a first step towards the unification of Norwegian law.

Restructuring Medieval Commercial Law: Evolution of the Structure of the Section on Trade

Brage Thunestvedt Hatløy (University of Bergen)

The Norwegian Code of the Realm of 1274 shows signs of having been based on older Norwegian law, in the sense that the older laws have acted as a foundation for the new law to build upon. This is the case both for the legal content of the Code as well as the organization of individual chapters within the different sections (*bolks*), which I will refer to as the structuring of the sections. In my paper, I will show how the Section on Trade (*Kaupabolk*) in the Gulathing compilation is used as a foundation for the structuring of the corresponding Sections on Trade in the Code of 1274 and *Jónsbók*. The presence of the Maritime Law (*Farmannalög*) in *Jónsbók* causes some interesting differences between the three comparable sections, which may shed light on the process of how the laws were written and structured.

***Bréfabrot*: The Construction of a Legal Concept and the Administrative State**

Ole-Albert Rønning Nordby (University of Bergen)

At the end of the thirteenth century, a new term appeared in Norwegian administrative documents, a term which is nowhere to be found in the law books which formed the foundation for so much of the realm's legal practice. The term is *bréfabrot*, meaning the breaking of a written royal command. These commands took many forms: they could be formal amendments to the law books, verifications of gifts and judgements, protection issued for the life and property of specific institutions or people, and so on. Common in all these cases was the king's insistence that any breach of his commands would entail a large fine, which came on top of any fines due for legal offences already stipulated in the lawbook. The term *bréfabrot* thus referred both to the act of disregarding the king's written word, and the corresponding fine due to him. In my paper, I will examine the emergence of this legal concept, and what it can tell us about the relationship between law codes, like the *Landsløg*, and the legal amendments and edicts that were given from the end of the thirteenth century onwards. Why was a new and conceptually distinct fine, which only applied to the latter, useful and necessary for the Norwegian rulers? Secondly, I will try to say something about the emergence of written administration more generally, by examining how the concept of *bréfabrot* could make administrative documents more authoritative and threatening.

Session 4: Recycling and Creatively Compiling Legal Documents

Grágás Compilations and Ideas of Codification

Patricia Pires Boulhosa (University of Cambridge)

I will explore how modern ideas of legal codification have influenced our understanding of the two major *Grágás* compilations, GKS 1157 fol. *Konungsbók Grágásar* and AM 334 fol. *Staðarhólsbók Grágásar*, and, as a result, our understanding of early Icelandic law. I will compare the material in these manuscripts with that found in fragments such as AM 315 a fol. I will consider the inadequacy of our theoretical language when dealing with this Icelandic material and suggest alternative ways of approaching it.

When Text Meets Text: The Dynamics of a Composite Manuscript

Anna Catharina Horn (University of Oslo)

The aim of my paper is to discuss possible readings of the law compilation GKS 1154 fol. Codex Hardenbergianus based on the composition and contents of the texts incorporated in the manuscript over time. Central questions are: how will a text be read and understood when new texts are added? How will the reception of a manuscript as a whole change when new texts are added? The two earliest codicological units of the manuscript, one produced in Bergen c. 1350–60, and the other produced in Niðaróss c. 1450, have been supplemented by several legal amendments and statutes during the 15th and 16th century, and by the mid-16th century, the two units were bound together with a third unit. In this period, the archbishop of Niðaróss strengthened his position towards the king, who resided abroad most of the time. GKS 1154 fol. seems to have been in the centre of this development, and I hope the examination of the manuscript will provide us with more knowledge about the supplementation and use of this manuscript.

Session 5: Textual Mobility and Legal Change

Manuscript Contexts of the *Kristinréttir Árna Þorlákssonar* in the Fourteenth Century

Elizabeth Walgenbach (Árni Magnússon Institute)

This talk will focus on fourteenth-century manuscripts of the *Kristinréttir Árna Þorlákssonar*, the “new” Christian laws for Iceland. I will specifically be exploring the relationship between the Christian laws and the texts that were transmitted with them in the same manuscripts, including *Jónsbók* and the *Kristinna laga þáttir* but also much briefer texts--amendments or short, often translated, excerpts of canon law treatises. Examining these texts can help us to better understand how the *Kristinréttir* was used and situated within the Icelandic legal landscape in the fourteenth century. I will focus in particular on a text called the “leyfi kardinála,” the “dispensation” or “permission” of the cardinal (in this case Cardinal William of Sabine/Modena) as well as several shorter texts that are often lumped together by cataloguers under vague terms such as “kirkuréttarlegt efni,” but are themselves an integral part of many fourteenth-century Icelandic law manuscripts, not an afterthought or later addition to them.

Textual Moveability and Manuscript Transmission in Early-Modern Scotland

Adelyn Wilson (University of Aberdeen)

Law clerks have been identified as among some of the most diligent and careful copyists of manuscript texts. However, transmission of legal texts through manuscript copying still allowed for variations to arise through both error and intent on the part of the copyists. Likewise, subsequent users could amend and develop their copies in ways which could become permanently embedded within a wider family of associated manuscript texts. This variation could range from large sections of text being added or removed, to changes in patterns of authority, to minor changes in phraseology. These changes could vary the nature (or perceived nature) and reputation of a text as understood by contemporaneous and subsequent readers. This paper will explore some of the circumstances under which such variations arose, and the impact of these variations on the texts and their understanding. It will do so with reference to examples drawn from two different genres of Scottish legal manuscript literature from the early-modern period.

Single Leaves as Carriers of Law Amendments (*Réttarbœtr*) in Medieval Norwegian Law Manuscripts

Stefan Drechsler (University of Bergen)

The practice of using single leaves as individual carriers of *Réttarbœtr* seems to have lived for a long time, as the sheer number of these single leaves found in the Norwegian law manuscripts and fragments is impressive. Although they initially seems to provide a momentary function for particular legal actions, they were added later. Both the variety of scribes and a diverging manuscript design indicate individual productions and use of these single leaves. Law amendments that survived in single leaves often feature specific regulations, while general *Réttarbœtr* appear more often incorporated into the main texts. With particular focus on the law manuscripts Isl. Perg. 4:o 33 Kongsbókin, Isl. Perg. 4:o 29 and AM 309 fol., I wish to discuss a number of codicological and philological aspects of single leaves as individual carriers of *Réttarbœtr*. The overall aim is to show the potential importance of this practice for our understanding of the use of these *Réttarbœtr* in both legal-historical and material philological contexts of medieval Norway.

