JOBNAME: No Job Name PAGE: 1 SESS: 11 OUTPUT: Fri Dec 7 14:01:52 2012 SUM: 857376E0
/v2503/blackwell/journals/hisr_v0_i0/hisr_12006

Toppan Best-set Premedia Limited	
Journal Code: HISR	Proofreader: Mony
Article No: HISR12006	Delivery date: 10 Dec 2012
Page Extent: 11	

The creation of a Scandinavian provincial law: how was it done?

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Abstract

It is well known that lawmaking was inseparable from kingship in England and on the continent and, therefore, there has been a predominant tendency to see medieval laws in Scandinavia in a regal context. In this context, the initiators of laws have been kings and men belonging to the upper stratum of society, and the laws themselves are seen as reflecting the societal situation when they were written down. This article focuses on 'peripheral' laws, such as the Icelandic *Grágás*, the main Svea law, the Uppland law and the Hälsinge Law. It attempts to show that such laws were not *inventions* of any one person or group in the thirteenth or fourteenth century, and that they cannot only be mirroring the time in which they were written down. Rather there are complex layers in the versions of these laws that we have: some old customary law, some probably newly composed law, some having their roots in Roman legal tradition and some in Canon law. The picture which emerges is much less clear-cut than has been supposed, showing many regional differences and peculiarities.

The Scandinavian provincial laws are the most important source we have for reconstructing our early medieval society (1100–1300), and some claim, or rather have claimed, that the same goes for the Viking age. From this well, historians, historians of law, researchers in agrarian history, cultural geographers and philologists can draw and have long drawn knowledge for their reconstruction of early Scandinavian society. However, not everyone can access primary and secondary sources from other cultures written in incomprehensible languages, as in our case, especially since the Scandinavian languages are so small in the great sea of languages, with very few speakers. One important task for us is hence to make accessible our major sources for international academic research. This insight was obvious to a master of the English language as well as the Scandinavian ones, namely the former professor of Scandinavian studies at University College London, Peter Foote. He spent much of his life studying, commenting upon and translating into English the most important Icelandic law, the *Grágás*, and he and his colleagues managed to publish a first volume in 1980 and a second, and final, in 2000.[1]

When working with the Scandinavian medieval laws alongside non-Scandinavian scholars, I could see the importance of doing something similar with the rest of the corpus. And there was also another issue that I thought could be solved in such a project. In Sweden, Norway and Denmark, all of the earliest laws have been translated into our national languages with commentaries. At least for Sweden, these translations

[1] *Laws of Early Iceland: Grágás, the Codex Regius of Grágás with Material from other Manuscripts*, ed. A. Dennis, P. Foote and R. Perkins (2 vols., Winnipeg, 1980–2000).

 DOI: 10.1111/1468-2281.12006 Historical Research, vol. ••, no. •• (•• 2012)
Published by Blackwell Publishing Ltd., 9600 Garsington Road, Oxford, OX4 2DQ, UK and 350 Main Street, Malden, MA 02148, USA.

and commentaries, made by the philologist Elias Wessén and the lawyer Åke Holmbäck, are extremely good, and I have the impression that the same is true for their Norwegian and Danish counterparts. However, there is one major problem with these editions, which is very noticeable when you read them: they were all produced in the nineteen-thirties and forties, and consequently long before the major settlement about the idea of a *Germanisches Urrecht* and the paraphernalia surrounding this concept. I saw here a possibility not only of producing a translation of the laws into an international language (the obvious choice today being, of course, English), but also of getting one of the foremost experts on each law to contribute a new introduction, and to write a new commentary section.

When I accepted a chair in Scandinavian studies at the University of Aberdeen, I saw a chance of realizing this idea. Together with many fellow researchers, such as Ditlev Tamm, Michael Gelting, Torstein Jørgensen, Thomas Lindkvist and others, a project was chiselled out and a successful bid was made to the Leverhulme Trust. This is a network project, relying on the unpaid work of fifteen distinguished researchers and around fifteen similarly distinguished scholars in an advisory group. Subsequently funding for this adventure has also come from the Royal Swedish Academy of Letters, History and Antiquities in Stockholm, the Royal Gustavus Academy in Uppsala, and several Danish funding bodies.

I would like to end this introduction by citing some wise words delivered by Kjell Åke Modéer in his closing statement at the first Carlsberg Conference on Medieval Legal History, where he talked about the important legacy of two of the most prominent legal historians in Sweden, Carl Johan Schlyter and Gösta Hasselberg. The latter, in his inaugural lecture in Uppsala, noted: 'Schlyter constructed the foundation, now it's up to you to build the house. You have to begin to write the history of the Swedish law'. 'Today', Modéer remarked, '35 years after Hasselberg's lecture, we have to accept that we, Nordic legal historians of today, to a great extent have failed to fulfil the mission of our close ancestors'.[2] My part in this revival of interest in our early laws is the effort – together with many colleagues – of trying to get these laws translated for an international audience, and to dress them in modern vesture, with an up-to-date introduction and wide-ranging and thought-provoking commentaries.[3] My personal interest in the legal material is trying to see how these laws are constructed, if there are identifiable layers in the laws, and so on.

It is well known that law-making was inseparable from kingship in England and on the continent, as, in recent times, is perhaps best articulated by the late Patrick Wormald.[4] As a result, there has been a tendency to study, indeed an entirely new way of perceiving, the medieval laws in Scandinavia in a regal context, where the initiators of laws were kings and men belonging to the uppermost stratum in society. As a natural con of this new understanding of our early laws in Scandinavia, it has also been stressed that the lawmakers relied on continental jurisprudence during the middle ages, and many scholars have been able to show clear links between these Scandinavian lawmakers and continental law-schools and legal practice. It has been evident during the last thirty years or so that Scandinavian lawmakers very much worked within a

[2] K. Å. Modéer, 'Nordic medieval laws revisited', in *How Nordic are the Nordic Medieval Laws?*, ed. P. Andersen, D. Tamm and H. Vogt (2nd edn., Copenhagen, 2011), pp. 235–9 (at pp. 237–8).

[3] See <http://www.abdn.ac.uk/medieval-nordic-laws/> [accessed 14 Sept. 2012].

[4] P. Wormald, '*Lex scripta and verbum regis*: legislation and Germanic kingship from Euric to Cnut', in *Early Medieval Kingship*, ed. P. H. Sawyer and I. N. Wood (Leeds, 1977), pp. 105–38.

European judicial context. The focus of legal history in Scandinavia today – my perception is, obviously, a consequence of this situation – is on canon law. I would guess that the majority of scholars conducting research on our earliest laws in Scandinavia are canon lawyers, or historians or theologians who have as their main area of research the relationship between canon law and the early laws in Scandinavia, and the influence of canon law. Consequently, the emphasis in recent years has been on the Christian and ecclesiastical law sections in the law codes, the *Kirkiu balkar* and *Kristinn réttr*, but also on other sections in the laws where there is a demonstrable impact from canon and continental law. As a consequence, the secular law sections, which make up the larger part of the laws, have been, shall we say, 'under-researched'.

It was an eye-opener for me when the report from the first legal history conference in the Carlsberg Academy series reached me, with its collection of interesting articles. It was called 'How Nordic are our Nordic laws?', and the majority of the contributions focused on the links with and dependencies on continental law. If one were to consult the writings from the nineteen-seventies and eighties of the influential Norwegian legal historian Gudmund Sandvik, and of the similarly important Swedish legal historian Elsa Sjöholm, the answer would be that they are heavily, and in Sjöholm's view totally, dependent on continental jurisprudence and legal praxis.[5] The question in the conference title, which was probably supposed to be a little provocative – or at least that is how I understood it – therefore seemed to me, from a Swedish and Norwegian perspective, to be a little dated. I have, however, been told by a prominent Danish legal historian, Per Andersen, that an agreement similar to that which took place in Germany in the nineteen-fifties and sixties, and in Norway and Sweden in the nineteen-seventies and eighties, never occurred in Denmark – so from a Danish perspective, this tickling innuendo was seen as in order.

Modern research discussing the relationship with canon law – and also Roman law and continental medieval jurisprudence – has been vital and rewarding, and has shed new light on our medieval laws in Scandinavia. I suspect that many more interesting aspects, connections and influences will be brought to light on this theme in the future. In this article, however, I will try to engage with the tricky question of how these provincial laws were made. In this endeavour I will not discuss laws which are the obvious creations or initiatives of kings or the aristocracy, since they are clear evidence of and have been used to define the new stance which has been predominant, at least in Norway and Sweden, for decades. Instead I will turn first to the Icelandic situation, then to the main Svea law, the Uppland law, and finally to one of the peripheral Swedish laws.

Medieval Iceland has been described as a distinctly over-sanctioned society obsessed with law.[6] Law was part of everyday life and was perceived as such. This obsession with law and legal process is epitomized in *Njáls saga*. While philologists and historians have usually undertaken research on this theme, it is interesting to listen to a lawyer discussing Icelandic legal society.[7] In the opinion of American professor of law William Ian Miller, Icelandic law, in the form of the *Grágás*, 'contrasts . . . in every way with the patchy and interstitial quality of the Anglo-Saxon and continental barbarian codes. It

[5] G. Sandvik, 'Norsk rettshistorie i mellomalderen', *Jussens Venner*, vi–vii (1989), 281–310 and E. Sjöholm, *Gesetze als Quellen mittelalterlicher Geschichte des Nordens* (Stockholm, 1976), and *Sveriges medeltidslagar. Europeisk rättstradition i politisk omvandling* (Lund, 1988).

[6] W. I. Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago, Ill., 1990), p. 223.

[7] Miller.

is distinguished both by the range of its coverage and its detail within each area covered'.[8] The style of the *Grágás* and the bulk of its evidence show, in Miller's words, 'a cultural predisposition for law and lawmaking'.[9] He also observes 'that matters which elsewhere would have been handled in ecclesiastical jurisdiction were, in Iceland, secular matters'.[10] Finally, what makes the medieval Icelandic society so remarkable 'is that Iceland developed a legal system – courts, experts in law, rules clearly articulated as laws – in the absence of any coercive state institution';[11] hence no king made or enforced these laws.

Thanks to the early written sources we have some knowledge of how the *Grágás* came about. Ari the Wise tells us in his *Íslendingabók* (chapter ten):

> The first summer that Bergþórr [lawspeaker between 1117 and 1122] spoke the law, a new pronouncement was made that our laws should be written in a book at the home of Hafliði Másson the following winter, at the dictation and with the guidance of Hafliði and Bergþórr, as well as of other wise men appointed for this task.[12]

It was obvious to learned Icelanders that literacy was going to be important in the reproduction of legal culture, something which is stressed by the author of *The First Grammatical Treatise*,[13] one of the earliest texts in Old Norse, probably dating from the mid twelfth century. When this writing down of laws took place in Iceland, there must therefore have been an extensive body of laws readily available to the men entrusted with the task of writing a law book,[14] some, according to Peter Foote, from well before the advent of Christianity.[15] These must have been orally transmitted laws, legal customs and 'sayings', treasured and transferred by wise men knowledgeable in legal matters. The efforts of Hafliði and others did not result in one sanctioned book, but obviously in many books or manuscripts.[16] This, of course, could lead to disputes and problems of interpretation and precedence, so it was stated in the *Grágás* (*Konungsbók* §117):

> if books differ, then what is found in the books which the bishops own is to be accepted. If their books also differ, then that one is to prevail which says it at greater length in words that

[8] Miller, p. 222.
[9] Miller, p. 224.
[10] Miller, p. 223.
[11] Miller, p. 224.
[12] *Íslendingabók. Kristnisaga. The Book of the Icelanders: the Story of the Conversion*, trans. S. Grønlie (2006), p. 12.
[13] 'Í flestum lǫndum setja menn á bœkr annat tveggja þann fróðleik, er þar innanlands hefir gǫrzk, eða þann annan, er minnisamligstr þykkir, þó at annars sta[ðar hafi h]eldr gǫrzk, eða lǫg sín setja menn á bœkr, hver þjóð á sína tungu' ('In most countries men record in books either the (historical) lore (relating to events) that have come to pass in that country, or any other (lore) that seems most memorable, even though it (relates to events that) have taken place elsewhere, or men commit their laws to writing, each nation in its own tongue'); and '. . . til þess athægra verði at rita ok lesa sem nú tíðiz ok á þessu landi bæði lög ok áttvísi eða þyðingar helgar eða svá þau in spakligu fræði er Ari Þorilsson hefir á bækr sett af skynsamlgu viti' ('in order that it may become easier to write and read, as is now customary in this country as well [i.e., as in England], both the laws and genealogies, or interpretations of sacred writings, or also that sagacious historical lore that Ari Êorgilsson has recorded in books with such reasonable understandings') (*The First Grammatical Treatise*, ed. H. Benediktsson (Reykjavík, 1972), pp. 206–9, cf. p. 181).
[14] P. Foote, 'Oral and literary tradition in early Scandinavia: aspects of a problem', in *Oral Tradition, Literary Tradition: a Symposium*, ed. H. Bekker-Nielsen and others (Odense, 1977), pp. 47–55, at pp. 52–5; P. Foote, 'Some lines in *Logréttuþáttr*: a comparison and some conclusions', in P. Foote, *Aurvadilstá: Norse Studies*, ed. M. Barnes and others (Odense, 1984), pp. 155–64, at pp. 160–4.
[15] P. Foote, 'Reflections on *Landabrigðisþáttr* and *Rekaþáttr* in *Grágás*', in *Tradition og historieskrivning. Kilderne til Nordens ældste historie*, ed. K. Hastrup and P. Meulengracht Sørensen (Aarhus, 1987), pp. 53–64, at p. 63.
[16] Foote, 'Oral and literary tradition', pp. 53–4.

affect the case at issue. But if they say it at the same length but each in its own version, then the one which is in *Skálaholt* is to prevail.[17]

From this it is obvious that in early Iceland there existed no well-defined and sanctioned Law-Book, from which identical copies were made and used out in the country. Instead, there were successively several law-books, and probably other legal documents, used in the judicial process. Although Hafliði was given the job in 1117 of trying to collect scattered laws into a book, this was clearly not ratified as *the* Law-Book for Iceland, but was rather an attempt to collect and write down oral law.

This Icelandic law-making situation in some ways resembles the making of the Uppland law (U.L.; *Upplandslagen*), which was to be valid for the heartland of early medieval Sweden (*Svíþjóð*), the province of Uppland, and later on set a pattern for the other so-called *Svea* laws.[18] This law was collected and written in the late thirteenth century and ratified in 1296 by King Birger. Thanks to a unique royal ratification letter and the king's preamble ('Praefatio') to the law, we know about its background.

King Birger's ratification letter (D.S. 1154) says:[19]

Now our faithful servant Sir Birger, Lawman of Tiundaland, has credibly declared to us on behalf of all of them, who settle and live in the three folklands of Uppland, that in their law, who were scattered in several communities, there were some things not quite fair, some things obscurely stated and some things very difficult to comply with . . . we invited Sir Birger Lawman . . . that he together with the most knowledgeable men from each of the folklands should establish both what old law there has been and then what ought to be stated and compiled in new law. He fulfilled our assignment with utmost promptness and assigned to his help a commission of twelve men, who are here named: from Tiundaland *Mæstær* Andreas dean in Uppsala, our knights Sir Rødh Kældorson and Sir Benedict Boson, Ulf Laghmanzson, Hagbardh from Söderby, Andræs from Forkarby and Thorstæn from Sandbro; from Attundaland our knight Sir Filip the Red from Runby, Hakon Lawman, Æskil the cross-eyed, Sigurdh judge and Jon goose-shoulder; from Fjädrundaland Ulf from Önsta, Gøtrik and Ulvhedhin judge . . . After that all these men had carefully considered and examined old law, and formulated, compiled and supervised new law, they declared it at the thing assembly, with those listening, who were concerned. Thereafter, when the thing assembly in full agreement and without any contradictions had accepted the law, they came back to us . . .[20]

This statement is to be supplemented with what is written in the *Praefatio* to the new law:

Thus gives the sovereign king of the Svear and Götar, Birgir, son of King Magnus, to all of them, who live between the sea and Sagå river and Ödmorden, this book, which contains Vigher's *flockar* and Upplandic law . . . Lawmaker was Vigher the wise, pagan in pagan time ['Lagha yrkir war vighær spa. hæþin i hæþnum timæ']. What we find in his law which is for the benefit for all, we include in this book; that which is useless we will exclude. And everything which the pagan has not included, hence the Christian law and the church law ['cristnu ret oc kirkio laghom'], we shall add to the beginning of this book.[21]

In this letter and preamble it is therefore stated that the three folklands had their own – older – laws, and that King Birgir invited the lawman of the largest folkland,

[17] Dennis, Foote and Perkins, i. 190–1.

[18] Which were the Södermanna law (*Södermannalagen*), the Västmanna law (*Västmannalagen*), the Dala law (*Dalalagen*) and the Hälsinge law (*Hälsingelagen*).

[19] D.S. = *Svenskt Diplomatarium: Diplomatarium Suecana, i* (Stockholm, 1829–).

[20] My translation.

[21] My translation from Å. Holmbäck and E. Wessén, 'Upplandslagen', in *Östgötalagen och Upplandslagen* (Svenska landskapslagar, i, Lund, 1933), p. 7.

Tiundaland, 'together with the most knowledgeable men from each of the folklands [to] establish . . . what old law has been' and to elucidate what from the old laws ought to be included in the new law, as well as naming the men who should form the committee. The committee comprised twelve nominated delegates from the folklands: six from Tiundaland, four from Attundaland and two from Fjädrundaland. It is likely that the church's representative, Andreas And, and the three lawmen from each folkland were considered obvious members of the committee.[22] Andreas And, the dean in Uppsala, probably functioned as its secretary. He was the cousin of the lawman Birger Persson, had been educated in Paris, and was thereby probably knowledgeable in canon law. In the *Praefatio* these older laws are called Vigher's *flockar*, thus chapters or perhaps, in this case, collections. And here it is also stated that 'What we find in his law', if it was useful, was to be included in the new law-book. Vigher's *flockar* is hence an epithet used for the older laws, which were used and incorporated in the new Uppland law-book, while the 'Upplandic law', which is opposed to Vigher's *flockar*, must be understood as that part of the law which was newly made. Furthermore, it is notable that when the job was done, the committee had to go back to the assembly to get the new law accepted: 'they declared it at the thing assembly, with them listening, who were concerned', and this assembly must consequently be that of the whole province of Uppland.

Thus, if we are to believe these two records (as I do, having seen no evidence that they are fraudulent) they contain ample evidence that there must have been older laws, which were used when making the Uppland law. It is not explicitly stated if these earlier laws were written down or not. However, the translators of and commentators on the law, Elias Wessén and Åke Holmbäck,[23] note, with regard to the mention of laws of the three folklands, that in the Latin version of the king's ratification letter it says 'per plura volumina', which they believe may suggest that these laws actually were written down.

Holmbäck and Wessén point out another interesting circumstance of relevance to this question. In his chronicle of Sweden from the early sixteenth century Olaus Petri writes, in relation to a visit to Sweden in 1248 by the papal emissary William of Sabina, about a Swedish law-book which at this time was used in Uppland ('the Sweriges laghboock som thå brukades i Vpland'), and he cites from it.[24] This leads them to believe that the citation must emanate from a law for the Uppland folklands (or one of them) which is lost and otherwise unknown, if this mention of a law-book in 1248 is not what is alluded to in the ratification letter and the *Praefatio*, namely the so-called Vigher's *flockar*.

Elias Wessén has speculated about Vigher's *flockar*.[25] The latter word, O.N. *flokkr*, is, at least in Old Norse poetry, used for a collection of stanzas in a rather free order, in contrast to a *drápa*, which was a poem with a more rigid structure. He believes that the above mentioned 'per plura volumina' is to be understood as referring to the fact that the older laws were found in disordered collections, whereas the new law-book was well structured in *balkar*, balks, that is, books or chapters. I believe this speculation to be well founded. Wessén is also of the opinion that Vigher's *flockar* is used as a generic

[22] Holmbäck and Wessén, pp. 9–10, n. 11.
[23] Holmbäck and Wessén, p. 9, n. 8.
[24] Holmbäck and Wessén, p. 9.
[25] E. Wessén, *Svensk medeltid. En samling uppsatser om svenska medeltidshandskrifter och texter*, i: *Landskapslagar* (Stockholm, 1968), p. 20.

term for all the older law collections, which were, probably with conscious exaggeration, attributed to one man only, Vigher, who was probably a well-known lawman of the past. The background to such an attribution could be to 'copy', or provide a counterpart for, something which was written in the so-called 'Lawmen's chronicle' from Västergötland, an enumeration of the earliest lawmen in the province, where the first lawman is presented thus: 'The first [lawman] was Lum, and after him it is called Lum's law, because he is said to have thought out and made a large part of our laws. He was born in Vånga, and there he is lying in a mound, because he was a pagan'.[26]

There are thus indications and hints in the earliest law manuscripts and other documents from the thirteenth century that the laws, which by then had started to be written down for the different provinces, included older laws which were either oral laws or found in documents. This is, in my opinion, an important observation when we are discussing the earliest Scandinavian laws. Someone was thus given the order or mandate to write down a law, where newly composed law was sometimes obviously intermixed with earlier law.

I will end this article by demonstrating how this might have been done, by dissecting one of the most peripheral laws in Scandinavia, the law of the Hälsingar (H.L.). The Hälsinge law has seldom attracted any attention or been discussed in historical, judicial or philological research. The odd article describing the law code has been published in lexica and handbooks; the Old Swedish text was published by Carl Johan Schlyter in 1844;[27] it has seen two translations into modern Swedish; a philological doctoral thesis, dealing with the vowels in the codex where the law text survives, was published in 1905;[28] and a couple of articles have discussed the law. That is about it. The reason for this fairly parsimonious attitude is probably the fact that it is well known that the Hälsinge law is based on, or rather linked with, the Uppland law, so that parts of the latter were used when preparing the former. Some scholars have perhaps understood the Hälsinge law as merely an edition of the Uppland law – which is wrong – and therefore the former has been viewed as uninteresting. This is unwise and a significant mistake, especially if we want to try to understand the background to our earliest laws. I will try to explain why this is the case.

The attitudes that I have described above are related to this problem. We may take as an example of this stance the Danish historian Niels Skyum-Nielsen, who humbly declared of the Scandinavian laws: 'The provincial laws were created for the landowners and they are stamped with the self-centred view of the property-owning class'.[29] In Hälsingland a king or a king-like person was never, or very seldom, present during the middle ages, and this part of the world has never and still does not have any aristocracy. The land-owning class was the free farmers. The bishop was obviously

[26] My translation from Codex Holm. B59 p. 48r. (printed in *Äldre Västgötalagen och dess bilagor i Cod. Holm. B59*, ii, ed. P.-A. Wiktorsson (Skara, 2011), p. 193): 'Fyrsti war lumbær oc af honum æru lums lagh callæðþ fore þy at han sighs hawa huxæt oc gørt en mykin loth aff laghum warum. han war føðær i wangum oc þær liggær han i enom collæ fore þy at war han heðþen'.

[27] H. S. Collin and C. J. Schlyter, *Codex iuris Helsingici, Helsinge-lagen; Codicis iuris Smalandici pars de re ecclesiastica, Kristnu-balken af Smålands-lagen; et, Juris urbici codex antiquior, Bjärköa-rätten, Corpus iuris sueo-gotorum antiqui*, ed. D. C. J. Schlyter (Samling af Sweriges gamla lagar, iv, Lund, 1844).

[28] O. F. Hultman, *Hälsingelagen och Upplandslagens ärfdabalk i Cod. Ups. B 49: språkhistorisk undersökning* (Helsingfors, 1905).

[29] N. Skyum-Nielsen, 'Nordic slavery in an international setting', *Mediaeval Scandinavia*, xi (1978–9), 126–48, at p. 145.

active, but only during the phase when a law was written down in the fourteenth century (I will return to this below). A law like the one for the Hälsingians is therefore extremely interesting to analyse for understanding the earliest Scandinavian laws; is it an anomaly or does it also have something to say for other medieval laws?

Let us start with what we know or more certainly can reconstruct. There is one extant manuscript of the Hälsinge law, kept in the university library in Uppsala (Codex Upsaliensis, B49). It is notable that this manuscript was acquired by the then national antiquarian of Sweden, Johannes Bureus, during his journey to Norrland in 1600–1. Philologists and antiquarians have been able to show that at least four manuscripts of the law must have existed in the late fourteenth century. We know this because of three important letters from 1374, arising from official meetings which had taken place on the coast of Norrland to institute an inquiry about the border between Norway and Sweden, and hence also the border between Turku and Uppsala dioceses.[30]

All of these manuscripts should be seen as transcripts of a Hälsinge law which was 'made' around the middle of the fourteenth century. We are fairly sure that the person who ordered this law to be written down was the archbishop in Uppsala, Olof, also called 'sapiens', here meaning 'legally wise', obviously for his interest in collecting and writing down laws. It has furthermore been proposed that the editor and writer was probably a Dane. We can see this, for example, in the language and in the writer's knowledge of *Jyske Lov*. That the archbishop in Uppsala should have Danish clerics or writers around him at this time is very probable. For this task the writer obviously chose, or more likely had been ordered to use, the Uppland law as an aid, and to abridge, adjust and complement relevant parts of this law so that it would be suitable for – and most importantly be accepted by – the people living in the northern part of the archbishop's diocese, what is now called Norrland.[31]

When creating this Hälsinge law it must have been obvious to the people in charge of the project that they had to make a law which could be accepted by the people in Norrland, and consequently it should not deviate from the legal traditions in these northern provinces. This was obviously done by adjusting the parts used from the Uppland law to local customs, and by incorporating vital legal aspects from customary Hälsinge law, which means that an earlier Hälsinge law must have existed, or at least we must reckon with established legal customs, orally transmitted or written down – legal customs which could be called *Hälsinge law*. The implication is, as far as I can see, that since there was no medieval aristocracy here and no royal presence, this must have been a customary law for the people, for the provinces.

This conclusion is not in line with the discourse concerning medieval Scandinavian laws during the last couple of decades, where, for good reasons, this nineteenth-century egalitarian-peasant-society picture has been out of fashion. But I cannot explain away the fact that this kind of customary law, with no involvement from an aristocracy and probably not even a king, seems to have been in existence in an albeit certainly hierarchical medieval society of northern Sweden.

Here we have a law, constructed using the Uppland law as a model, written down somewhere between 1296 and the mid fourteenth century. There are therefore many similarities between the Hälsinge and the Uppland laws – some paragraphs even are

[30] For these important letters, see S. Brink, 'Mediality and usage of medieval laws: the case of the Hälsinge law', in *Liber Amicorum Ditlev Tamm: Law, History and Culture*, ed. P. Andersen and others (Copenhagen, 2011), pp. 71–4.

[31] See S. Brink, 'Hälsingelagens ställning mellan väst och syd, och mellan kung, kyrka och lokala traditioner', in *Kungl. Vitterhets historie och antikvitets akademiens årsbok* (2010), pp. 119–35.

identical. However, what makes the Hälsinge law interesting in a general discussion of the provincial laws of Scandinavia is where it differs from the Uppland law. In these cases we have to consider two possibilities: either new paragraphs have been composed and written down, or already existing law has been included. If we can show or intimate that a legal case in the H.L. is at a more archaic stage than in the U.L., this would suggest that this is existing law, which has been included in the written codex.

In general the chapters regarding *Manhelgdsbalken* (on personal integrity), *Jordabalken* (dealing with how to conduct farming), *Byalagsbalken* (concerning settlements and being a neighbour), *Köpmålabalken* (concerning trading) and *Rättegångsbalken* (dealing with legal procedures) are fairly independent from the U.L., although sometimes headings to paragraphs have been taken from it, occasionally not reflecting what is treated in the actual paragraph.

Most interestingly blood revenge is still in use in H.L. as an option for settling a homicide. The rules regulating this offence provide an excellent illumination of the degree to which the Hälsinge law was dependent on or influenced by Norwegian legal tradition. In H.L. *Manhelgdsbalken* 38 it says: 'If a man kills another man, and he admits to the killing, the injured family have the right to revenge or to take legal fine, whichever they like the most'. If the payment is accepted, the fine is seven *marker* in silver or the equivalent amount in money, which would be higher (see below). The king should have as his fine four *marker*. When describing this fine to the king a *hapax legomenon* is used, namely O.Sw. *wærold*, which has obvious affinities with O.E. *wergild* ('the value of a man'). Everyone who has observed this word has assumed it was borrowed from some West-Germanic language. It is, however, extremely difficult to see how a West-Germanic word could have affected Old Hälsingian in a direct way. No obvious and natural contacts can be assumed between the two. Instead, the natural source for this word would be Old Norwegian, and Old Norse legal and ecclesiastical language, which has many Old English loanwords. In our case the O.Häls. 'wærold', which is probably ultimately a borrowed O.E. *wergild*, has been confused with the word *verold* ('world').[32]

Furthermore, for a murder something called 'ætta(r)bot' ('ættæ bot') should be paid, indicating that this was an issue for the family at large. The payment to the parents for their son, sixteen *ørar*, is equivalent to two *marker*, which in another paragraph in the same chapter is called a 'bog', O.Sw. *bogher*, again a very interesting and unusual word, only found here in the Swedish laws. The word has been noticed and discussed, and the obvious connection is, of course, the Old Norse word *baugr*, hence the payment for an offence equivalent to twelve *ørar* (one and a half *marker*) silver. The original meaning of the word is of course 'ring', but it is here used as a payment. In western Scandinavia, before minted gold or silver came into use, a *baugr* was used as a medium of payment, but also for a fine of varying amounts for manslaughter, *weregild*; this fine for manslaughter was called *baugbót* or *bauggildr*, and someone who had, according to the law, an obligation to pay or receive this fine was called a *bauggildismaðr*. The payment of the fine *baugr* for manslaughter in early Iceland is described in a section of the law *Grágás*, called *Baugatal*. The word *baugr*, in simplex and in compounds, is well attested in the Gulating's and the Frostating's laws, where *baugar* in the plural is a term used for the fine for manslaughter, the *wergild*, which should be paid by a killer and his nearest male relatives to the victim's family, and where the *hǫfuðbaugr*, the 'head *baugr*', which

[32] Brink, 'Hälsingelagens ställning', p. 127.

was nine *marker* silver, hence six *baugar*, was the fine which should be paid to the killed man's son and father. The fine of sixteen *ørar* in silver in H.L. is to be transformed to money, 'penningar', in the ratio 3:4, hence the silver should be reduced by three quarters to adapt to the monetary system. This is then twelve *ørar*, exactly the same value for the *baugr* as in Norwegian medieval laws. This fact, of course, underlines the connection between H.L. and Norwegian laws. There can be no doubt, in my opinion, that we have here, again, in the case of the *bogher*, an obvious connection with the Old Norwegian legal world and its *baugr*, payment for manslaughter.[33]

We can continue with this theme of the links between the Hälsinge law and medieval Norwegian laws. In the paragraph regulating the treatment of the king's emissary, the 'konungsari' – which has the closest relative in Norwegian *ármaðr* – there is mention of how he should be received and accommodated, hence his hostelry. It says: 'Swa ær mælt wm konungx aræ friþ . . . æn i garþi þær sum han a wæzlu', that is, 'This is said about the peace of the king's *ari* . . . but in the farm, where he has a *wæzla*'. This last word, 'wæzla', only occurs here in the Old Swedish laws, but for anyone with knowledge of the medieval Norwegian laws, it is easy to connect this word to the well-known institution of *veizla*. It is, of course, the same word and the same institution – the king and his escort being given accommodation and food at a farm. Again, we can solve a unique problem in H.L. by going to the Old Norse language and laws, showing the affinity between the legal systems and vocabulary of the two.[34]

To understand how the Hälsinge law was constructed, it is also important to analyse how the institution of *ledung* is presented there. It is fairly easy to see that the overall structure of the administrative system, and especially the *ledung*, the naval defence organization, is modelled upon an Upplandic structure. In the latter the important districts are the *hundare*, hence the hundred, and its subdivisions, the *skeppslag* ('skip district'), the *åtting* ('the eight') and the *hamna*, the smallest district, meaning 'rowlock'. This *ledung* model is also found in the Hälsinge law, with different terminology, and this is important. This means, as I understand it, that a *ledung* organization was in existence before the law was written down and edited, with the Uppland law as a pattern. An older *ledung* organization has been adjusted to the Uppland model, but the terms have been kept. For example, the hundred, the *hundare*, is never mentioned, obviously because it had never existed or been in use in Hälsingland. We can see that the basic unit in this organization was the *skeppslag*, O.Sw. *skiplagh*. A subdivision was the O.Sw. *har* ('rowlock'), with a similar meaning and function as in the Uppland law, but deploying a local term. The basic judicial unit was the *land*, the province, and this was divided in three thirds, *tredingar*. The basic judicial division was the *tingslag*, which may have coincided with the parish.[35]

In summary, the law of the Hälsingar, although relying on the Uppland law from 1296, has traces of older law and legal cases, which make this rather unknown and seldom discussed provincial law extremely interesting when trying to understand the background to these early laws, and how some of the written laws were composed. In our case, a law has been composed and edited under the directorship of the Archbishop Olof in Uppsala in the first half of the fourteenth century. It relies on the fairly new Uppland law, but older legal customs, together with documents and lists of

[33] Brink, 'Hälsingelagens ställning', pp. 127–9.
[34] Brink, 'Hälsingelagens ställning', pp. 129–30.
[35] Brink, 'Hälsingelagens ställning', pp. 130–1.

special interest for the northern part of Sweden, have been included in this written version. An older written law of the Hälsingar, or at least testimonies of customary law used by the Hälsingar, must have been present when composing this written Hälsinge law. We have no idea of the age of this older law or these legal customs. The important thing we learn from this analysis is that the Hälsinge law is not the invention of someone in the early fourteenth century. It cannot only be mirroring the situation when it was written down. There are many layers in the versions we have: some old customary law, some probably newly composed law, some aspects taken over from the Uppland law. Some law rules have their roots in Roman legal tradition and some in canon law; some reflect the authority of the king in these provinces; some probably describe negotiations between the king and the provinces; but some definitely reflect old customary law for these provinces, and bearing in mind the discourse in legal history in Scandinavia during the last thirty to forty years, I think this is important to state.