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Local Disputes and the Role of the Royal Judiciary in Early 14th-Century Norway

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ABSTRACT

This chapter examines the local legal system in Norway in the early part of the 14th century by investigating legal practices recorded in four well-documented local disputes. I argue for the existence of a dual legal system that accepted as legal authorities both local opinion and decisions made by the royal judiciary. This resulted in a situation where feuding parties not only had to fight over truth, that is, to establish the facts about a case. They also had to create a context in which truth could be interpreted and established. Having recourse to two legal bodies, litigants had considerable opportunity to circumvent unfavourable decisions. Furthermore, comprehensive conflict resolution required that settlements be reached by both local opinion and the royal judiciary, and these settlements required negotiations between the parties involved and agents of the local communities and the royal judiciary.

Jeg ønsker i denne artikkelen å diskutere lokal rettspraksis i lys av forholdet mellom lokalsamfunn og sentralmakt i Norge på første del av 1300-tallet. Dette vil jeg gjøre ved å undersøke fire utvalgte lokale konflikter beskrevet i diplomaterialet. Et kjennetegn ved lokal konfliktløsning var at både lokal opinion og avgjørelser fattet i kongedømmets rettsinstanser ble tillagt autoritet. Et slikt "dobbelt" rettssystem ga partene utstrakt mulighet til å omgå ufordelaktige avgjørelser ved å appellere til andre rettsinstanser.

Analysen vil ta utgangspunkt i de involverte partene og deres strategier; et forhold som må sees i sammenheng med partenes rettslige kompetanse, noe som igjen henger sammen med forholdet mellom en muntlig og skriftlig kultur. Mens de fleste lokalsamfunn var kjennetegnet av høy grad av muntlighet, var kongedømmets sentrale rettsinstanser preget av utstrakt skriftbruk. Dette vil bli diskutert med utgangspunkt i Brian Stock's tese om textual communities, og supplert med begrepet traditional communities. Et "tekstlig samfunn" er et samfunn konstituert gjennom felles forståelse, tolkning og erfaring av et begrenset tekstkorpus; mens et "tradisjonelt samfunn" er konstituert gjennom felles forståelse, tolkning og erfaring av lokale muntlige tradisjoner. De utvalgte brevene viser hvordan konfliktene ble forsøkt avviklet i henholdsvis tradisjonelle og tekstlige samfunn, og hvordan de involverte partenes mulighet for gjennomslag var avhengig av deres respektive kompetanse innenfor disse "samfunnene".

Et gjennomgående trekk synes å være at konflikter ble avviklet gjennom kompliserte og langvarige prosesser som involverte både lokal opinion og kongedømmets sentrale rettsinstanser (som stort sett korresponderer med termene tradisjonelle og tekstlige samfunn). Evnen til effektivt å kommunisere avgjørelser fattet i ett "samfunn" over til et annet, for på den måten å kunne påvirke lokal opinion eller grunnlaget for avgjørelser fattet i kongedømmets sentrale rettsinstanser, synes å ha vært avgjørende for utfallet av konfliktløsningene.

Dette kan peke i retning av at mange lokalsamfunn manglet evnen til effektivt å avikle lokale konflikter; noe som kan knyttes an til statsutviklingen på 1100 – og 1200 – tallet. Perioden var kjennetegnet av at et lokalt forankret aristokrati, med viktige funksjoner innenfor lokal rettspleie, ble byttet ut med et "tjenestaristokrati", og at kongedømmets sentrale rettslige organer ble bygget ut. Dette kan ha svekket lokalsamfunnnenes evne til selv å løse konflikter, ved at lokalsamfunnene ble tømt for makt og ved at nye rettslige instanser kom i tillegg til gamle.

Norwegian historians traditionally have viewed the early part of the 14th century as the apex of an independent medieval Norwegian kingdom, which most scholars perceived as a *recht stat* [a state founded on the authority of the royal judiciary]¹. Few have specifically discussed the role of local communities within this *recht stat* and as a result there has been a tendency for scholars to assume that local communities used the legal system provided by courts and followed the laws of the royal judiciary. This corresponds with another assumption made by historians: that the peasant population found that using the services of the royal judiciary worked to their advantage². There are, however, scholars who object to certain aspects of this view. Steinar Imsen, who has investigated the communal system in the period after the 1270s, has pointed out that the local commune was a self-sufficient legal entity that resolved disputes through local commissions which based their decisions mainly on local opinion, while also looking to judgements made by the king and his judges as guidelines³. Kåre Lunden has pointed out that criminal cases involving local agents at the beginning of the 14th century could still, at least partially, be resolved locally in accordance to the code of honour⁴. Andreas Holmsen has emphasized that at the beginning of the 14th century the local royal administration was characterized by unruly and corrupt sheriffs⁵, a view supported by Jón Viðar Sigurðsson's research, which has emphasized the centralized character of the royal judiciary in the 12th and 13th centuries. Only a small number of royal officials were deployed in peripheral areas. Based on his study of Icelandic sources Sigurðsson has suggested that local jurisdiction was, for the most part, the responsibility of local guilds⁶.

I wish to explore the dynamics between *truth* and *context*, between *local opinion* and *decisions made by the royal judiciary* in the first part of the 14th century. Doing this means considering the implications of a crucial cultural aspect, literacy. Communication in local communities was predominantly oral; the royal judiciary, in contrast, thrived on textual communication. This is likely to have had practical implications for the settlement of local disputes, especially since disputes arbitrated in textual environments in most cases origi-

nated in oral environments. I will approach this topic through an adaptation of Brian Stock's concept of "textual communities"⁷. A textual community is a group of persons bound together by shared knowledge and interpretations of a textual corpus. Stock uses this concept to explain how the introduction of texts in pre-literate societies facilitated various changes within these societies, despite the fact that the majority of their members remained functionally illiterate. Texts were mostly transmitted to these communities by oral means. In this way large portions of society were bound together, through their common knowledge and understanding of written texts, in what Stock defined as textual communities. This in turn led to the transformation of oral discourse, which came to be governed by texts. The concept of textual communities can be used to describe fundamental aspects of the foundation of medieval states. Crown and Church established textual communities in order to transform society. The establishment of a textual community was epitomized by the introduction of a uniform law, such as Magnus the Law-Mender's Landslaw, for the entire kingdom of Norway in 1274.

Stock's concept of textual communities has both social and political implications. Power within textual communities depended on textual competence. A small minority of interpreters of texts, and a minority of communicators of textually-based knowledge, came thus to exert power over a large majority of illiterate recipients. I wish to expand Stock's perspective by adding the concept of *traditional* communities, that is communities bound together by shared knowledge and interpretations of a corpus of oral *traditions*. In the same way as power and authority within a textual community required extensive textual knowledge and understanding, power and authority within a traditional community was based on extensive knowledge and understanding of oral traditions and local opinion.

Medieval men thus moved between (at least) two types of communities, textual and traditional. Positions within these communities varied according to specific competences. For instance, influential members of local communities were likely to have enjoyed influential positions within traditional communities, as interpreters or communicators of oral traditions. Nevertheless, their positions within textual communities were likely to have been less prominent, depending on their particular level of textual competence. Similarly, we may assume that royal and ecclesiastical officials enjoyed influential positions within textual communities, as interpreters and communicators. Yet their positions within traditional communities is likely to have varied, according to the specific kind of relationship that officials had with particular local communities.

Norwegian rural society was, and still is, characterized by the absence of villages. It was, as a result, organized in *bygder*, i.e. clusters of individual farmsteads. This created the basis for a social and political structure that differed from most of continental Europe and the British Isles. Local communities were run by land-holding peasantry, and not dominated by feudal lords. This is reflected both in legal practices involving the active participation of local peasants, and in the production of legal documents, which were typically issued by local peasants and parish priests. The majority of medieval charters were issued as open letters, and presented as oral testimonies committed to writing by

the issuers themselves. The term *charter* will therefore be used in a wide sense of the word to denote a “written declaration meant to serve as evidence of actions of a legal kind, recorded in specific norms...”⁸

To examine the relationship between local communities and the central authorities four types of case have been selected. These are not only among the best documented disputes from this period, but they also involve different type of agents and so reveal different perspectives on this topic.

THE SANDVEN DISPUTE

The Sandven dispute, which took place in the parish of Vikøy located in the Fjord of Hardanger in western Norway, concerned the rights and privileges related to several boat houses at a farm called Sandven, located strategically by the sound of Nordheim. The dispute involved the influential Peter from Sandven and a group of farmers residing in the interior, in the small valley of Steinsdalen, where farmers lacked natural access to the fjord. Seven charters issued from 1316 to 1324 record the conflict⁹.

The dispute can be divided in three stages: an initial moment during which the dispute was partially resolved at local assemblies; a second stage in which the dispute was resolved at various tribunals attended by royal officials convened outside the community of Vikøy; and a final period in which the local community implemented decisions made by the royal judiciary.

In the initial stage the dispute was resolved at local venues according to the opinion of the traditional community. This stage is recorded by four charters that were issued by local commissions. These describe the legal practices carried out at local assemblies in addition to containing written testimonies¹⁰. The charters show that both parties conducted their cases by presenting conflicting local oral traditions, in the form of stories inherited from deceased ancestors. A lone attempt was made by Peter from Sandven to introduce textual evidence, but this was rejected as irrelevant by both his opponents and the assembly as a whole¹¹.

The dispute was partially resolved at a local assembly in 1317, when one of the representatives of the Steinsdalen party, Svein from Steine, publicly conceded the two disputed boat houses to Peter from Sandven. This solution came about as a consequence of Peter from Sandven having produced oral testimonies proving that the claims made by the Steinsdalen party did not represent a legitimate tradition: no one in the local community could remember that anyone had in the past made the claim that Svein from Steine had presented.

A few years later, around 1320, the dispute resurfaced, due to the unresolved legal status of another pair of boat houses. It was presented at a legal venue in Opedal in Hardanger, located outside the local community, and was presided over by a high-ranking royal official, *herra* [lord] Halkiæli. *Herra* Halkiæli issued a now lost document that was subsequently copied by a commission of four royal officials in Bergen. From there it was

dispatched to Oslo to be presented to the king. The king instructed his judge in Bergen to summon the parties, and, after inspecting *herra* Halkiæli's record, to pass judgement. The judge's ruling is lost, but there is no reason to doubt that it was issued.

The second stage of the dispute was clearly conducted and resolved by a textual community. The lengthy and textually-oriented process began in Hardanger, continued in Bergen and Oslo, and ended at the royal judge's court in Bergen. Although there is no explicit evidence for this, it seems reasonable to assume that Peter from Sandven, who is documented in other charters as holding minor royal offices and was the only one to profit from this process, was the driving force behind this stage of the process. Peter appears to have used his superior textual competence to have the dispute resolved in his favour by the (royal) textual community.

However, the dispute was yet to be fully resolved, as the royal judge's ruling, announced at this court in Bergen, still had to be implemented in the community of Vikøy. According to Old Norse law and contemporary legal practices, it was the role of the royal sheriff to oversee the implementation of judgements, and to take measures against any violations. In February 1324, Peter from Sandven complained that the Steinsdalen party had continued unlawfully to occupy two of the disputed boat houses, and so the Hardanger sheriff Peter Petersson convened an assembly at Sandven. This event, which is recorded in a single open charter¹², marks the third and final stage of the dispute, and a return of the legal process to the traditional community of Vikøy. The manner in which the settlement was implemented reveals that it was by no means a simple task or a straightforward process to enforce the decisions of the textual community. Appealing to the traditions of the oral community, Peter pursued a strategy of presenting a large number of witnesses who testified that the witnesses he had presented at the *herra* Halkiæli's assembly at Opedal were in fact the kinsmen of his opponent. Thus he returned the basis of the legal process to the traditions of the oral community. In so doing he neither presented the royal judge's previous (written) ruling, nor mentioned the textual legal process which had involved the king personally. Peter sought to influence local opinion by pointing out that the Steinsdalen party lacked support from a substantial part of their allies, i.e. men and women to whom they were related. To this strategy he added a more subtle approach. By introducing a royal sheriff and his assistant, both acting on his request, to the traditional community of Vikøy Peter sought to influence local opinion. This would not have been possible without first having had the dispute presented to and resolved by the textual community. Peter thus used the legal authority of a written judgement issued by a royal judge to gain the direct support of a cooperating royal sheriff. However, despite the presence of the royal official, the (royal) textual community decision was introduced *indirectly*, and in the guise of a traditional community decision.

The strategies implemented by Peter from Sandven show that to pursue his interests he had to engage with different tiers of legal authority, and that the traditional and textual communities both interacted and influenced each other. Initially, Peter attempted to introduce textual evidence at a local assembly, only to discover that this was of no interests to the traditional community. He then changed tactics, and sought to convince the

traditional community by arguing that the claims of his opponents did not represent a legitimate oral tradition. In the second stage of the dispute, he pursued his interests by presenting the dispute to the textual community, the royal judiciary. This strategy enabled him, in the third and final stage, to enforce a traditional community strategy of aiming to influence local opinion through the presence of the royal sheriff, whose authority would have impressed the Vikøy community members.

A similar process of implementing textual community decisions, i.e. judgements, by subsuming them to the opinion of the traditional community can be observed in a dispute that arose in the community of Høland, southeast of Oslo, in 1311. The dispute concerned rights to an outlying field named Snaramo between the farmers of Hornås and Rud and the owner of Komnes, a man called Grimi huit. The dispute had previously been presented to a royal judge named Thorer who ruled in favour of the farmers Hornås and Rud at a venue located outside Høland. A single charter issued by a local commission records how Thorer's previous ruling was presented to a local assembly as evidence complementing oral depositions that confirmed the content of Thorer's charter. It adds the details of how two, presumably deceased, men had previously testified that the farmers of Hornås and Rud possessed the same privileges in the disputed property of Snaramo – an outlying field – as the farmers of Komnes (information on which the royal judge is likely to have based his decision)¹³.

In these cases it appears that the litigants sought the services of the royal judiciary because it offered a means of breaking local legal deadlocks. As Peter from Sandven's maneuvers showed, influencing the opinion of the traditional community appears to have remained the decisive element. These cases also demonstrate that introducing the decisions of the textual community into these traditional communities could prove a delicate matter, and that the ability to communicate the decisions and opinions of one community to the other constituted a crucial factor in the success or failure of a case.

THE RØDUNGEN DISPUTE

The Rødungen dispute concerned the ownership of a mountain lake called Rødungen, located near the settlement of Ål in the valley of Hallingdal in central Norway. The dispute involved two local farmers, Hallvarðr bonde from Stave, who claimed not to have received due payment for the lake, and Arne Jorunnar son, who had purchased it. Four documents from 1309 and 1310 record the dispute¹⁴. The parties met in mid-August 1309 in Ål before an assembly led by the parish priest and his colleague from Eidfjord (a distant parish located in Hardanger). Hallvarðr presented his case, and included the testimony of two witnesses to the actual transaction, and summoned his opponent to appear before a *fimptar stefno* [a local tribunal] scheduled to be held in Ål within five days. Arne failed to attend the scheduled assembly. This did not deter Hallvarðr from presenting his case at the *fimptar stefno*, which included testimonies both to the summons and to the transaction. The events of the two assemblies, the initial assembly and the *fimptar stefno*, were recorded in a report addressed to the king in Oslo¹⁵. Hallvarðr's

attempt to have the dispute resolved locally by submitting it to the traditional community at the *fimptar stefno* in Ål failed all the same, as his opponent, Arne, is recorded to have continued to use and be in possession of the disputed lake.

Within a month, Hallvarðr travelled to Oslo, where he presented his case to the king, who responded by instructing four men from the province of Valdres, including the royal senior ombudsman in Valdres, *herra* Sigvatr from Leirhol, to investigate and decide the matter¹⁶. The four-man commission convened an assembly in Ål the following spring and inspected the depositions recorded in the previously issued report, which had been presented to the king¹⁷. It decided that not only was the lake to be returned to its previous owner, Hallvarðr, but he was also to receive compensation for Arne's unlawful use of the lake. Their decision was recorded in a *processus* [a full transcript of the case] addressed to the king. Once again, Arne was absent from an assembly to which he had been summoned¹⁸. However, this time, his evasiveness did not work to his advantage. It failed to hamper the work of the commission, which seems to have influenced local opinion in Hallvarðr's favour. Hallvarðr is recorded to have regained possession of Rødungen following this assembly.

Having been defeated, both in the eyes of traditional and textual communities, Arne was forced to pursue a different strategy. Five months later he summoned Hallvarðr to the royal judge's court in Bergen accusing him of having unlawfully seized Rødungen. Hallvarðr responded by presenting a combination of textual evidence, and oral testimonies. The royal judge rejected Arne's complaint, and confirmed the previous judgement¹⁹.

Hallvarðr's strategy seems in many ways to mirror that of Peter from Sandven as discussed above. Initially, he sought unsuccessfully to resolve the dispute by recourse to the traditional community. His failure indicates that Arne enjoyed substantial local support. Hallvarðr's response was to present the dispute to the royal judiciary, and thus pursued a decision from the textual community in order to influence the traditional community.

What differentiates the Sandven and Rødungen disputes were the measures taken to implement decisions made by the officials of the two kings, Hakon and Magnus. Whereas king Magnus instructed his judge in Bergen to resolve the Sandven dispute at his court in 1324, thirteen years earlier his grandfather, king Hakon, had instructed a commission to undertake the same assignment, but to conduct their investigations within the community of the dispute. That King Hakon, an experienced and dedicated administrator, was sensitive to the difficulties of implementing textual community decisions in traditional communities is demonstrated by his instruction to the commission to travel to Ål to inspect a document which he had himself previously seen in Oslo before they made their decision. Hakon's solution was to have the commission impress traditional community opinion through its presence and activities.

The outcome of the Rødungen dispute was a complete victory for Hallvarðr, who had managed to obtain a favourable textual community decision that thereafter was skillfully presented to the traditional community of Ål, thus influencing local opinion in his fa-

voir. This must have been a shattering blow to his opponent, whose strategy depended on local support. Having lost it, Arne was forced to pursue a new strategy in his attempt to reverse the situation. He approached the royal judge in Bergen in order to reopen the dispute. He clearly hoped to obtain a different decision from another textual community interpreter, which could then be used to influence local opinion in his favour. However, at this point in the proceedings he did not stand much chance of success, since his opponent, Hallvarðr, had already acquired extensive textual competence by obtaining vital textual evidence through his previous dealings with the royal judiciary.

THE BYRKJO DISPUTE

My third example, the Byrkjo dispute, pitted a pair of local farmers from the settlement of Voss in western Norway against a Bergen-based merchant and landowner. The dispute concerned the ownership of parts of Byrkjo, a medium-sized farm in Voss. The two Voss farmers, Oddr from Rogne and Hollrod from Ringheim, claimed the disputed piece of land by virtue of the legal institute of *oðal* [collective family ownership]. The Bergen-based merchant, Æinar Pinnungr, claimed in turn that he had purchased the disputed piece of land. The dispute is recorded in two sets of documents dating from 1292, and, ten years later, in 1302-1303²⁰.

The dispute was initially arbitrated in 1292 by a royal judge who ruled in favour of the Voss farmers and instructed Æinar Pinnungr to hand over Byrkjo and collect due payment²¹. A royal charter subsequently confirmed the judge's decision²². Despite these legal efforts, the dispute appears to have remained unresolved. Ten years later, a commission consisting of between three to eight men from Voss and Bergen convened to resolve the dispute for a second time. The commission set up three assemblies in Voss and Bergen and made inquiries, which it recorded in three open charters, concerning conflicting testimonies which had been presented to a royal judge in Bergen sometime between 1294 and 1301²³. The work of the commission yielded immediate results. It was established that Æinar Pinnungr and his wife had bribed four witnesses to present false testimonies before the royal judge in Bergen.

Shortly thereafter, the two parties convened at the royal court in Bergen before two royal judges and a large congregation consisting of men (other than those who made up the commission) from Voss and Bergen publicly to announce an agreement. This was in effect an admission of defeat on the part of the Bergen-based merchant and his family. The agreement was approved by the judges, who recorded it in an open charter that was subsequently confirmed by a royal judgement²⁴. This, however was not the end of the dispute. A final document, a report addressed to the royal council in Bergen, describes how on two separate occasions in Voss the son of the Bergen-based merchant, Hakon, resisted attempts by the Voss party to implement the content of the Bergen-agreement²⁵.

The work of the commission and of the royal judiciary (represented by a royal judge and the king), demonstrates a desire to establish a common ground between the communi-

ties in Voss and Bergen upon which the dispute could be ended. To achieve this, the commission recorded information about local customs of the traditional communities of Voss and Bergen, and consistently ignored existing textual evidence²⁶. Its intention was less to reveal the truth as such than to make the opinions of the different traditional communities publicly known.

The commission is likely to have been set up by the king or his judge in response to the public outrage provoked by the presentation of false testimonies. By including members from both Voss and Bergen the commission managed to communicate efficiently with both communities. The Byrkjo dispute demonstrates how a textual community could function as a bridge between traditional communities – in this case located in Bergen and Voss – while providing a medium through which different traditional communities could communicate.

THE LYNG DISPUTES

In the fourth case, farmers of Lyng in Verdal in the province of Trøndelag were involved in a number of disputes with outsiders during an 80-year period from 1283 to 1353. For reasons unknown, the Lyng farmers were at odds with several powerful agents, including both lay aristocrats and ecclesiastical organizations, who had (mainly economic) interests in the community of Stiklestad. The “Lyng disputes” consist of seven different instances of conflict involving the farmers of Lyng. The majority of these disputes concerned the ownership of the farm of Lyng itself, while others concerned different properties. The particular dispute discussed here concerned the tithe of the neighbouring parish of Haug²⁷.

A relatively clear pattern of conflict management can be observed throughout these conflicts. On one side, the Lyng men implemented a consistent dual strategy in which they combined direct action out of court with an evasive legal strategy in court²⁸. Out of court, they took physical action, seizing that which they claimed to be theirs; in-court, on the other hand, their actions are best described as dilatory, such as frequent absences from assemblies to which they had been summoned. In contrast, their opponents, lay aristocrats and ecclesiastical organizations, pursued their interests by approaching the royal judiciary, which responded by instructing commissions to investigate and settle the disputes by judgement. The resulting judgements consistently favoured the aristocratic and ecclesiastical agents, to the detriment of the Lyng men. There are, however, indications that these judgements were not always put into practice, at least not in their complete form²⁹.

The different strategies can be compared to different cultural competences. While aristocratic and ecclesiastical agents pursued a textual community strategy by attempting to resolve disputes in the courts of the royal judiciary, the Lyng men followed the alternative route of subjecting disputes to the opinion of the local traditional community. This is best illustrated by a dispute from 1302 to 1303, in which Aslacr from Lyng, a pivotal figure in 14th-century Lyng, was caught up in a dispute with the canons of Nidaros.

According to the latter (and the king who ruled in their favour) Aslacr had unlawfully confiscated the tithe of the neighbouring parish of Haug. Despite the charge and his subsequent conviction, Aslacr appears to have enjoyed considerable support from local communities in Verdal and beyond. When Aslacr was faced with outlawry and banishment, a group of twelve farmers from Verdal rallied behind him and negotiated a settlement by which they committed themselves to act as Aslacr's surety and to pay his debt to the canons of Nidaros in two instalments³⁰. Local opinion thus appears to have been at odds with the opinion of the canons and of the royal judiciary. This event epitomizes how the Lyng disputes involved both the opinion of the traditional community and the verdicts of the textual community, as each party sought to exploit this dichotomy to settle their differences favourably.

Cultural competence seems thus to have been the weapon chosen by both parties in the Lyng disputes. As prominent members of the local community in Stiklestad and Verdal, the Lyng men exploited their standing as interpreters and communicators of traditional community knowledge. Meanwhile, their opponents used their superior standing within the textual community by consistently involving the royal judiciary. As mediators of this dispute the agents of the royal judiciary were aware of the cultural and contextual difficulties that had to be overcome in order to resolve local disputes effectively. They therefore took measures to ensure that decisions made within their textual community were implemented in the traditional community of Stiklestad. In order to achieve this, several commissions were instructed to convene in Lyng and Stiklestad to announce their decisions³¹.

CONCLUSION

Local disputes in early 14th-century Norway were in many cases resolved through a lengthy and complicated process which involved several legal bodies convened in different cultural contexts, including local traditional oral communities and the textual communities of the courts of the royal judiciary. In the Sandven and Rødungen disputes, which involved only one local community, this situation came about both as a result of an inability of such communities to resolve disputes efficiently and because of the availability of the legal services provided by the royal judiciary. When the local communities were divided, discontented parties utilised the royal judiciary to obtain favorable textual community decisions. However, for such rulings to be effective, they had to be presented to and accepted by local opinion, which was no trifling matter.

In local disputes which involved agents from several communities, the royal judiciary played a different role. It could either be a mediator between traditional communities, as it was in the Byrkjølvs dispute, or it could be mobilized against local opponents by competent members of the textual community, as was the case in the Lyng disputes. In the latter case, local farmers succeeded in implementing a similar strategy by mobilizing local opinion against their non-local opponents. In

effect, this created a situation where disputes between individuals became disputes between different cultural communities.

Royal officials appear to have been aware of the difficulty of implementing textual decisions in traditional communities. In the four disputes under investigation, members of the textual community took different measures to implement decisions in local communities effectively, but all four cases included a combination of the display of power – represented by the presence of high-ranking royal officials – and influential local men maintaining or changing local opinion.

Regarding the concepts of traditional and textual communities that bound actual communities through shared knowledge and the interpretation of orally and textually based knowledge it has been shown that these communities were led by men with the ability to communicate and interpret both local oral traditions and a textual corpus. Cross-community competence, i.e. competence in both traditional and textual communities, thus appears to have been a decisive factor in winning disputes in which success depended on the ability to convince both traditional and textual communities, as in the Sandven and Byrkjo disputes. The key to resolving local disputes thus came to rest on a litigant's ability to conduct productive negotiations between a textual and a traditional community, i.e. the royal judiciary and local communities.

This brief survey has thus confirmed the insights of Imsen, Lunden, Holmsen and Jøn Viðar Sigurðsson who have downplayed the role of the royal judiciary in resolving local disputes. At the same time our survey has indicated that dispute resolution was more complex than previously assumed. It is not enough to say that local commissions resolved disputes based on local opinion, as in many cases local opinion was divided and unable successfully to decide disputes. The same could be said of decisions made by royal judges. A crucial aspect of dispute resolution was thus the ability to settle disputes within separate communities, traditional and textual, and to communicate the opinions and decisions of one legal community to another. This complex and dual legal system can be shown to be a direct consequence of Norwegian state formation. The newly-founded royal judiciary had created new legal avenues for resolving local disputes. Their development coincided with a transformation of local power structures which took place as a result of a change in the nature of Norwegian aristocracy. While local chieftains had previously played a vital part in local jurisdiction³², in the 12th and 13th centuries they gave way to a new type of “service aristocracy”, which was essentially an aristocracy that wielded its power by holding royal office rather than by inheriting their local standing.

NOTES

¹ This perspective can be dated back to the birth of history as an academic discipline in the mid-19th century. Recent historians advocating this view include K. Helle, *Norge blir en stat*, Oslo 1972 and *Under kirke og kongemakt: 1130-1350*, Oslo 1995; and A. Nedkvitne, *The Social Consequences of Literacy in Medieval Scandinavia*, Utrecht 2004.

- ² A. Nedkvitne, *The Social Consequences of Literacy in Medieval Scandinavia*, Utrecht 2004, p. 152; K. Helle, *Norge blir en stat*, Oslo 1972 and *Under kirke og kongemakt: 1130-1350*, Oslo 1995.
- ³ K. Imsen, *Norsk bondekommunalisme fra Magnus Lagabøte til Kristian Kvart*, Trondheim 1990, pp. 198-199 and 209.
- ⁴ K. Lunden, *Norge under Sverreätten 1177-1319*, Oslo 1976, pp. 432-436 and 441-447.
- ⁵ A. Holmsen, *Sentrum og periferi: Konge, stormenn og Bønder under Magnus Lagabøte og hans sønner*, in *Nye studier i gammel historie*, Oslo 1976, pp. 159-179.
- ⁶ J. Viðar Sigurðsson, *The Icelandic Aristocracy after the Fall of the Free State*, in "Scandinavian Journal of History" 1995, 20, pp. 153-166. J. Viðar Sigurðsson, *Norsk historie 800-1300. Konge og kyrkjemakt*, Oslo 1999.
- ⁷ B. Stock, *The Implications of Literacy*, Princeton 1983.
- ⁸ English translation of Harry Breslau's German definition of *Urkunden*. K. Heidecker, "Introduction", in *Charters and the Use of the Written Word in Medieval Society*, Utrecht 2000, p. 2.
- ⁹ *Diplomatarium Norvegicum* [hereafter DN] XI 7, DN XXI 14, 16, 17, DN VIII 69, DN I 166, DN XV 9.
- ¹⁰ DN XI 7, DN XXI 14, DN XXI 16, DN XXI 17.
- ¹¹ DN XI 7.
- ¹² DN XV 9.
- ¹³ DN VI 80.
- ¹⁴ DN II 99, DN II 100, DN II 101 and DN II 103.
- ¹⁵ DN II 99.
- ¹⁶ DN II 100.
- ¹⁷ DN II 99.
- ¹⁸ And this despite the commission's request for testimonies describing how both parties had agreed to accept its decision.
- ¹⁹ DN II 103.
- ²⁰ DN II 32, DN II 33, DN I 100, DN I 99, DN I 98, DN I 97, DN I 103, DN II 71, DN II 79, DN I 106.
- ²¹ DN II 32 and DN II 33
- ²² DN II 33.
- ²³ DN I 100, DN I 99 and DN I 98.
- ²⁴ DN I 97 and DN I 103.
- ²⁵ DN II 71.
- ²⁶ The events of 1292, recorded in DN II 32 and DN II 33, were consistently described in oral testimonies. The same is the case with the events that took place at the royal court in December 1303, as recorded in DN I 97 and DN II 79. According to DN II 71, these were later described in oral testimonies.
- ²⁷ Five of the disputes concerned Lyng itself. DN V 12 (1283), DN V 57, 58, II 116, 117, I 137 (1313), DN III 142 (1325); DN I 186 (1346); DN III 142 (1353). Two disputes concerned other properties: DN III 53, 56 (1302-1303), and DN III 167, 179, 193, IV 231 (1333-1338).
- ²⁸ In the 1353 dispute an opposite pattern emerges (DN III 142).
- ²⁹ I base this on the observation that despite the Lyng men being defeated in nearly every recorded legal proceeding they appear still to have possessed more or less the same property in Lyng by the end of this period as they did at the beginning.
- ³⁰ DN III 56. Cf. DN III 53.

³¹ DN I 137 (1313); DN III 142 (1325); DN V 186 (1346).

³² This was the norm in Iceland, according to Jón Viðar Sigurðsson, *The Icelandic Aristocracy after the Fall of the Free State* cit. E. Adolfsen, *Maktforholdene på tinget i Norge 900-1200* (unpublished master thesis, University of Oslo), Bergen 2000, has pointed out that the same may have been the case in Norway.

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