Quantitative Approaches to Medieval Swedish Law

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By

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PREFACE

This book has, conceptually at least, developed over a good number of years. Already prior to finishing my doctoral dissertation in 2014, the embryo of an idea to conduct some type of quantitative assessment of the legal provisions in the Nordic, or at least Swedish, medieval laws had taken hold. During the course of the work with my doctoral dissertation – consisting of a comparative analysis of legally regulated kingship in medieval Denmark, Norway and Sweden – I had identified a striking lack of quantitative overviews or assessments of what the various laws actually contained in terms of how they cover different fields of law and which prescribed consequences they include.

To remedy this situation, I started to slowly but steadily draft ideas of what such a study could look like. This occurred during a period after defending my doctoral dissertation when I had just moved from being a mainly qualitative scholar, working with text analyses, to establishing myself as a mainly quantitative scholar, working with statistics and big datasets. I had actually thought I was over and done with researching legal history save for perhaps an occasional article. Instead, I took on the rather ambitious and challenging task of conducting a major quantitative study in medieval legal history – arguably the first of its kind – in parallel with all my other demanding, and entirely different, research undertakings.

At first, I envisioned including all fully preserved medieval Nordic laws – the Danish, Icelandic, Norwegian as well as the Swedish ones – in my planned monograph. The comparative inter-Nordic aspects of such an ambitious research undertaking would have yielded extremely interesting results in a number of ways. However, this soon proved to be an unrealistic endeavour in terms of the amount of work and time required to finish such a project. To conduct a quantitative assessment of the preserved Swedish medieval laws had, from a practical point of view, to be enough for now.

As opposed to most studies in legal history (or history in general for that matter), the analyses of this book mainly operate on a macro-historical level rather than a micro-historical level. This means that not all problems concerning the individual laws as sources or regarding the interpretations of individual legal provisions or phenomena can or will be dealt with here. The state of current research with relevance for the key questions addressed in

this book is, furthermore, rather elusive as this research occurs scattered throughout the literature in frequently more implicit than explicit statements. It is for this reason that I decided to employ the approach of structuring the empirical chapters according to hypotheses formulated on the basis of a holistic reading of existing scholarship instead of relating my research questions to particular works of scholarship.

Macro-history and micro-history – as well as quantitative *versus* qualitative studies – require, by necessity, different approaches, methods, and interpretive frameworks. Systematic comparative and quantitative studies are comparatively rare in historical research. Interestingly, the authors of many of the existing ones are actually researchers with a background in other disciplines than history. Perhaps it is telling, in this light, that I not only hold a PhD and an Associate Professorship in History, but am also an Associate Professor of Physical Geography.

The use of quantitative methods in legal history may be seen, by some, as contrary to the very epistemological foundations of this field. It is entirely true that the highly complex law material is reduced into a limited number of parameters with the use of quantitative methods. This is, however, the strength of the analyses presented in this book as this allows to more easily identify major trends, similarities, and differences between them. The criticism that has been raised against quantitative historical scholarship, and perhaps by some will be directed against this work as well, partly stems from a lack of understanding that the analytical framework of a quantitative study is quite different than for a qualitative study; it may, wrongly, be perceived as rather 'descriptive' if qualitative scholarship is set as the benchmark. Epistemological issues aside, my hope is that this study will serve as a source of inspiration, or even as a kind of guidebook, for how to employ quantitative methods in the study of pre-modern legislation from other periods and regions.

I want to express my great gratitude to the Royal Swedish Academy of Letters, History and Antiquities and Riksbankens Jubileumsfond for funding the work with this book within the project 'TTT: Text till tiden! Medeltida texter i kontext – då och nu.' My stays as Visiting Scholar at the University of Cambridge between 2017 and 2019 offered time to plan for and begin working on this book, while my 2019–2020 year as an 'in residence' fellow at the Swedish Collegium for Advanced Study, Uppsala, provided an excellent opportunity to begin finalising the empirical research presented in this book. Stockholm University Library has, as always, been very helpful through its excellent and rapid service in providing me with

needed special, occasionally rare, literature even during the height of the covid-19 pandemic and during holiday times in summer.

My gratitude goes to a number of persons that have lent me valuable assistance and provided helpful input on aspects of this work. I would like to especially mention historian Dr Maria Wallenberg Bondesson, The Institute for Futures Studies, and legal scholar Lecturer Carolina Saf, Södertörn University. Input on particular parts of the book has been given by Professor of Scandinavian languages Roger Andersson, Stockholm University, historian Professor Kurt Villads Jensen, Stockholm University, and literary historian Professor Daniel Sävborg, University of Tartu. Andreas Wadensjö has professionally reformatted the references to Cambridge Scholars Publishing house style. The English language has been much improved through thorough proof-reading by my mother Hélène Charpentier of an earlier version of the manuscript, and of the final version by Dr. Gwendolyne Knight who polished the text and, as a native English speaker, in particular did an excellent job with correcting idiomatic mistakes. Finally, I want to especially thank TTT project leader Professor Jonas Nordin, Lund University, for his great patience and support for the study from beginning to end.

Fredrik Charpentier Ljungqvist
Stockholm University, December 2021

NOTE ON TRANSLATIONS AND ABBREVIATIONS

Note on the English translation of concepts and names

The noun 'law' in this book refers mainly to acts of legalisation, i.e., the Swedish medieval laws, although it occasionally refers to a legal system or the contents of law. The Old Swedish *landsskap*, and modern Swedish *landskap*, have been translated as 'province.' The Old Swedish *laghsagha*, or modern Swedish *lagsaga*, defining a jurisdiction, has been translated as 'legal district.' The Old Swedish *landsþing*, or modern Swedish *landsting*, has been translated as 'provincial legal assembly.'

The Old Swedish noun *balker* has been translated as 'codes'; the alternative translations 'books' or 'sections,' favoured by certain authors, are unsuitable considering that modern Swedish law is still divided into *balkar*, for which the official English translation is 'codes' (e.g., *Äktenskapsbalken* is translated as the Marriage Code). The Old Swedish noun *flokker* is translated as 'chapters.'

Translations of the names of the laws

In translating the names of the medieval Swedish laws, I have strived to remain as close as possible to their common names in modern Swedish. Thus, for example, I have translated *Östgötalagen* as 'the *Östgöta Law*,' as the name refers to the legal district of Östergötland. The alternative translation 'Law of the Östgötar,' favoured by certain authors, would instead refer to the inhabitants of the legal district of Östergötland, which its Swedish name does not. My English translation of *Magnus Erikssons landslag – Magnus Eriksson's Law of the Realm* – is admittedly somewhat freer. Here, I have attempted to follow the medieval connotation of 'landslag,' which refers to the realm, while 'land' typically otherwise in Old Swedish referred to the individual province (or, sometimes, legal district).

Translations of the names of the codes

My translation of the code names in the laws has not been literal. It has instead aimed to capture the actual legal content of each code while still, as

far as possible, keeping the title in line with the Old Swedish original. The translation of the code names from the *Uppland Law* can be taken as an example. While Church Code, King's Code, Inheritance Code, Land Code, and Trade Code are direct translations of, respectively, *Kirkiu balkær*, *Kununx balkær*, *Ærfþæ balkær*, *Jorþæ balkær*, and *Kiöpmalæ balkær*, other code names have been translated more freely to better capture their actual meaning for modern readers. The *Manhælghis balkær* has been translated as Personal and Property Protection Code, as it contains property crimes as well as violent crimes, while Old Swedish *manhælghi* refers to 'sanctity of man,' which may wrongly be interpreted as protection only for a person. The *Wiþærbo balkær* – in other laws called *Bygninga balkær* or *Bygningabalker* – is translated as Building and Community Code, as this translation best captures its actual legal content. Finally, the *Þingmalæ balkær* is translated as Judicial Process Code as this corresponds most closely to modern legal terminology.

Abbreviations of the laws

GL	The *Guta Law*
VgL1	The *Older Västgöta Law*
VgL2	The *Younger Västgöta Law*
ÖL	The *Östgöta Law*
DL	The *Dala Law*
UL	The *Uppland Law*
VL	The *Västmanna Law*
SL	The *Södermanna Law*
HL	The *Hälsinge Law*
MEL	*Magnus Eriksson's Law of the Realm*

Other abbreviations

Ger	German
OSw	Old Swedish
Sw	Swedish

Use of italics and small caps

Besides the conventional use of *italics*, e.g. for marking laws, book titles, and non-English words, italics are used in this book to emphasise fields of law sub-categories, while SMALL CAPS are used exclusively to emphasise main categories of fields of law and prescribed consequence categories.

CHAPTER 1

INTRODUCTION

The research problem

'Quantitative legal history is in a rather sorry state.' With these words the American legal scholar Daniel Klerman introduces the use of quantitative methods in legal history in his chapter on the topic in *The Oxford Handbook of Legal History* from 2018.[1] It is perhaps slightly misleading to claim that the use of quantitative methods in legal history 'is in a rather sorry state': They have, in fact, been employed so rarely that it is more appropriate to contend that they are in no state at all. This is especially the case regarding studies within legal history of the European medieval and early modern periods. When quantitative methods have been used, even in their simplest forms, it has mainly been for studying the development of case law in comparatively modern times.[2]

The very nature of legal history – law in historical times – and most research problems addressed by this field, preclude the use of quantitative approaches or, at the very least, are ill-suited for them.[3] A legal method to approach historical legislation and case law has therefore, for good reason, been prevalent within the field. This dominance of the legal method has been reinforced through the traditionally close association between legal history and legal scholarship.[4]

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[1] David Klerman, "Quantitative Legal History," in *The Oxford Handbook of Legal History*, ed. Markus D. Dubber and Christopher Tomlins (Oxford: Oxford University Press, 2018), 344.

[2] Regarding the latter, see e.g. Stephen Robertson, "Searching for Anglo-American digital legal history," *Law and History Review* 34 (2016), 1047–1069; Gavin Wright, *Sharing the Prize: The Economics of the Civil Rights Revolution in the American South* (Cambridge, Mass.: Harvard University Press, 2013).

[3] See Markus D. Dubber, "Legal history as legal scholarship: Doctrinalism, interdisciplinarity, and critical analysis of law," in Dubber and Tomlins (eds.), *Oxford Handbook of Legal History*, *passim*.

[4] Leading principles of legal analysis, influential also on the field of legal history, have been outlined in, for example, Benjamin N. Cardozo, *The Nature of the Judicial*

Certain research problems in legal history are nevertheless, to a greater or lesser extent, quantitative in nature. Quantitative statements are unavoidably made – even when the framework of study is entirely qualitative – with regard to, for example, differences or similarities of legal phenomena between various laws, at least in studies with comparative ambitions. One typically encounters statements such as 'this law contains harsher penalties than that law' or 'this law has a larger focus on these fields of law.' A more systematic application of quantitative methods has in many cases the potential to distinguish, or indeed reveal, patterns and trends in a more robust way that can be replicated by other scholars wishing to test the validity of various claims. Studies of this type are, to date, virtually non-existent in legal history.

For one reason or another, the use of 'big data' and the application of methods from the expanding field of digital humanities have hitherto been nearly absent within the study of legal history of the medieval and early modern periods.[5] A possible reason for this is the misconception that the volume of preserved legislation or court decisions would be insufficient to facilitate the application of quantitative methods in a meaningful way. This is certainly not the case for legislation from the Late Middle Ages, or for early modern court decisions, for much of Europe. Even for a comparatively peripheral region of Europe such as Sweden, the corpus is large enough to allow for meaningful quantitative assessments back to the Late Middle Ages for legislation, and back to the early modern period for court decisions.[6]

Process (New Haven: Yale University Press, 1921) as consisting of: (a) the method of analogy or logic, (b) the method of searching for the historical origins of the legal rule, (c) the method of considering custom and tradition to evaluate expectations, and (d) the method of sociology to consider justice, reason, utility and what constitutes the common good.

[5] A major exception, and a source of inspiration and methodological foundation for this book, is Arne Jarrick and Maria Wallenberg Bondesson, *The dynamics of law-making: A world history* (Stockholm: Kungl. Vitterhets historie och antikvitets akademien, 2018). This monograph, and its many pioneering aspects, have regrettably been neglected by many in the international research community; the work by Jarrick and Bondesson will be further addressed below in Chapter 1 and also in Chapter 2. The prospects of applying methods from digital humanities in legal history research, including text mining (which was not used for this study), have been discussed briefly by Anselm Küsters, Laura Volkind, and Andreas Wagner, "Digital Humanities and the State of Legal History: A Text Mining Perspective," *Journal of the Max Planck Institute for European Legal History* 27 (2019), 244–259.

[6] Examples of research that has used the late medieval court decisions from the City of Stockholm, preserved in *Stockholms stads tänkeböcker* (available from 1474

What has instead been the limiting factor has arguably been epistemological challenges, along with an unfamiliarity of quantitative methods among legal historians, as well as the absence of a methodological framework for conducting these types of studies. Comparative studies of social phenomena, such as legislation, are dependent on clear and systematic classification systems, allowing for comparability of the variables to be studied. Systematic classification systems are arguably even more critical for quantitative than qualitative comparative research, and the lack of such a classification system, or a similar tool, in the study of pre-modern legislation has until recently hampered the prospect of large-scale quantitative comparative studies in medieval or early modern legal history.[7]

In any quantitative assessment of a societal phenomenon, like legislation, it is crucial to apply a consistent scheme of classification and coding. Only through such a rigid procedure is an unbiased comparison of the contents of laws achievable, as the laws themselves classify legal provisions in different ways and show different levels of legal abstraction. Fortunately, a systematic classification system has recently been developed by the Swedish historians Arne Jarrick and Maria Wallenberg Bondesson, which operates independently of cultural context.[8] The foundation for the quantitative analyses in this book is a modified version of this classification system as described in Chapter 2.

Purpose and aims

This book aims to systematically investigate, for the first time, the similarities and differences between ten of the fully preserved medieval

onwards), include Eva Österberg and Dag Lindström, *Crime and social control in medieval and early modern Swedish towns* (Uppsala: Studia historica Upsaliensia, 1988); Niklas Ericsson, *Rätt eller fel? Moraluppfattningar i Stockholm under medeltid och vasatid* (Stockholm: Almqvist & Wiksell International, 2003).

[7] For the latter, see Susan Reynolds, "Early Medieval Law in India and Europe: A Plea for Comparisons," *The Medieval History Journal* 16 (2013), 16.

[8] This classification system was first published in Arne Jarrick and Maria Wallenberg Bondesson, "Flexible comparativeness: Towards better methods for the cultural evolutionary/historical study of laws," in *Organizing history: Studies in honour of Jan Glete*, ed. Anna Maria Forssberg, Mats Hallenberg, Orsi Husz, and Jonas Nordin (Lund: Nordic Academic Press, 2011), 179–199. It is much more extensively described in Jarrick and Bondesson, *Dynamics of law-making*. For a shorter summary, see Arne Jarrick and Maria Wallenberg Bondesson, "What can be understood, compared, and counted as context? Studying lawmaking in world history," in *Methods in world history: A critical approach*, ed. Arne Jarrick, Janken Myrdal, and Maria Wallenberg Bondesson (Lund: Nordic Academic Press, 2016), 147–184.

Swedish laws (originating between *c*. 1225–1350), and their legal provisions, through employing mainly quantitative methods. Emphasising change over time, and differences between regions within the medieval Swedish Realm, four major research questions have been formulated: (1) What major structural differences can be detected between the laws? (2) What differences in the proportion of legal provisions within various fields of law can be found between the laws? (3) What differences in prescribed consequences can be found between the laws? (4) What differences can be found between the laws in the proportion and type of civil law, criminal law, procedural law and public law, or in the proportion of casuistic *versus* abstract law?

These four major research questions will be answered by testing hypotheses that have been formulated based on what can be characterised as a holistic reading of existing scholarship. As similar research questions to those addressed within this book have not been systematically pursued before, the state of current research is very ambiguous and even, in some cases, obsolete (see below). Thus, instead of seeking a point of departure in specific literature for each and every one of the formulated hypotheses, they are formulated on the basis of immense cumulative reading of medieval, especially Nordic, legal history over the course of more than fifteen years. The hypotheses will be presented in the beginning of each empirical chapter. Answering them through the use of mainly quantitative methods will contribute to the reassessment of some long-standing problems in Swedish medieval legal history.

The medieval Swedish Realm is a particularly suitable test bed for the application of quantitative methods to historical legislation for several reasons. Nine fully preserved provincial laws and one law for the entire realm were codified over a relatively short period of time. They originated in a politically, socially, and culturally relatively coherent – yet within this framework still somewhat diverse – setting, which allows for a comparison across both space and time. The town laws have been excluded from this study since the societal and political conditions in the towns were very different in a number of respects from those in the countryside.

The quantitative methods employed in this book can readily be applied to other collections of pre-modern laws. Thus, this book can be said to also have the character of a case study – with the function of a handbook – for how to apply a range of basic quantitative methods to the study of historical laws. The investigation of the relative proportion of different fields of law and of different prescribed consequences can improve our understanding of what type of legal system the laws represent and, ultimately, what type of society they reflect. At the same time, the limitations of this book ought to

be stressed. It is *not* directly addressing the form and exact content, such as legal rules, of the various legal provisions within the laws.

State of research

Comparative studies, which may even contain quasi-quantitative elements, have long been a staple in the field of legal history.[9] Nevertheless, genuine comparative studies have remained rather rare. Studies of the development of legalisation within one or several historical cultural areas have frequently been conducted in a far from systematic way.[10] Furthermore, they have for the most part focused on relatively modern law, and more on civil law than on criminal law, while comparative research on older civil law has garnered less interest.[11] A larger comparative scope has, in general, come at the expense of empirical precision in the study of pre-modern legislation. Traditional scholarship within legal history – regardless of whether the authors have been historians or legal scholars – has either lacked a comprehensive comparison between a larger number of laws *in extenso*, or been characterised by insufficient empirical or methodological rigor when such attempts have been made. A prominent exception is the very early extensive empirical comparative study of legislation from Antiquity by the British legal historian Sir Henry J.S. Maine, published in 1861.[12] Otherwise, studies such as the rather imprecise comparison of historical Chinese legislation with historical European legislation by the German sociologist Max Weber have been more typical.[13]

During the twenty-first century several scholars have emphasised the need for large-scale comparative studies in legal history to overcome such

[9] For an updated overview of the use of quantitative methods in legal history scholarship, see first and foremost, Klerman, "Quantitative Legal History". See also, for example, Jonathan Rose, "English Legal History and Interdisciplinary Legal Studies," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (London: Routledge, 2005).
[10] Jarrick and Bondesson, *Dynamics of law-making*, 32.
[11] See, for example, Markus D. Dubber, "Comparative criminal law," in *The Oxford Handbook of Comparative Law*, ed. Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2019).
[12] See, in particular, Henry J. S. Maine, *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (London: John Murray, 1861).
[13] See, e.g., Max Rheinstein (ed.), *Max Weber on Law in Economy and Society* (Cambridge, Mass.: Harvard University Press, 1954), 54, 184–186, 236–237, 242, 264.

empirical and methodological limitations.[14] The relative lack of more comprehensive comparative research in legal history, including the lack of quantitative elements, entails the risk that the origin of specific legal provisions is wrongly sought entirely in the local political or cultural context. Frequently, similar – or even identical – pieces of legislation may occur widely across regions with different socio-political and cultural settings, making such local explanations insufficient.

Certain large-scale trends in the development of legislation have been highlighted in scholarship with larger comparative ambitions. Arne Jarrick and Maria Wallenberg Bondesson have distinguished a distinct tendency in the world history of legislation to go from a more loosely to a more clearly organised structure of law. They found that the oldest law collections were typically structured around a number of basic principles, which appear to be mixed or to occur side by side in the text without any obvious hierarchy. Over time, the law collections gradually became both more abstract and more hierarchically organised. Furthermore, they concluded that each legal provision came to include an increasing number of rules.[15]

Other trends that have been observed in European, even Eurasian, legal history over time is the transition from a dominance of casuistic law to a dominance of abstract law (see also Chapter 5). Another development over time is an increase in attention paid in the legislation to the perpetrator's or tortfeasor's intent behind a criminal or harmful act in relation to the prescribed consequences. Furthermore, laws have tended to show a higher degree of complexity over time as well as be more well-balanced in terms of the proportion of legal provisions devoted to different fields of law.[16] A number of scholars have also noted that the punishments tended to become harsher in the Late Middle Ages in Europe, with a more frequent use of capital punishments. Furthermore, more numerous and different types of execution methods, including torturous ones, were introduced in this period.[17]

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[14] Douglas A. Knight, *Law, Power, and Justice in Ancient Israel* (Louisville: Westminster John Knox Press, 2011), 37–38; Thomas Duve, "Global legal history: A methodological approach," *Working paper published by Max Planck Institute for European Legal History research paper series* (Frankfurt am Main: Max Planck Institute for European Legal History, 2013), 21.

[15] Jarrick and Bondesson, *Dynamics of law-making*, 308–354 *et passim*.

[16] Jarrick and Bondesson, *Dynamics of law-making*, 89–21 *et passim*.

[17] Steven Spitzer, "Notes toward a theory of punishment and social change," *Research in Law and Sociology* 2 (1979), 207–229; Keith F. Otterbein, *The Ultimate Coercive Sanction. A Cross-Cultural Study of Capital Punishment* (New Haven: HRAF Press, 1986), 78–82, 85–109; Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York City: Viking Books, 2011), 132–133. These

The lack of more comprehensive comparative studies on medieval Swedish law, the topic of this book, is very striking. Quantitative assessments regarding the similarities and differences between the medieval Swedish laws on a more structural level are virtually non-existent. Most of the existing research about the relationship between the laws relates to specific legal provisions, or particular fields of law, and it has largely been based on philological approaches. Furthermore, many of the scattered statements that one does find *en passant* in the literature about differences and similarities between the laws appear to be based on the general impression of the authors rather than genuine empirical studies aimed at investigating these.[18]

Extant comprehensive studies that to some extent assess and compare the overall content of the different medieval Swedish laws are rather dated. Some were even written over a century ago. For example, comparisons of fines in the different laws are explored in monographs by Carl G.E. Björling from 1893, Ragnar Hemmer from 1928, and Torsten Wennström from 1940.[19] These monographs, however, treat the fines without any rigorous comparative method, going through law collection by law collection, obscuring the differences and similarities between the them. Still, these studies are hugely important as the size of the fines, and their division among parties, have played a large role in the study of the relationship between the laws, and in attempting to determine the age, stage of legal development, and character of individual legal provisions.

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conclusions were also confirmed by the findings of Jarrick and Bondesson, *Dynamics of law-making*, 232–241.

[18] Some of the hypotheses used to date the laws, or assess their relationship, have even had questionable foundations. An example is the hypothesis that women once, during the Viking Age (*c*. 790–1100), would be on an approximately equal social standing with men, at least in terms of inheritance, and that the medieval Swedish laws represent a supposedly gradual progressive deterioration of these inheritance rights, see the discussion in Elsa Sjöholm, *Sveriges medeltidslagar: Europeisk rättstradition i politisk omvandling* (Stockholm: Institutet för rättshistorisk forskning, 1988), 44–45. Åke Holmbäck, *Ätten och arvet enligt Sveriges medeltidslagar* (Uppsala: Almqvist & Wiksell, 1919), 133, even suggested – without much foundation – that women were on the way to receiving equal inheritance rights with men in medieval Swedish law when Birger Jarl supposedly reversed this development in the mid-thirteenth century by giving daughter's half the inheritance right of sons.

[19] Carl G. E. Björling, *Om bötesstraffet i den svenska medeltidsrätten* (Lund: Gleerup, 1893); Ragnar Hemmer, *Studier rörande straffutmätningen i medeltida svensk rätt* (Helsingfors: Helsingfors universitet, 1928); Torsten Wennström, *Brott och böter: Rättsfilologiska studier i svenska landskapslagar* (Lund: Gleerupska universitetsbokhandeln, 1940).

The most extensive treatment, to date, of the differences and similarities between the medieval Swedish laws is arguably found in the comprehensive introductions and comments by the legal scholar Åke Holmbäck and the philologist Elias Wessén in their translations of the laws into modern Swedish published between 1933 and 1962.[20] Furthermore, similar statements – representing the state-of-the-art understanding at the time – are found in individual articles of the encyclopaedia *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid* (1956–1978).[21] Some of the more important statements from both Holmbäck and Wessén and *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid* will be recapitulated here.

The laws from the Svealand region, with the possible exception of the *Dala Law*, are considered to represent a more advanced stage of legal development than those from the Götaland region.[22] Among the Swedish provincial laws, the *Older Västgöta Law* is considered to represent the oldest stage of legal development, the *Östgöta Law* an intermediate stage of legal development, and the *Uppland Law* the most advanced level of development.[23] Furthermore, it has been noted that the *Guta Law*, the *Older Västgöta Law*, the *Younger Västgöta Law*, and the *Hälsinge Law* have distinctive special rules for fines and their division compared to the other medieval Swedish laws.[24]

It is well established that the *Uppland Law* was the major foundation for the *Västmanna Law*, and partly also for the *Södermanna Law* and the *Hälsinge Law*.[25] While containing many particular legal features, the *Södermanna Law* is nevertheless considered to contain substantial direct

[20] Åke Holmbäck and Elias Wessén (eds. and trans.), *Svenska landskapslagar: Tolkade och förklarade för nutidens svenskar* (Stockholm: Geber, 1933–1946); Åke Holmbäck and Elias Wessén (eds. and trans.), *Magnus Erikssons landslag* (Stockholm: Institutet för rättshistorisk forskning, 1962).

[21] Ingvar Andersson and John Granlund (eds.), *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid*, vol. 1–22 (Malmö: Allhem, 1956–1978).

[22] Åke Holmbäck and Elias Wessén, "Inledning," in *Magnus Erikssons landslag*, ed. Åke Holmbäck and Elias Wessén (Stockholm: Institutet för rättshistorisk forskning, 1962), xvi.

[23] Åke Holmbäck and Elias Wessén, "Inledning," in *Svenska landskapslagar: Tolkade och förklarade för nutidens svenskar*, vol. 1, ed. and trans. Åke Holmbäck and Elias Wessén (Stockholm: Hugo Gebers förlag, 1933), xxii, xxi.

[24] Gösta Hasselberg, "Böter. Sverige," in *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid*, vol. 2 (Malmö: Allhem, 1957), 519.

[25] Jan Liedgren, "Landskabslove. Sverige," in *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid*, vol. 10 (Malmö: Allhem, 1965), 232.

loans from the *Uppland Law*.[26] More importantly, Holmbäck and Wessén have emphasised that the *Västmanna Law* can be characterised as a revised version of the *Uppland Law*. The near identical legal provisions in the *Västmanna Law* typically appear in a shorter form than in the *Uppland Law*. Some alterations have also been made to adjust certain provisions to the legal traditions of the Västmanland legal district.[27]

Holmbäck and Wessén have rather extensively assessed the relative influence of the different provincial laws on *Magnus Eriksson's Law of the Realm* from *c*. 1350. They found that its King's Code was mostly built on royal ordinances from the preceding two decades.[28] The Marriage Code, Inheritance Code, Land Code, Building and Community Code, and Trade Code were found to be mostly built on the *Östgöta Law*, the *Uppland Law*, and the *Västmanna Law*.[29] A very minor influence of the *Younger Västgöta Law* and the *Södermanna Law* is also claimed. The Judicial Process Code of *Magnus Eriksson's Law of the Realm* differs substantially from the provisional laws, but shows the greatest similarity with the *Uppland Law* and the *Västmanna Law*, and a lesser similarity with the *Östgöta Law*. Conversely, the *Östgöta Law* played the largest role for the King's Sworn Peace Code, Lèse-majesté Code, Deliberate Manslaughter Code, Accidental Manslaughter Code, Deliberate Assault Code, Accidental Assault Code, and Theft Code in *Magnus Eriksson's Law of the Realm*. An influence from *The*

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[26] Elias Wessén, "Södermannalagen," in *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid*, vol. 18 (Malmö: Allhem, 1974), 9–12.

[27] 'Västmannalagen kan kanske riktigast karaktäriseras som en moderniserad Upplandslag, i vilken inskott skett av äldre rättsbud från den västmanländska lagsagan,' quotation from Holmbäck and Wessén, "Inledning," in *Magnus Erikssons landslag*, ed. Åke Holmbäck and Elias Wessén (Stockholm: Institutet för rättshistorisk forskning, 1962, xv. The *Västmanna Law*, and its relationship with the *Uppland Law*, is very similarly expressed by Jan Liedgren, "Västmannalagen," in *Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid*, vol. 20 (Malmö: Allhem, 1976), 342.

[28] Holmbäck and Wessén, "Inledning," xxxiii–xxxviii. See also Gabriela Bjarne Larsson, *Stadgelagstiftning i senmedeltidens Sverige* (Stockholm: Institutet för rättshistorisk forskning, 1994), 43 *et passim*.

[29] Holmbäck and Wessén, "Inledning," xxxiii–xxxiv. Concrete examples of comparisons between the treatment of different fields of law in the *Östgöta Law*, the *Younger Västgöta Law*, and the *Uppland Law* are provided in Appendix 1 of Holmbäck and Wessén, "Inledning," li–lv. Holmbäck and Wessén noted that for the many (near) identical chapters in the *Uppland Law* and the *Västmanna Law*, usually the shorter form in the latter law has been used as a template for *Magnus Eriksson's Law of the Realm*.

Uppland Law, *The Västmanna Law* and *The Södermanna Law* has been proven as well.[30]

Rather extensive comparisons of the differences between many of the medieval Swedish laws, although only within restricted fields of law, have also been conducted by legal historian Elsa Sjöholm. However, her aim was to evaluate the political strength of the Crown and the Church rather than to comprehensively evaluate the structural differences between the laws in terms of their legal content. Of relevance here, though, is her conclusion that the *Södermanna Law* has a more advanced systematisation of its legal content than the *Uppland Law*, and that the *Östgöta Law* contains a particular mixture of older and newer legal provisions.[31]

Several newer studies have also noticed similarities and differences between the various medieval Swedish laws. Two monographs are worth particular attention. Christine Ekholst has studied and compared, in great detail, women as legal subjects and women's criminal liability in the laws.[32] Certain comparative and quantitative assessments of most of the Danish, Norwegian and Swedish laws have previously been conducted by the present author in his study of law-regulated kingship *c*. 1150–1350. It was, among other things, concluded that the Swedish laws tended to become longer over time both in number of chapters and number of words. Furthermore, the number of chapters in a given law was found to correlate strongly with its number of words. Likewise, the proportion of entries about the King/Crown was found to increase in the newer laws.[33]

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[30] More recently, Charlotte Cederbom, *Married Women in Legal Practice Agency and Norms in the Swedish Realm, 1350–1450* (New York and London: Routledge, 2020), 12–13, has stated that *Magnus Eriksson's Law of the Realm* was primarily based on the *Östgöta Law* and the *Uppland Law*. In particular, she has drawn attention to that the *Östgöta Law* has heavily influenced the Marriage Code of *Magnus Eriksson's Law of the Realm*.

[31] Sjöholm, *Sveriges medeltidslagar*, 239–240 *et passim*.

[32] Christine Ekholst, *A punishment for each criminal: Gender and crime in Swedish medieval law* (Leiden: Brill, 2014). Cederbom, *Married Women*, can also be mentioned as this monograph includes quantitative assessments of the actual legal practice of married women's agency in the Swedish Realm 1350–1450. Cederbom created a database with information about different aspects of married women's legal agency, to reveal trends and tendencies over her study period, based on the information from more than six thousand original charters pertaining to women and their agency.

[33] The number of entries about the King/Crown was calculated per 1000 words in the laws. For practical purposes, the legal subjects receiving (parts of) fines were divided into only four categories: the King, the Church, the local society and the plaintiff. Furthermore, the division of all crimes resulting in fines was only made

This outline of the state of current research, of relevance for the questions addressed in this book, is far from all-inclusive. It is particularly challenging to summarise all assumptions and conclusions that have been made with regard to differences and similarities between the various medieval Swedish laws, as they are frequently more implicit than explicit, and occur scattered throughout the literature. For this reason, as described above, hypotheses have been formulated on the basis of a holistic reading of existing scholarship. These hypotheses do not, for the most part, take a point of departure in specific works of scholarship. Instead, they are founded on the present author's comprehensive reading of medieval Nordic, as well as general European, legal history scholarship for more than fifteen years. Much, although far from all, of this literature is referred to in different contexts throughout the book.

Historical context

For the benefit of readers less familiar with medieval Scandinavia, and medieval Sweden in particular, a brief overview of the historical context in which the laws under examination originated is provided here. The formation of the three Nordic kingdoms of Denmark, Norway, and Sweden occurred during the Viking Age (*c*. 790–1100).[34] Consolidation into more stable and centralised political entities followed periods of civil wars during the twelfth and early thirteenth centuries.[35] Medieval Scandinavia, consisting of these three kingdoms, is frequently viewed as a region distinct

into three broad categories: violent crimes, crimes against property and breaches of societal order. A division was also made between smaller fines, of less than 3 *marker*, and larger fines, exceeding three *marker*, see Fredrik Charpentier Ljungqvist, *Kungamakten och lagen: En jämförelse mellan Danmark, Norge och Sverige under högmedeltiden* (Stockholm, Stockholms universitet, 2014), 353–362.

[34] The borders between the three Nordic kingdoms remained more or less the same from the end of the Viking Age (*c*. 1100) until the mid-seventeenth century. This border stability for such a long period was something rather unique in a wider European perspective as have been emphasised by Sverre Bagge, "Skandinavisk statsdannelse," in *Statsutvikling i Skandinavia i middelalderen*, ed. Sverre Bagge, Michael H. Gelting, Frode Hervik, Thomas Lindkvist, and Bjørn Poulsen (Oslo: Dreyer, 2012), 35.

[35] A good overview in English, albeit with some bias towards the Kingdom of Norway, is given in Sverre Bagge, *Cross and Scepter: The Rise of the Scandinavian Kingdoms from the Vikings to the Reformation* (Princeton: Princeton University Press 2014).

and separate from continental Europe, especially by non-Nordic authors.[36] While this view is questionable, it is true that the region shared particular characteristics that distinguished it from other portions of Europe.

This similarity between the three medieval Nordic kingdoms is most evident in a mutually understandable Nordic language (called in the Middle Ages *dǫnsk tunga*), a collective Viking Age heritage, and a comparatively late Christianisation occurring around the year 1000.[37] Furthermore, the three Scandinavian kingdoms showed numerous similar features in their legal systems, political institutions, kinship patterns, and social conditions. Their far-northern location, and access to long coast-lines with many inlets, gave rise to partly similar material conditions. The historical Middle Ages, as defined by a source material of locally produced written records, is commonly regarded to first have started around 1100.[38] Compared to much of continental Europe and the British Isles, most of Scandinavia remained an overwhelmingly rural society. Towns were few and far between and they were mainly a late medieval phenomenon. Even the villages, in general, tended to be smaller than further south in Europe throughout the Middle Ages.[39]

Despite such an apparent relative similarity between the three medieval Nordic kingdoms, as well as within them, considerable differences existed both between and within them, and, at the same time, the similarities with the rest of Europe were very large.[40] In fact, each region within medieval Europe showed its own particular features – thus, Scandinavia was one of

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[36] See, for example, Robert Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change, 950–1350* (Princeton: Princeton University Press, 1994). This book is characterised by, and has been criticised for, operating with a rather explicit centre–periphery model.

[37] Nora Berend (ed.), *Christianization and the Rise of Christian Monarchy: Scandinavia, Central Europe and Rus' c. 900–1200* (Cambridge: Cambridge University Press, 2007); Anders Winroth, *The Age of the Vikings* (Princeton: Princeton University Press, 2014).

[38] Discussed in, for example, Fredrik Charpentier Ljungqvist, *Den långa medeltiden: De nordiska ländernas historia från folkvandringstid till reformation* (Stockholm: Dialogos Förlag, 2015).

[39] Regarding the size of medieval Europen cities in general, see Paul Bairoch, Jean Batou, and Pierre Chèvre, *Population des villes européennes de 800 à 1850: banque de données et analyse sommaire des résultats* (Geneva: Droz, 1988).

[40] Knut Helle, "Towards nationally organised systems of government: Introductory survey," in *The Cambridge history of Scandinavia 1: Prehistory to 1520*, ed. Knut Helle (Cambridge: Cambridge University Press, 2003), 345–352; Knut Helle, "Conclusion," in *The Cambridge history of Scandinavia 1: Prehistory to 1520*, ed. Knut Helle (Cambridge: Cambridge University Press, 2003), 771–800.

numerous more or less distinct regions in Europe.[41] It is worth emphasising, for readers unfamiliar with medieval Nordic history, that since the twelfth century the Nordic countries were a firmly embedded part of the medieval Roman Catholic world as much as, e.g., England, France, or Poland.[42]

Like in many other parts of Europe, the power of both the Crown and the Church expanded in the Nordic countries during the twelfth and thirteenth centuries. This process occurred more slowly, and was less pervasive, in Sweden than it was in Denmark and Norway.[43] Sweden remained a looser federation of provinces until the reign of King Gustav I (Vasa) (*r*. 1523–1560).[44] The growth of ecclesiastical and royal power during the twelfth and thirteenth centuries occurred in parallel to political centralisation, institutionalisation, hierarchisation, and territorialisation. At the same time, the judicial sphere was marked by an increasing, albeit still limited, literacy – demonstrated first and foremost by the introduction of written law (see further below).[45]

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[41] Thomas Lindkvist, "Sveriges medeltida europeisering," in *Forskning om Europafrågor vid Göteborgs universitet 2005*, ed. Rutger Lindahl and Per Cramér (Gothenburg: Centrum för Europafrågor vid Göteborgs universitet, 2006), 125–154.

[42] For a comprehensive presentation in English, see Philip Line, *Kingship and state formation in Sweden, 1130–1290* (Leiden: Brill, 2007).

[43] See mainly Ljungqvist, *Lagfäst kungamakt*, and the references cited there-in. Other overviews of the expansion of the royal power in medieval Sweden are, for example, given in Hans Jägerstad, *Hovdag och råd under äldre medeltid: Den statsrättsliga utvecklingen i Sverige från Karl Sverkerssons regering till Magnus Erikssons regeringstillträde (1160–1331)* (Lund: Lunds universitet, 1948), 42, 50–52, 247; Corinne Péneau, "La table du royaume: L'image du roi dispensateur de la justice en Suède (XIV^{e}–milieu du XV^{e} siècle)," in *Le roi fontaine de justice: Pouvoir justicier et pouvoir royal au Moyen Âge et à la Renaissance*, ed. Silvère Menegaldo and Bernard Ribémont (Paris: Klincksieck, 2012), 242, 245, 263; Fredrik Charpentier Ljungqvist, "Legitimising royal power in medieval Scandinavian laws," in *Nordic Elites in Transformation, c. 1050–1250, Volume III: Legitimacy and Glory*, ed. Wojtek Jezierski, Kim Esmark, Hans Jacob Orning, and Jón Viðar Sigurðsson (New York/Oxon: Routledge, 2020), 105–126.

[44] Examples of the limited degree of integration between different parts of the Swedish Realm are given in Carl Göran Andræ, "Några tankar kring sädesmått, mynträkning och riksenande i Sverige," in *Studier i äldre historia: Tillägnade Herman Schück 5/4 1985*, ed. Robert Sandberg (Stockholm: Stockholms universitet, 1985), 33–47.

[45] Inger Larsson, "The role of the Swedish lawman in the spread of lay literacy," in *Along the oral–written continuum: Types of texts, relations and their implications*, ed. Slavica Ranković, Leidulf Melve, and Else Mundal (Turnhout: Brepols, 2010), 411–427.

During the thirteenth century, the Kingdom of Norway incorporated islands in the North Atlantic that had been settled mainly by Norwegians during the Viking Age, including the Shetland islands, the Hebrides, the Orkney Islands, Isle of Man, the Faroe Islands, Iceland, and the Norse settlements of southwestern Greenland.[46] Sparsely populated and previously independent Jämtland in the northern interior was likewise, through armed invasion, incorporated into the Kingdom of Norway.[47] The Kingdom of Denmark temporarily came into possession of Estonia and the south coast of the Baltic through armed conquest.[48] At around the same time, the Kingdom of Sweden took control over Finland and incorporated it into the realm.[49]

The initial formation of unified Christian kingdoms in the Nordic countries was, as mentioned above, followed by internal armed power struggles during the twelfth and thirteenth centuries. In Nordic historiography they have frequently been labelled 'civil wars.' They have been regarded, especially by the Norwegian medieval historian Sverre Bagge, as the consolidation phase for the medieval state formation process, as they resulted in a centralised political system with a greater royal control over the use of force.[50] An even more crucial role was played by the Roman Catholic Church for both the consolidation process of royal power, and for the increasingly closer integration with the political, legal and cultural systems prevailing in continental Europe and the British Isles.[51]

Around 1300 signs of crisis, as well as a stagnation of the earlier rapid population growth, had become evident in parts of Denmark and Norway.[52]

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[46] Imsen, Steinar (ed.), *Taxes, tributes and tributary lands in the making of the Scand-inavian kingdoms in the Middle Ages* (Trondheim: Tapir Academic Press, 2011).

[47] Olof Holm, "Social och ekonomisk stratifiering i Jämtland 800–1600," *Collegium Medievale* 23, 114–148.

[48] Eric Christiansen, *The Northern Crusades* (London: Penguin Books Ltd, 1997), 50–72.

[49] Christiansen, *The Northern Crusades*, 122.

[50] Sverre Bagge, "Borgerkrig og statsutvikling i Norge i middelalderen," *Historisk tidsskrift* 65 (1986), 145–197.

[51] Nils Blomkvist, *The discovery of the Baltic: The reception of a Catholic world-system in the European north (AD 1075–1225)* (Leiden: Brill, 2005); Nils Blomkvist, Stefan Brink, and Thomas Lindkvist, "The kingdom of Sweden," in *Christianization and the rise of Christian monarch: Scandinaia, Central Europe and Rus' c. 900–1200*, ed. Nora Berend (Cambridge: Cambridge University Press, 2007), 167–213.

[52] Steensberg, Axel, "Archæological dating of the climatic change about A.D. 1300," *Nature* 168 (1951), 672–674; Terje Thun and Helene Svarva, "Tree-ring growth

Economic and political turmoil essentially dissolved the Kingdom of Denmark into fiefs held by foreign powers, including the Counts of Holstein and the King of Sweden, for a brief period in the first half of the fourteenth century.[53] The Kingdom of Norway, in particular, suffered from colder, and more variable, climatic conditions following the onset of the Little Ice Age at about the same time.[54] Eastern Sweden, on the other hand, enjoyed continued population growth and settlement expansion.[55] However, the Black Death in the mid-fourteenth century, and subsequent recurrent plague outbreaks, severely decreased the population and caused large-scale abandonment of farmlands in all the Nordic countries.[56] Nevertheless, the Kingdom of Norway suffered by far the worst, and never fully recovered from the crisis.[57]

By 1397 the three Nordic Kingdoms were joined in a dynastic personal union, known as the Kalmar Union, under *de facto* Danish overlordship. Despite that, from the 1430s and onwards much of Sweden (including Finland) essentially functioned as an independent political entity, and, following a number of wars of independence, the Kalmar Union formally dissolved in 1523. While Sweden regained independence as its own kingdom, Norway and its North Atlantic colonies were instead incorporated by force as provinces of Denmark as a by-product of the Reformation.[58]

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shows that the significant population decline in Norway began decades before the Black Death," *Dendrochronologia* 47 (2018), 23–29.

[53] Ingvor Margareta Andersson, *Erik Menved och Venden: Studier i dansk utrikespolitik 1300–1319* (Lund: Gleerupska, 1954).

[54] Heli Huhtamaa and Fredrik Charpentier Ljungqvist, "Climate in Nordic historical research – A research review and future perspectives," *Scandinavian Journal of History* 46 (2021), 665–695, and there-in cited literature.

[55] Per Lagerås, Anna Broström, Daniel Fredh, Hans Linderson, Anna Berg, Leif Björkman, Tove Hultberg, Sven Karlsson, Matts Lindbladh, Florence Mazier, Ulf Segerström, and Eva Sköld, "Abandonment, agricultural change and ecology," in *Environment, Society and the Black Death: an Interdisciplinary Approach to the Late-medieval Crisis in Sweden*, ed. Per Lagerås (Oxford: Oxbow Books, 2016), 30–68.

[56] Janken Myrdal, "The Black Death in the North: 1349–1350," Living with the Black Death, ed. Lars Bisgaard, and Leif Søndergaard (Odense: University Press of Southern Denmark, 2009), 63–84; Janken Myrdal, "Scandinavia," *Agrarian Change and Crisis in Europe, 1200–1500*, ed. Harry Kitsikopolous (London: Routledge, 2012), 204–249.

[57] Halvard Bjørkvik, *Aschehougs Norgeshistorie 4. Folketap og sammenbrudd: 1350–1520* (Oslo: Aschehoug, 1996).

[58] Harald Gustafsson, "A state that failed? On the Union of Kalmar, especially its dissolution," *Scandinavian Journal of History* 31 (2006), 205–220.

The Kingdom of Sweden differed in several important respects from the Kingdoms of Denmark and Norway. It contained vast inland regions, which complicated the integration of and communication between different parts of the realm. The individual provinces, often separated by large tracts of more or less uninhabited forest lands, remained more independent than those in Denmark or Norway. The Crown and the Church were able to exercise a lower degree of centralised power. The major population centres were the fertile plains of the Province of Västergötland in the southwest and the Province of Östergötland in the southeast, and especially the rich lowland regions around Lake Mälaren in the east, where Stockholm is located. The former two regions belonged to the Götaland region, whereas the latter region, the centre of the kingdom, belonged to the Svealand region.[59]

Medieval Sweden had very different political boundaries compared to present-day Sweden. The southernmost part of present-day Sweden – Skåne, Halland, and Blekinge – constituted eastern Denmark; Skåne was even one of the core parts of the Kingdom of Denmark. Bohuslän in the west, north of present-day Gothenburg, belonged to Norway, as did Härjedalen and Jämtland in the north.[60] The northern parts of present-day Sweden were hardly integrated into the kingdom at all, and were inhabited by a nomadic Sámi population.[61] The island of Gotland was an independent republic but accepted the King of Sweden as overlord.[62]

Finland was gradually incorporated into the Swedish Realm during the twelfth and thirteenth centuries as a result of armed invasions, labelled 'crusades,' against the still mainly pagan Finnish population. Even though settlements with a Swedish-speaking population may already have existed in coastal southwestern Finland, it was not until these 'crusades' that Finland, politically, became incorporated into the Swedish Realm and thoroughly Christianised. Finland became a fully integrated part of Sweden during the fourteenth century, and would remain so until the 1808–1809 war between Russia and Sweden when the Russian victory resulted in the

[59] Ljungqvist, *Lagfäst kungamakt*, 421–425 *et passim*.
[60] See especially the map in Ljungqvist, *Den långa medeltiden*, 77.
[61] Lars Ivar Hansen, "Norwegian, Swedish and Russian 'tax lands' in the North," in *Taxes, tributes and tributary lands in the making of the Scandinavian kingdoms in the Middle Ages*, ed. Steinar Imsen (Trondheim: Tapir Academic Press, 2011), 295–330.
[62] Tryggve Siltberg, "Medieval Gotland, 'Peasant Republic' and 'Skattland'," in *Taxes, tributes and tributary lands in the making of the Scandinavian kingdoms in the Middle Ages*, ed. Steinar Imsen (Trondheim: Tapir Academic Press, 2011), 237–264.