

# Legal Traditions in Anglo-Norman England and their Scandinavian Roots

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<sup>1</sup> This rune, Fehu, is associated with wealth but also the struggles and tragedies associated with greed.

Then they had a great *thing* of the people summoned and at the *thing* Sigurd the Jarl spoke for Hacon and offered him to the bonders as king. After that Hacon himself stood up and spoke....Hacon began his speech by asking the bonders to give him the name of king and also to grant him support and help to maintain his kingdom; in return he offered to make all the bonders *odal*-born to their lands....<sup>2</sup>

In this passage, the thirteenth century Icelandic poet and historian Snorri Sturlason describes an institution that might look familiar to moderns: the *thing*, or assembly. The tradition of government by assembly and community authority has long been a part of Germanic cultural tradition. It is mentioned by Tacitus in the late first century C.E.<sup>3</sup> The institution of the *thing* existed in recognizable forms in England, under the name *mot*, in Denmark and in all of the Scandinavian nations. The widespread existence in late antiquity of the Germanic assembly is well known among historians and even in an educated popular imagination of the long history of Europe, but heretofore the weight of historiography in the English legal tradition has not fully accounted for the influence of the Scandinavian tradition on England. Scholars with enormous historiographical influence such as F.W Maitland have claimed that the political revolution in thirteenth century England, which culminated in the Great Charter, owed much of its impetus to French, rather than the Scandinavian influence or, more broadly, Germanic traditions of community rule. In my view, Magna Carta and the revolution in English politics and law which

<sup>2</sup> To have *odal* over one's lands was to have right of inheritance from them. The king before Hacon, Harald Hairfair, had taken this right from the bonders of his kingdom and instituted a tax upon them in the manner of a European king. The term 'bonder' in this context refers to a class of people in Norse society known as the *boendr*. The *boendr* are farmers who own their own land and are the heads of a relatively wealthy household defined here by Byock: "members of this large group...qualified for full rights as freemen by owning a certain amount of property – a cow, a boat, or a net for each person in their charge" Jesse Byock, *Feud in the Icelandic Saga* (Los Angeles: University of California Press, 1993), 212. Snorri Sturlason, *Edda*, ed. and trans. Anthony Faulkes (London: Everyman, 1987), chapter 1 The History of Hacon the Good.

<sup>3</sup> Cornelius Tacitus, *Complete Works of Tacitus*, Trans. Alfred John Church, William Jackson Brodribb, Lisa Cerrato, edited for Perseus (New York: Random House, Inc. Random House, Inc. reprinted 1942), chapter 11.

followed it owe a great deal to the tradition of the *thing* and the conceptions of justice, authority, and power that came with it. The assertion of their rights to assembly and self-governance by the Norman barons represents an evolution of the ancient Anglo-Saxon *mot* and the Norse *thing*.<sup>4</sup> Why, though, does it matter if Scandinavian culture lies at the root of English tradition? Scandinavia and Germanic traditions in general have long been an object of distaste for historians of 'western tradition', who focus on the Greco-Roman core of western thought. To marginalize the culture and influence of the Scandinavian peoples on western history is one of the methods used to further the triumphalist narrative of western history; Rome, glorious and everlasting, and its legacy have been the central thread of western history. It is true, Rome and its influence in the west today are enormously important, but the Romans were not the only font of liberty and justice in the West. It is my view that there is another source of freedom in Europe; it is a colder, harder liberty, but it was instrumental in creating the English state. This view, of Scandinavian influence being vital to English identity, is a reinterpretation the Anglo-Saxon vs. Norman dichotomy, instead I propose a view focused on the blending and fusion of these cultures.

The perspective of Maitland, who was writing in the late nineteenth-century, is founded on conceptions of Carolingian feudalism and vassalage as outlined much later in 1964 by Francis Louis Ganshof in his *Feudalism*. Ganshof thoroughly describes feudalism as having several major features: a system of *benefice*, a highly ritualized system of land tenure paired with a military system founded on social hierarchy.<sup>5</sup> Maitland forms his opinion on the nature of the Normans

<sup>4</sup> The *mot* is the equivalent system to the *thing* in Anglo-Saxon tradition, with the *witenagemot* (King's moot) being equivalent to the *athing* (great assembly).

<sup>5</sup> Francis Louis Ganshof, *Feudalism* (London: Longmans, Green and CO Ltd., 1964), 24.

in relation to a very specific norm of feudal organization, but because he does not use the Icelandic sources his argument does not fully take into account the Scandinavian social order. The sources written by Icelanders offer a window, albeit tinted by time, on what ninth and tenth century Scandinavian culture was like. The ninth and tenth centuries are of supreme importance to the question of Norman heritage because it was during this period that Hrolf, the first Duke of Normandy, was exiled from Norway.

*The relevant scholarship*

In order to assemble the evidence for the importance of the *thing* in English history I will begin with a discussion of two Scandinavian sources: the *Heimskringla*, and Saxo Grammaticus' *The Nine Books of Danish History*. In particular Snorri's accounts of Harald Hardrade, King Olav Trygvason, and the flight of Hrolf shed light onto the purpose and practice of the *althing* and the ideals of power it exemplifies.<sup>6</sup> Theodore M. Andersson's in *The Problem of Icelandic Saga Origins*, and the words of the German scholar Walter Baetke both present the sagas, including Snorri's *Heimskringla*, as semi-historical documents. Baetke's analysis of saga literature shows that, although the specific deeds of heroes are impossible to confirm, everything else in the sagas is equally impossible to disprove. Scholarship on both Icelandic and generally Scandinavian political institutions, including Jesse Byock's *Feud in the Icelandic Saga*, Einar Ól Sveinsson's *The Age of the Sturlungs*, and Robert Bartlett's *From Paganism to Christianity in Medieval Europe*, is relevant to this discussion. These Scandinavian conceptions of law, justice, and government made their way into England in an organized way (as opposed

<sup>6</sup> Snorri Sturlason, *Heimskringla*, ed. Erling Monsen, trans. A. H. Smith (Cambridge: W. Heffer & Sons Ltd., 1932), 60-61.

to raids and limited settlement of England by the Danes), Alexander E. Rumble's *The Reign of Cnut* argues Cnut represents a blending of the Anglo-Saxon with the Scandinavian in a way that had never occurred before and his reign establishing formal continuity between the Anglo-Saxon and the Scandinavian worlds. Cnut brought relative stability to the new Anglo-Danish kingdom of England, but it would not be for another one hundred and fifty years that the Anglo-Scandinavian tradition merged into the Great Charter.

Among and behind all this more recent scholarship tower the works of the great English legal historian Frederic William Maitland. Maitland's analysis of Anglo-Saxon, and Anglo-Norman law is immensely detailed and covers every aspect of the tradition. So fundamental is Maitland's work that familiarity with his research is a prerequisite to any serious discussion of English law. Maitland's works have been affirmed by many scholars including Sir Frederick Pollock, James C. Holt, and John Hudson. I will take a different angle on his work, challenging Maitland's assertions about the origins of English legal traditions with an understanding of Scandinavian traditions and culture, and in doing so add another aspect to the historiography of liberty in the West.<sup>789</sup> Holt emphasizes during his introduction to Maitland's essays on the Domesday book that Maitland's works have not only been foundational to English history, but have been recently revived by modern scholars.<sup>10</sup> Holt goes on to point out that Maitland was a lawyer, not a historian, and that his analysis of Normans and their heritage was sorely

<sup>7</sup> John Hudson, *Land, Law, and Lordship in Anglo-Norman England* (Oxford: Clarendon Press, 1994).

<sup>8</sup> James C. Holt, *Magna Carta and the Idea of Liberty* (London: John Wiley and Sons Ltd., 1972).

<sup>9</sup> Frederic William Maitland and Frederick Pollock, *The History of English Law* (Cambridge: Cambridge University Press, 1968).

<sup>10</sup> Frederic William Maitland, *Domesday Book and Beyond*, ed. James C. Holt (Cambridge: Cambridge University Press, 1987), IX-X.

lacking.<sup>1112</sup> Holt's introduction supports my assertions that Maitland must be challenged, even a century after his work was published, and that his dismissal of Scandinavian influence was unwarranted.

I challenge Maitland's analysis of English history in his use of the terms 'Frenchmen', and Anglo-Normans interchangeably.<sup>13</sup> Frenchmen, and Anglo-Normans are different representations of a group of people, and for Maitland to call Normans after the conquest by both names is problematic for the argument he poses.<sup>14</sup> To Maitland, the traditions and policies enacted by the Normans are 'French' in nature and origin, rather than Germanic, or more specifically Scandinavian.<sup>15</sup> Maitland's assertion that Norman lords were 'French' is founded in solid evidence, but it is an oversimplification of their heritage and culture. I argue that although the Norman lords may have been nominally 'French', because they adopted the language and religion of their new land, to say that their politics and culture were entirely French is exaggerated. Maitland entirely rejects the notion that Scandinavian tradition could have had significant influence on Norman political traditions, although he cites Steenstrup who simply states that Norman law was French.<sup>16</sup> Maitland, contrary to his typically well supported and thorough examinations of Anglo-Saxon law does not support his argument sufficiently here for me to accept his view. He asserts that English law must look to France for its roots.

To counter this assertion I will draw upon the primary documents Asser's *Life of Alfred*

<sup>11</sup> Ibid. v-vii.

<sup>12</sup> Ibid. xii-xiii.

<sup>13</sup> Pollock and Maitland, 79. Here I use the term 'Germanic' to refer to the broader Anglo-Saxon, Frisian, and Danish culture group. This term will be used to describe phenomenon that are expressed across all Germanic cultures, including Scandinavian groups at times.

<sup>14</sup> Pollock and Maitland, 29, 66.

<sup>15</sup> Ibid. 94.

<sup>16</sup> Pollock and Maitland, 66.

*the Great*, Dudo's *Gesta Normanorum*, and the *Anglo-Saxon Chronicle*. All three primary documents, examined through the lens of the Scandinavian tradition, offer many examples of a strong cultural, and legal parallelism between Anglo-Saxon England and Scandinavia. It is important to investigate the Anglo-Saxon and Anglo-Norman documents because their contemporary views on authority, kingship, and justice facilitate a discussion of Scandinavian influence on political culture in England. The ideals of just behavior discussed by Jesse Byock, 1993, as well as the events described in the *Reign of Cnut* and the *Heimskringla* offer us examples of how liberty and authority were deeply rooted themes in the Scandinavian tradition. A study of Alfred's reign, and the way that he is memorialized by contemporary scholars allows for a comparison between the Anglo-Saxon traditions and the Scandinavian influences that became increasingly strong during his lifetime. The treatment of kingly power by ancient and contemporary Scandinavians, along with the king's interaction with community authority offer alternative explanations for the politics of the Norman dukes as well as the policies of Cnut, a Danish king of England in the eleventh century. The Normans, regardless of their later adoption of French language and Frankish legal terminology *were* Scandinavians. Their Scandinavian cultural and political heritage must be properly accounted for in a discussion of their influence on English political history.

My argument against Maitland will focus on his teleological tendencies when discussing the merits of law, and his total disregard for the political and cultural nature of the Norman duchy. Maitland argues that because the Norman nobles spoke French and adopted Christianity and some French customs, they became French - and everything that they created was



therefore French as well.<sup>17</sup> The argument that because a group of people learn a language makes them identical to the native speakers of that language is suspect. The crux of my response lies in three articles of Magna Carta: the twelfth, granting the Barons the power of contesting “Scutage and aid” levied upon them, the fourteenth, formally instituting the council of Barons and gives them the right to assemble along with all other important men, and the sixty-first, stating that this council of Barons will be self-regulating and will punish those who disobey it, including the king.<sup>18</sup>

Maitland himself rejects the *Heimskringla*, as well as the entirety of the Scandinavian tradition, as a historically relevant document, claiming that the Norwegian roots of the Normans are irrelevant to their political traditions. He persists in making a contradictory claim about the Anglo-Saxons who preceded them. Maitland’s rationale for tipping his hand to the Scandinavian sources is that, unlike the Franks, the Northmen were *uncivilized*. He makes this claim despite his admittance of ignorance about Scandinavian traditions.<sup>19</sup> In “Anglo-Saxon Land Books and Charters”, edited by Robert Livingston Schuyler, Maitland argues that the villages and infrastructure to be found in England are predominantly Germanic in nature because the people who created them *were* Germanic.<sup>20</sup> In his statements about Anglo-Saxons, he uses the same logical move that allows him to discard the Norwegian heritage of Normans to affirm the Germanic heritage of Saxons and Angles. Here his teleology can be seen clearly. Maitland argues consistently that the Germanic traditions are “rude and primitive” while legal

<sup>17</sup> Pollock and Maitland, 76

<sup>18</sup> Ed. Carl Stephenson, Frederick George Marcham, *Sources of English Constitutional History* Vol. 1 (New York: Cornell University Press, 1972), 118 and 125.

<sup>19</sup> Pollock and Maitland, c-ci (introduction).

<sup>20</sup> Maitland, Frederic William, Ed. Schuyler, Robert Livingston, *Selections from his Writings* (Berkeley: University of California Press, 1960), 149.

traditions flowing from Rome are essentially good.<sup>21</sup> Maitland seems to think that the laws which were 'civilized' are good, and in this view seems to be caught in a conceptual trap. Those events which led the West to develop a certain way seem to him preferable to others. Maitland's tendencies are perfectly defined as 'Victorian' by Vivian H. Galbraith, 1961, as he states his conclusions were based more upon his vision of the past than the evidence provided.<sup>22</sup>

J.R Green's *Henry II* renews emphasis on community leadership in English history as a counter-development to the increasing power of kings. Green offers insight on the motivations of Henry II and the significant influence his policies had on the baronage. The devastating civil wars of twelfth-century England are important to my argument, as they were what inevitably created the climate for Magna Carta. James C. Holt's *Magna Carta and the Idea of Liberty* published in 1972 delves into the significance of the Charter in a wider Germanic context, as well as the specific passages within it that show it is more than a power grab by the baronage.<sup>23</sup> Henry II's reign, seen in relation to Scandinavian culture and political tradition, reveals strong parallels between the baronage and Icelandic *goði*. Holt's analysis and Green's descriptions of Henry II, in the context of Scandinavian ideals of just authority, affirm that Henry II is the epitome of the *Ojafnadarmadr* and that Magna Carta sought to force *hof* and *drengskapr* back into the political sphere.

Robert Bartlett's *England under the Norman and Angevin Kings* published in 2000

<sup>21</sup> Pollock and Maitland, 6.

<sup>22</sup> Frederic William Maitland, *Domesday Book and Beyond*, ed. James C. Holt (Cambridge: Cambridge University Press, 1987), xv.

<sup>23</sup> James C. Holt, *Magna Carta and the Idea of Liberty*, 123.

develops the discussion begun by Green. Bartlett notes that Norman kings claiming to have been unanimously elected is strange (even before the writing of Magna Carta).<sup>24</sup> The custom of being 'voted' onto the throne only appears strange if viewed from the Romano-centric perspective of historians such as Maitland who, although they praise the common law of England, reject the notion that English tradition was vitalized by Germanic heritage. In the history of England, the Norman invasion of 1066 was the final episode in a long series of Scandinavian invasions that resulted in a reorganization of the English state. Is it then a coincidence that the Norman barons were responsible for Magna Carta? Norman kings were fulfilling their ancient roles as the accepted, not inevitable, rulers of their kingdoms. This insight is reinforced by examining the way the ancient Scandinavians (accessed through the isolated and relatively stagnant Icelandic society) viewed authority. The Angevin king Henry II (though John was king in 1215) eventually pushed the baronage too far, and Bartlett goes on to argue that this royal hegemony elicited the reaction of the baronial prerogative to manage the taxation of the realm, so creating the earliest beginnings of 'no taxation without representation!'. In their seizure of the power to collect and send funds to the crown, the barons effectively return the king of England to his traditional position in Germanic, and in my analysis Scandinavian, cultures as a warrior leader who relies on his people for support. Bartlett argues that the repeated attempts at rebellion by the baronage, often resulting in the curtailing of their power and privileges even further, culminated in the final, somewhat desperate, attempt to exert power over the crown in 1215.<sup>25</sup>

<sup>24</sup> Robert Bartlett, *England Under the Norman and Angevin Kings* (Oxford: Oxford University Press, 2000), 145-146

<sup>25</sup> Robert Bartlett, *England under the Norman and Angevin Kings*, 52

Tracing the threads of *hof*, *drengskapr*, and their opposite in *ojafnadarmadr* through the Scandinavian sources, the primary English literature, and then through the historiography of English tradition shows that these ancient roots form an essential part of English legal and political heritage. This Anglo-Saxon tradition resembled in many ways the Scandinavian thing, with *gemot* assemblies of various sizes operating as courts of law as well as political gatherings.<sup>26</sup> The Normans, contrary to the generally accepted view, were French only in language and faith (and perhaps not even in that). When William and his barons conquered England, they inherited a kingdom with deep Germanic heritage and a highly developed system based on the *mot*, later expressed in the common law. The Normans easily adapted this system to their uses, and reintroduced aspects of Scandinavian law that had since been cast aside by the English system, such as the *holmganga*.<sup>27</sup> Why was it that before the Norman Conquest the baronage did not attempt to formally establish its rights? What about the Normans made them change the way feudal system in England was structured? I say that it is the Norman's Norse political heritage, and the collective memory of the foundational ideals of *hof*, *drengskapr*, and a hatred of *ojafnadarmadr* that gave them the impetus to challenge regal authority. The collective memory of Hrolf's exile, the brutality of Harald Hairfair, and the loss of liberty had not died in the spirit of the Normans, and this spirit of liberty now allowed England to demand more from its king.

<sup>26</sup> F. W. Maitland and F. Pollock, *The History of English Law*, 40. The *gemot*, according to Maitland, was any assembly empowered with the force of law.

<sup>27</sup> The trial by combat. This ancient method of judgement had long since been abandoned by the English system, but was one of the many changes the Normans made to English common law. Maitland states that this was a 'French' custom, but Jesse Byock states that it was a very ancient custom popular in Iceland, and therefore was likely common in Norway as well. Jesse L. Byock, *Feud in the Icelandic Saga* (Berkeley: University of California press, 1982), 230.

*The roots of Yggdrasil: Pagan traditions, and the evolution of authority*

Snorri should be considered valuable for interpretations of early English history because of his experience in the *thing*, more importantly the *althing*; Snorri participated in the *thing* system for his entire life and was an influential figure within it for many years.<sup>28</sup> Furthermore, the oral tradition within Iceland was very strong, so Snorri's knowledge of major Norwegian events should not be entirely dismissed. As there are few contemporary sources from the Scandinavian world that provide the level of insight and detail that Snorri's do, his works represent a vital source that should be examined and used carefully. Despite the value of Snorri's works, many modern historians including F.W Maitland reject the sagas as historically useful on the basis that they are not historical documents. While Maitland and others are not entirely wrong to assert that Snorri's historicity is not strong, the Poet's works cannot be entirely ignored especially in the area of political history. Establishing their value to the study of the past is therefore helpful here.

Theodore M. Andersson, in his 1964 summary of German saga scholarship, *The Problem of Icelandic Saga Origins*, argues that while the sagas and Snorri cannot be used as evidence for specific events, they remain very useful for information on overarching tradition, and law.<sup>29</sup> Several of Andersson's German sources argue that while the sagas appear to be written in a historically sober manner, this style of Icelandic prose is merely conventional and does not lend the sagas any credibility. On the subject of saga scholarship, however, Andersson states that "The shades of opinion on historicity are many and have little more than the value of

<sup>28</sup> Einar Ol Sveinsson, *The Age of the Sturlungs* (New York: Cornell University Press, 1953), 45, 49.

<sup>29</sup> Theodore M. Andersson, *The Problem of Icelandic Saga Origins* (Birminghamton N.Y: Vail-Ballou press 1964), 44.

opinion.”<sup>30</sup> Walter Baetke, one of Andersson’s sources, provides further insight into the historical relevance of the sagas:

We cannot attain exact evidence of the truth of the deeds because there is no corroboration. Liestøls has determined this, and he must be the beginning of all research into the Icelandic Sagas. In fact, here we find neither a contemporary account that stands at the beginning of a tradition, nor the handing down of that tradition. There are also hardly any sources that can be compared with it.... On the other hand, we cannot draw the conclusion that the Icelandic Sagas do not have any historical content.<sup>31</sup>

I agree with Baetke, and acknowledge that much of the texts will be unusable as direct evidence, but the broader themes presented in the are still accurate. Of great importance to this essay is Andersson’s acknowledgement that on the subject of bloodlines and the lineage of Rollo first Duke of Normandy, the *Heimskringla* is entirely reliable.<sup>32</sup> Viewing the *Heimskringla* not as a historical text, but as a cultural icon and window into the Icelandic perspective enables its use to explore the roots of liberty in Scandinavia.

#### *The Scandinavian sources*

The primary evidence for assertions about Snorri’s viewpoint in *Heimskringla* comes from his more well-known works, the *Edda* and specifically the *Gylfaginning*<sup>33</sup>. The latter text represents Snorri’s attempt at creating a version of the old ways that could be interpreted by his Christian audience as something of value, rather than as an inferior way of life and belief.<sup>34</sup>

<sup>30</sup> Andersson, 49.

<sup>31</sup> Walter Baetke, *Über Die Entstehung der Isländersagas* (Berlin: Akademie-Verlag, 1956), 27-28.

<sup>32</sup> Andersson, 45.

<sup>33</sup> *Gylfaginning* = the Tricking of Gylfi.

<sup>34</sup> “And now if you know any more questions to ask further into the future, I do not know where you will find the answers, for I have heard no one relate the history of the world any further on in time. And mayu the knowledge

Within the *Gylfaginning* are mythological clues about the cultural and religious significance of the *thing*, for example the Norse image of the end of the world. Ragnarok is preceded by three signs: “Brothers will fight and kill each other, cousins will break the bonds of their relationship. It will be harsh for heroes, much depravity, age of axes, age of swords, shields cloven, age of winds, age of wolves, until the world is ruined.” This prophecy speaks of the degradation of the human community to the point of its violent destruction, something the *thing* is clearly intended to prevent by encouraging negotiations and compromise rather than the custom of *holmganga*.<sup>35</sup> Einar Øl Sveinsson states, “although they (the Icelanders) adhered to ancient warlike virtues, many things led them to insist on law and justice and co-operation and thus to keep in check the self-will of some of the chieftains.” Snorri saw the *thing* as preserving this system. The *Gylfaginning* represents Snorri’s attempt to justify the existence of the social order as it is, including the system of the *thing*, by implying that without the sanctuary of the *thing* the stability of the world would collapse, and chaotic destruction would therefore ensue.<sup>36</sup> The examples of Ragnarok and the sanctuary status that the *thing* borrows from Norse paganism show us that the *thing* assembly was more than just a form of government. It served a role in the cosmology of the Norse by ensuring that the realm of men did not fall into chaos.

Exploring the historical context within which Snorri wrote the *Heimskringla* as well as

you have gained do you good...then he went off on his way and came back to his kingdom and told of the events he had seen and heard about” Snorri Sturlason, *Edda*, 57.

<sup>35</sup> Sturlason, 53.

*Holmganga* = the ritual duel between the defendant and the accuser, a ‘trial by combat’.

<sup>36</sup> So greatly did the gods respect their holy places and places of sanctuary that they did not want to defile them with the (fenris) wolf’s blood even though the prophecies say that he will be the death of Odin” Snorri Sturlason, *Edda*, ed. Anthony Faulkes (Oxford: Clarendon Press, 1991), 29. This assertion that it is not just to slay a being in a holy place, even when it is known to be ‘evil’, is supported by Du Chaillu’s discovery that “The thing-plain was a sacred place, which must not be sullied by bloodshed arising from blood-feud or any other impurity...Every breach of the peace at a Thing was a sacrilege which put the guilty one out of the pale of the law....a *varg l veum* (wolf in the sanctuary)” Paul Du Chaillu, *The Viking Age* (London: John Murray, 1889), 517.

the mythological background to the *thing* as an institution enables analysis of the *thing* in the *Heimskringla* itself. In Snorri's work the *thing* was very important both to the author and to the Norse people, not only in Iceland where Snorri lived but also in mainland Scandinavia, where the book's characters spend the majority of their time. One of the first examples of a *thing* of great import in the *Heimskringla* is Hacon the Good's first attempt to convert his people to Christ peacefully:

King Hacon came to the Frosta thing and thither was come a great number of bonders. When the thing sat, King Hacon spoke; he said first that it was his behest and offer to the bonders and laborers, great and small, and young men and old, rich and poor, women and men, that they should become Christians and believe in one God, Christ, the son of Mary, and give up all blood offerings and heathen gods, keep holy the seventh day and not work, and fast every seventh day. And as soon as the king had said that before the people there was straightaway a mighty uproar; the bonders growled....Asbjorn from Medalhus in Guldale stood up and answered his speech thus: "we bonders thought, King Hacon" said he "when thou hadst the first thing here in Trondheim and we took thee as our king and got back from the our *odal* lands, that we had taken heaven in our very hands....Now it is our will and the bonders' also, to keep the laws which thou madest for us here at the Frosta thing and into which we entered....but if thou wilt take up this matter with so great zeal and use force and might over us, then have we bonders made up our mind to part from thee and take us another king....Sigurd the Jarl answered and said that "it is King Hacon's wish to agree with you bonders and never to be parted from your friendship."....Sigurd the Jarl afterwards spoke with the king and said that he must not altogether fail to do what the bonders wished and that there was nothing for it.<sup>37</sup>

This passage shows how Snorri valued the power of the *boendr*. His character Asbjorn's full-fledged speech contrasts with King Hacon's appeal, which is limited to a summary of his points,

<sup>37</sup> Snorri Sturlason, *Heimskringla*, 88



indicating whose side Snorri was on in this instance. As Sveinsson states, this sentiment towards kingship was a common theme in Icelandic literature, so Snorri's opinions likely indicate cultural bias.<sup>38</sup> Numerous iterations of this same passages ilk appear in the early *Heimskringla* chapters. Evidently Snorri as a historian, and a critic of Norse society, is very interested in the transition between the traditional, community-centered government and the new, centralized authority of kingship. Snorri does not pass any judgments on his characters for their choices of faith, but the discussions of conversion in the *Heimskringla* show both sides to be militant and sometimes cruel in their dealings with the other religion.<sup>39</sup> In his willingness to address the most controversial issues of his time with a fairly even hand, I believe that Snorri shows himself to be a narrator who seeks to portray the past so others can learn from it, rather than being consumed with the need to glorify or justify certain events or individuals. The most evident example of his even-handed posture is his account of the second attempt by a king to use the *thing* to convert the *boendr* to Christ, this time by a new king named Olav Trygvason:

the king was going from the east through the land with a great army and was breaking the old laws, and that all who spoke against him were marked out for torments and mishandling, then the kinsmen arranged to hold a meeting...they were of one mind about going with a great strength of men to the Gulathing and arranging there to meet King Olav Trygvason....When they came together they held talk and made plans, and then they chose three men who were the fairest spoken in their gathering to answer King Olav at the thing and speak against him and to make it known that they would not undergo lawlessness, even if the king himself bade it...King Olav stood up first and spoke blithely to the bonders. Yet it seemed from his speech that he wished them to take up Christianity; first with fair words he bade

<sup>38</sup> Einar Ól Sveinsson, 32

<sup>39</sup> Immediately after the above passage is concluded is a passage where "These eight men agreed that the four of the Outer Tronds should destroy Christianity....the Outer Tronds went south to More, slew three priests and burned three churches" (*Heimskringla*, 90).

them do it, but at length he vowed that they who spoke and against him and would not fall in with his behest should have from him wrath and torment and hard dealing everywhere. And when the king ended his speech, there stood up among the bonders one who was the best-spoken and was first chosen to answer King Olav. And when he wished to speak, there came upon him such a cough and choking in the chest that he could not bring forth one word....<sup>40</sup>

Here Snorri shows the king breaking the old way, and the *boendr* too weak to challenge him.<sup>41</sup> Nevertheless, Snorri emphasizes how committed the *boendr* are to their traditions; They stand up to the king because they believe it to be right, but when they see that the gods have forsaken their cause they accept the demands of King Olav. The character of King Olav, who is made out to be fairly detestable in his use of torture and force to circumvent the *thing*, as his predecessor Hacon did not, reveals the motive behind the *Heimskringla* as a whole. Snorri shows us what it meant to be a 'good' king, in the example of Hacon the Good, and also what it meant to be a 'bad' king, in the example of Olav Trygvason, but he leaves both examples on the table for the reader to judge. Indirect comparisons made by characters such as Torgny the Lawman, Asbjorn, and Sigurd the Jarl suggest Snorri's opinion of the king in question.<sup>42</sup>

Snorri also provides a vital link in the story of the Normans, when he explains the reasons why Hrolf, the future Duke of Normandy, was exiled by Harald. Harald had already subdued all of Norway, as marked by the cutting of the matted hair he had vowed to wear

<sup>40</sup> Snorri Sturlason, *Heimskringla*, 88.

<sup>41</sup> *Boendr* is translated as landed man, the *boendr* in this case are the farmers and land owners who dwell in this province.

<sup>42</sup> Torgny, my grandfather, remembered the Uppsala king, Eric Emundson...He was not so haughty that he would not listen to folk when they would talk with him about anything...now we bonders wish to make peace with Olav Digre, king of Norway, and wed thy daughter Ingegerd to him....if thou wilt not have it as we say, then shall we go against thee and slay thee...." Snorri Sturlason, *Heimskringla*, 286.

uncut and unwashed until he ruled all of Norway.<sup>43</sup> Hrolf was a mighty warrior, and returning from a successful raid in the Baltic he was caught raiding cattle in Harald's kingdom.<sup>44</sup> Harald had decreed that any man raiding in his land should be killed, and only by pleas of his mother at the *thing* was the death penalty stayed and exile given to Hrolf instead:

Think'st thou, King Harald, in thy anger, to drive away my brave Rolf Ganger, like a mad wolf, from out the land? Why, Harald, raise they mighty had? Why banish Nefia's gallant name-son, the brother of brave udal-men? Why is they cruelty so fell? Bethink thee, monarch, it is ill with such a wolf at wolf to play, who, driven to the wild woods away, may make the king's best deer his prey.<sup>45</sup>

While the poem attributed to Hrolf's mother, Hild, is suspect, according to Andersson the story of Hrolf's banishment is not.<sup>46</sup> Furthermore, Hrolf's exile coincides exactly with the mass exodus of Norsemen bound for Iceland. Unlike traditional Norse expeditions, these migrations included entire extended families, as is exemplified in *Egil's Saga*. There, Skallagrim, son of Kveldulf, is forced to flee Norway with his family after Thorolf, his ambitious and powerful brother, is murdered by King Harald Hairfair.<sup>47</sup> Skallagrim, after taking vengeance on one of Harald's retainers and reclaiming his brother's longship, takes his family and flees to Iceland. "Thereafter Grim and his folk fitted the ship with her lading out to their own ships; changed then the ships : loaded her which they had won....sailed therewithal out into the deep, soon as a fair breeze blew.<sup>48</sup>" Once in Iceland, Skallagrim is joined by his father-in-law, Yngvar, and together they

<sup>43</sup> Snorri Sturlason, *Heimskringla*, Trans. Samuel Laing, Ed. Rasmus B. Anderson (London: Norrœna Society, 1907), 38.

<sup>44</sup> Ibid. 38.

<sup>45</sup> Ibid. 39.

<sup>46</sup> Andersson, 45.

<sup>47</sup> Snorri Sturlason, *Egil's Saga*, trans. and ed. E. R. Eddison (Cambridge: Cambridge University Press, 1930), 40.

<sup>48</sup> Ibid. 53.

make a new home. It is likely that Hrolf, like Skallagrim, would have taken not only a large warrior band with him to Normandy, but also their family units in a manner comparable in some respects to the Great Migrations (*Völkerwanderung*) between the fourth and ninth centuries. The circumstances of Hrolf's exile, and the fact that so great a number of warriors went with him that he was able to subjugate the whole of Normandy, support my assertion that the Normans had a particular interest in the maintenance of their traditions. Hrolf and his descendants after him were exiled by a usurper who had broken the old ways and used his power to cast them out of their homeland.<sup>49</sup> In context of their circumstances, it seems unlikely that such men as the sons of Hrolf would forget their heritage easily.

Saxo Grammaticus offers *Gesta Danorum* an alternative perspective on Scandinavian kingship whose histories of the Danish kings includes little about the ways the community operates in concert with the king. Saxo seems uninterested in the operation of the Danish society, so showing his intent in writing the text; he is a Danish patriot, and as he is writing in a world that is post-*Heimskringla* and resolutely Christian.<sup>50</sup> He feels compelled to bring into the world a text for Danish nobles to read to feel the same pride that the Norwegians did in Snorri's work. Thus, Saxo's work has a clear purpose focused in a historiographical sense on the personal life and deeds of kings, in that view sifting through the large amount of information

<sup>49</sup> Snorri Sturlason, trans. Samuel Laing, ed. Rasmus B. Anderson, *Heimskringla*, (London: Norrœna Society, 1907), 20. Snorri claims that Harald was going about the land, stripping the *odal* right from any man who had it. In essence, he was claiming the right to create *benefices* with the lands of other, often men whose families had lived there for generations.

<sup>50</sup> The introduction of *Gesta Danorum* states that "it almost certainly follows that the latter books were written in (Bishop) Absalon's (commissioner of the work) life; but the Preface, written after them, refers to events in 1208." and further states that "We do not know how late the preface was written, except that it must have been sometime between 1208 and 1223, when Anders Suneson ceased to be Archbishop; nor do we know when Saxo died." Saxo Grammaticus, *The Nine Books of the Danish History of Saxo Grammaticus*, trans. Oliver Elton, ed. Rasmus Björn Anderson and James W. Buel. Vol. 1 (London: Norrœna Society, 1905), 11.

that he has compiled to discover where he refers to the *thing* and how the kings made use of the institution is easy. Furthermore, Saxo's perspective as a historian of kings makes his comparison to Snorri particularly interesting, for we can see how the *thing* is perceived by a man who valued it personally and, as well, by a man who likely saw it as simply part of kingship. To begin the discussion of Saxo's work it is important to explore what is known about the author himself and about the process of writing *Gesta Danorum*. Information about Saxo comes from church records as well as his own writing, which refers to the death of a certain Bishop, Asker, meeting his death "in our time", and coincides with an ecclesiastical record dating his death in 1158.<sup>51</sup> By indirect reckoning we can see that Saxo lived and wrote during a very similar time to Snorri himself, but wrote his works in different atmosphere of politics and religion from Snorri's. Denmark in Saxo's time was firmly within the domain of Christendom, and had been so for longer than Iceland or the rest of Scandinavia.<sup>52</sup> The effects on Saxo's historiography of the commissioning of his work by a religious official, and how Christianity, as well as how medieval European conceptions of kingship colored his discussion of the *thing* remain at issue.

Saxo's *Gesta Danorum* was written at the request of the Archbishop of Lund, Absalon.<sup>53</sup>

This origin explains many of the differences between the *Gesta* and the *Heimskringla*, which

<sup>51</sup> This title, 'Grammaticus', reveals much about the man named Saxo. By being identified by this qualifier it is clear that he was 'learned' from a Romano-European perspective, that is, he has been educated in Latin. The fact that Saxo, a Dane, is educated in Latin and chooses to use this non-vernacular language to discuss the histories of men who were very likely heathens who spoke a dialect of Old German or Old Norse to me reveals a bias that is inherent in his text. Saxo, 7.

<sup>52</sup> In the *Heimskringla* Snorri writes that in the kingships following Harald Hairfair, specifically those of Olav the good and Olav Trygvason, Danish kings repeatedly sent demands and even armies into Norway to force conversion to Christianity. The Danish king who is said by Snorri to be responsible for this namely is Harald 'Bluetooth' Gormsson. Snorri Sturlason, *Heimskringla*, 134.

<sup>53</sup> Saxo Grammaticus, page 8.

was apparently written by Snorri without direct patronage. Saxo, unlike Snorri, was writing a history of nation on the order of one of the most powerful men in Denmark, and a man who had benefitted greatly from the shift in political, and religious order. The following passage shows the tone in which Saxo discusses the *thing*, although he does not name it:

The ancients, when they were to choose a king, were wont to stand on stones planted in the ground, and to proclaim their votes, in order to foreshadow from the steadfastness of the stones that the deed would be lasting. By this ceremony Humble was elected king at his father's death, thus winning a novel favor from his country.<sup>54</sup>

Saxo describes the *thing* as important to him and the Danes only in the sense that it is a source of power for a king, and so justifies his rule. This simplification of the role of the *thing* in Scandinavian culture is partly due to the differences between the structure of Christian Danish society and that of Snorri's Christian Iceland. In Saxo's Denmark, the king rules according to the doctrine of medieval Christianity that a ruler is divinely sanctioned and therefore does not require the consent of his people in order to make laws, war, or pass judgements upon any subject. Reinforcing this interpretation of Danish kingship in Saxo's work is his remark that the consent of the Danes to Humble's kingship was 'novel'.<sup>55</sup> The Icelanders, on the other hand, possessed no king and maintained the practice of the *thing*, which according to Sveinsson encouraged the continual practice of ancient Norse customs as well as societal norms, such as *hof* and *drengskapr*, which in Denmark had likely been altered by Christian values at this time.<sup>56</sup>

<sup>54</sup> Saxo Grammaticus, 92.

<sup>55</sup> Saxo Grammaticus, 92.

<sup>56</sup> The Icelandic, and therefore Old Norse, notion of 'honor' as described by Einar Sveinsson: "only through the relationship of mutual trust between the strong and the weak did the ideal of honor, *drengskapr*, find its full development." Sveinsson, 27.

Throughout the rest of the first five books of *Gesta Danorum* Saxo mentions the *thing* is only when the need for a king is presented, such as when Dan and Angul were both chosen as kings:

And these two men, though by the wish and favor of their country they gained the lordship of the realm, and, owing to the wondrous deserts of their bravery, got the supreme power by the consenting voice of their countrymen.<sup>57</sup>

And later:

After the death of Fridleif, his son Frode, aged seven, was elected in his stead by the unanimous decision of the Danes. But they held an assembly first, and judged that the minority of the king should be taken in charge by guardians, lest the sovereignty should pass away owing to the boyishness of the ruler.<sup>58</sup>

Saxo here simplifies the *thing* into a body serving only to choose a king, and not limit him from using the power of kingship selfishly.

References to the *thing* in Saxo and the *Heimskringla*, where men such as Sigurd the Jarl, Asbjorn, and Torgny the Lawman give voice to the idea of *hof* and the belief that even a king must abide by this standard when dealing with matters which effect all his people are important. A good example of a king following *hof* is the example of king Olav the Good, who abstained from using force to convert his *boendr* to Christianity and instead gave way to their will.<sup>59</sup> In contrast to the *hof*-driven arguments of the *Heimskringla* against rash kings, however Saxo highlights the sovereignty of rulers, a notable contrast to the ideal of power as something to benefit the whole community. Byock defines men who break the social norms of moderation

<sup>57</sup> Saxo Grammaticus, page 91.

<sup>58</sup> *Gesta Danorum*, page 261.

<sup>59</sup> The behavioral code revealed by the sagas was based on the standard of *hof*, meaning moderation or measure. A man of power, such as a *god* (chieftain) was expected to curb his ambitions. *Hof* was more than an ethical judgment; it specified the kind of conduct looked for in those who held power." Byock, Jesse L, *Feud in the Icelandic Saga*, (Berkeley: U of California, 1982), 218.

(regardless of their societal position) as *ojafnadarmadr* or 'overbearing men'.<sup>60</sup> An example of the types of actions Saxo's kings engage in is one of king Frode's campaigns: "The design occurred to Frode of a campaign against Friesland; he was desirous to dazzle the eyes of the West with the glory he had won in conquering the East."<sup>61</sup> In this passage Saxo shows no reservations about the conquests of king Frode, particularly because of the clear warmongering and glory-seeking of the king. Throughout the *Gesta Danorum* we see kings who value plunder and constant warfare, and hurl themselves into conflicts without regard for their countrymen, thereby earning the notoriety of *ojafnadarmadr*. The most extreme example is the early Danish king Hadding, who engages in war after war as soon as he is fit to fight until he eventually hangs himself.<sup>62</sup> The wars of Hadding are devastating not only to his own people, but to those against whom he fights. It is fair to assume, by contrast, that Saxo does not find the warmongering of the kings to be an issue. He has abandoned the traditional value of *hof*. The adoption of the belief that a king should be empowered to wield his maximum might and authority is a paradigm shift. Christian notions of divine sanction, God's providence, and human centrality to the unfolding of time here come together here to empower Christian kings over their people.

#### *Modern scholarship.*

Byock's analysis of the *thing* and the cultural expectations it reflected are summed up in his statement: "Formal studies have ignored that the bulk of saga narrative reflects issues inherent in societal decision making, the acquisition of status and wealth, and the formation

<sup>60</sup> The attachment of the title *ojafnadarmadr* to a man was usually due to his penchant for disregarding "the norms of moderation and compromise in social, legal, and financial dealings. His conduct, marked by greed and ambition, went beyond acceptable limits." Jesse Byock, 218.

<sup>61</sup> Saxo Grammaticus, 142.

<sup>62</sup> Saxo Grammaticus, 109-128.



and maintenance of networks of obligations".<sup>63</sup> Byock's statement is matter-of-fact, and is susceptible to a counter-argument based on the prevailing conception that sagas, although useful, are generally fictional accounts. Theodore M. Andersson asserts that the divided nature of saga scholarship allows historians to use sagas in many ways, with legal studies and cultural analysis being the most useful.<sup>64</sup> Byock elaborates on the function of the *thing* as a check to the king's power:

The right to choose a leader, highly unusual in medieval times, was possible because the *tingmandr* of one chieftain could, and often did, live interspersed with the followers of another chieftain. When a chieftain became overbearing, a *tingman* was free to move away from the area. For his part, a chieftain could refuse to accept a *bondi* as his thingman. Although a *bondi* could shift his allegiance from one chieftain to another, such changes were infrequent because of personal and family loyalties or proximity to a particular *goði*.<sup>65</sup>

The nature of the *goði* as a lord figure in Icelandic society presents a unique, and useful, image of the way these Scandinavian societies may have functioned. In 'feudalism' as expressed on the continent, a lord was a military and political figure who secured homage both from tenants, who had usufruct of his land and from landed free men who exchanged their assistance in war for protection. In the Scandinavian system a lord also was obliged to represent his *thingmen* at the *althing*. The representative nature of the *goðar* in Iceland holds the key to the evolution of Scandinavian political tradition, in that the future Norman lords would come to engage with this role in a new way. Byock's and Andersson's statements on the sagas affirm that these

<sup>63</sup> Jesse Byock, 25

<sup>64</sup> Andersson, 49.

<sup>65</sup> Byock, 214.

sources are vital to understanding the Scandinavian assemblies. The *thing* was a societal structure for decision-making governed by the conception of *hof*.

The inception of mainland ‘feudalism’ in Scandinavia was concurrent with the importation of Christianity by kings such as Harald Harfrage and Olaf the Good, who were baptized overseas and returned home as conquerors. The shift from paganism to Christianity in Scandinavia, as in Europe overall, was not uniformly successful or simple by any means. Bartlett argues that the conversion process was largely a top-down phenomenon in the Scandinavian world, in contrast to the Roman-style grassroots conversion narrative.<sup>66</sup> Bartlett’s assertion is well-supported by Snorri’s and Saxo’s numerous examples of kings attempting to either coerce or force their people to convert to the new faith. This concept both adds additional credibility to Snorri and Saxo and complicates the way that kingship and culture can be viewed in a Christianized Scandinavia. It is easy to imagine a situation where the common folk remained primarily pagan in practice but were nominally Christian, and such a formulation is reported to have existed in Iceland during Snorri’s lifetime.<sup>67</sup> Bartlett argues that pagan tradition, including the *thing* as a “popular constitution are here explicitly linked” when he discusses a bloody uprising in Saxon lands against Christian kings.<sup>68</sup> The uprising, as described by Bartlett, was a rebellion of the common people who’d organized themselves through the *thing* and were dealt with brutally by their lords. The conversion to Christianity wrought changes in the social order of Scandinavia as the ‘missionary kings’, a term used by Sverre Baghe and Sæbjørg Walaker

<sup>66</sup> Robert Bartlett, “From Paganism to Christianity in Medieval Europe”, in *Christianization and the Rise of the Christian Monarchy*, ed. Nora Berend, (Cambridge: Cambridge University Press, 2007), 47.

<sup>67</sup> “...there were many who were untouched by the Christianity of the twelfth century.” Sveinsson, 110-111

<sup>68</sup> Bartlett, 66.

Nordeide in their essay *The Kingdom of Norway*, reformed the political landscape into something more manageable by a central authority. Baghe and Nordeide note that the Harald Hardrade broke Norway into territories made up of land he controlled and maintained them each through an appointed *jarl* with four subservient *hersir*.<sup>69</sup> The system of rule established by Harald bears strong resemblance to the system that would later be established in England under the rule of King Cnut, who established a pan-Scandinavian empire from Sweden to England.

The reign of King Cnut, which lasted nearly thirty years, was the moment in the history of England when the continuity between its Anglo-Saxon heritage and the Scandinavian world was most apparent. Alexander Rumble's 2007 *The Reign of Cnut* provides a detailed explanation of who Cnut was, his policies, and the England that he left behind after his death. Rumble immediately notes that even in the time of Cnut, the early eleventh century, the *thing* was still used as a tool for governance in Denmark.<sup>70</sup> The persistence of the custom, which inherently challenged kings as omnipotent figures, suggests a complex and forceful relationship between the subjects and the ruler. Why would a king choose to allow his subjects to govern themselves, and possibly him, in this way? One possibility are the practical benefits of maintaining an established system of government. English evidence suggests that the shire moot was a very useful such tool. Perhaps the *thing* had been relegated to a formality, reduced to mere pageantry and pomp. Could it have been, however, that the *thing* was a deeply important

<sup>69</sup> Sverre Baghe and Sæbjørg Walaker Nordeide, "The Kingdom of Norway" in *Christianization and the Rise of the Christian Monarchy*, ed. Nora Berend, (Cambridge: Cambridge University Press, 2007), 128.

<sup>70</sup> Alexander R. Rumble, ed., *The reign of Cnut*, (Leicester: Leicester University Press, 1994), 12.

cultural phenomenon, one that transcended social status and religion? The *thing* very likely was useful, perhaps weakened by the power of the king, but its persistence and development suggests that its continued existence was driven by the resilience of cultural norms. When Cnut conquered England, he swiftly reorganized the kingdom Alfred had united into four provinces, Wessex, East Anglia, Northumbria, and Mercia, each representing one of the ancient Anglo-Saxon kingdoms. Cnut installed a *jarl* in each other province but ruled Mercia himself, allowing him to project his power indirectly in much the same way as feudal lords on the mainland.<sup>71</sup> Rumble's analysis of Cnut's writs and their cosignatories by lords shows that he never issued a public document without the consultation of several of his *jarls* and he was known to hold annual assemblies at major holidays.<sup>72</sup> *The Anglo-Saxon Chronicle* notes the Easter *althing* as being religious, social, and political gatherings where the lordship and crown would discuss matters of state and plan for the coming year.<sup>73</sup>

This image of Cnut, and therefore of Danish kingship, stands in stark opposition to the portrayal of Danish nobility in *Gesta Danorum*. Cnut consistently shows himself to understand the values of *hof* and *drengskapr* as he seeks counsel not just from his closest barons, but from all the leaders in his kingdom. His reorganization and efficient management of England shows that, even as a Dane, he was either sufficiently familiar governing a nation structured in a similar way, or that he was very willing to accept local advisors. In any case, Cnut shows a remarkable understanding of *hof*. He was willing to accept the English as his kinsmen and made

<sup>71</sup> Rumble, 44.

<sup>72</sup> *Ibid.* 53.

<sup>73</sup> *The Anglo-Saxon Chronicle*, trans. Rev. James Ingram (London: J. M. Dent & Sons Limited 1912), 118.

amends for the slaughter his conquest brought to the Anglo-Saxon people.<sup>74</sup> As a Scandinavian king transplanted in England, Cnut showed that the differences between these labels are small. Cnut was able to conquer England and immediately begin running it in an efficient and respectable manner. The English accepted him as their rightful king, but it was an Anglo-Saxon king who had set the stage for Cnut's success.

### *Kingship and Authority in Anglo-Saxon England*

Determination of the implications of the Norman Conquest for pre-existing Germanic traditions in England, requires some background. The political structure of England was until the tenth century was divided into several independent and often warring kingdoms – Mercia, Northumbria, Wessex, and East Anglia being the four largest. Although the wars that ravaged these kingdoms were frequent and violent, much contemporary evidence about them survives, particularly surrounding two of the most important kings of England, Alfred the Great, and King Cnut. Contemporary sources stated that these two kings were the standard of excellence for English royalty. In the case of Alfred, Bede, in the *Anglo-Saxon Chronicle*, and Asser's *Life of King Alfred* have much praise to offer while, for Cnut, Bede offers insight into his life and reign. Alfred as the unifier and symbol of the Anglo-Saxon culture's strength comes first.

The Alfred whom Asser describes is a warrior, and he is portrayed as a traditional warrior king; a man who is temperate in peacetime but fierce and deadly in war.<sup>75</sup> Alfred, born

<sup>74</sup> Ibid, 118

<sup>75</sup> This character trope appears all across the Germanic diaspora, from Snorri's *Heimskringla* "When he (odin) sat with his friends he was so fair and noble in looks that all were joyful; but when he was with his army then he seemed terrifying to his foes" Sturlason, Snorri, 4, to Beowulf "After that the broad kingdom fell into the hand of Beowulf; he ruled it well fifty winters; that was a wise king, an aged guardian of the father-land...." trans. Thomas Arnold, *Beowulf*, (London: Longmans, Green, and Co., 1876), 142.

heir to the throne of the West Saxons, was the son of King Ethelwulf and Queen Osburh. He was descended from the Jutes and the Geats on his mother's side, both tribes of Northmen from Denmark and Sweden respectively. In his very lineage and upbringing he has Scandinavian roots.<sup>76</sup> His early life, as described by Asser, was full of war and conflict, as he and his kin attempted to drive back the Great Heathen Army that had descended upon all of England. As the war with the Norse-Danish army continued and Alfred came of age, he found great success in fighting against them, winning many of his battles, but not all.<sup>77</sup> Asser makes an interesting and useful note that "even while that same brother (the eldest, who ruled before Alfred) lived, had he wished to receive it, he could most easily have obtained the government, with the assent of all men....moreover because he was very warlike and was victorious in almost every battle." Asser here shows us two things; the *thing* tradition of king-choosing was alive and well in England during the ninth century, and that a virtuous king is one who tempers his ambitions.<sup>78</sup>

To apply the Icelandic ideals of *hof* and *drengskapr* to Alfred is tempting, and it would not be entirely wrong to do so. Alfred displays his commitment to justice and tempered authority, and the prime example of his honorable and respectful nature is in the sparing of Guthrum:

When he (Guthrum) had abode there fourteen days the pagans were overcome by hunger, and cold, and fear, and at the last despaired. Then they sought peace on these terms that the king should receive from them hostages, as many as he would, and that he should give no hostages to them....and when he heard

<sup>76</sup> Asser, trans. Jane, L. C., *Asser's Life of King Alfred*, (London: Chatto and Windus, 1908), 1-3.

<sup>77</sup> Asser, 25, 28, 31, 42

<sup>78</sup> Asser, 30. Here it is important to note that although the English term for the *thing* was *gemot* and the *althing* was *witan-gemot*, I have chosen to continue with the Norse vernacular for continuities sake.

them embassy the king was moved with pity and received from them the chosen hostages....moreover Guthrum, their king....would receive baptism at the hand of King Alfred.<sup>79</sup>

Even to his enemies, Alfred shows respect and honor. Is this passage an example of what Byock and Sveinsson mean when they talk about *hof*? The moderate use of power does not immediately appear to be relevant here, but at second glance Alfred is in a position of total power, albeit military power, over the Danish army, yet he chooses to be merciful and generous with them. While Alfred's deeds here fit well the descriptions of *hof* and *drengskapr* as given by Byock, it is important to recognize that the values Asser ascribes to Alfred are not only held by Scandinavian peoples. With this in mind, however, the fact that the standard of kingship is expressed in a man who *does* hold the values of temperance and honor dear to him suggests that these values were deeply rooted in Germanic societies in general.

While Asser's work is generally accurate, his account of Alfred takes the tone of legend in a fashion similar to the Arthurian tales. For example, Asser claims that Alfred's life followed a biblical arc:

Who willeth that those who are faithful to Him, when they are set in great honour, should sometimes feel the scourgings of evil fortune, that when they are brought low, they should not despair of the mercy of God....Now indeed we believe that this ill-fortune came not upon the king contrary to his deserts. For when he began to reign, as he was yet a young man, he was given up to youthful passions, and when the men of the realm subject to him came to him and sought his aid and favour, he would neither hear them nor given any help to them, but utterly despised them.<sup>80</sup>

<sup>79</sup> Asser, 43.

<sup>80</sup> Asser, 39.

This passage, though likely unreliable in the claims it attempts to make about Alfred's personal life, is important because it shows that Asser, and likely many Englishmen, saw the king's life as a powerful national legend.<sup>81</sup> Alfred's character is developed here so that he seems human, has flaws, makes mistakes, and sins, but through God's help he is able to rise above these failures and save England. Alfred, as the first Anglo-Saxon king to bring the disparate kingdoms under one banner carries with him a mystique of heroism and power that few others can match.<sup>82</sup> Although his legendary status appears to problematize his historicity, it also increases the importance of his fulfillment of the ideals *hof* and *drengskapr* because it suggests that these were deeper cultural values, not just aspects of one man's life. For Alfred, a nearly epic figure in English history, to display the virtues of *hof* and *drengskapr* shows that these values were still part of the definition of 'good' kingship.

The most important aspect of Alfred's legacy, however, was his role as a lawgiver for Anglo-Saxon England. Towards the end of his life, and after he had pacified the Danes in England, he focused his energies onto less practical issues such as religion and politics. Asser claims that Alfred encouraged the ideal that men of power should be first of all wise, and that the king should be wisest of all.<sup>83</sup> Alfred, beyond seeking to acquire knowledge, was acutely interested in the government of his kingdom and of passing justice in the courts of law. He created a code of taxation, and one of the most revolutionary aspects of his reallocation of funds was his provision for a standing army.<sup>84</sup> Alfred's military reforms ultimately allowed

<sup>81</sup> See Luke 14:11, this is a classic medieval Topos rationalizing the twists of fate that all people, good or bad, suffer.

<sup>82</sup> Asser, 65.

<sup>83</sup> Asser, 58.

<sup>84</sup> Ibid. 83.



England to repulse the relentless Danish raiders, who previously had been able to strike and retreat before the levies could be brought to bear. Furthermore, Asser claims, the king held his judges and reeves personally accountable for lapses in judgement, and failures to uphold justice:

He would inquire whether it was from ignorance, or from ill will of any sort, from love or fear of any man, or from hatred of others, or from greed of any man's money. Then if those judges professed that they had so judged those causes for that they could come to no better understanding on the matter, he would correct their inexperience....'I marvel greatly at your insolence, since by the gift of God, and by my gift, you have assumed the duties and rank of wise men, but have neglected the study and exercise of wisdom....apply yourselves with much greater zeal to the study of wisdom'.<sup>85</sup>

In this passage, Asser portrays Alfred as taking on the role of something more than a judge – a man who watches to ensure that his appointed men behave as they ought, with *hof* and wisdom. Many of the questions that Alfred asks of his judges, such as those pertaining to ill will, greed, hatred, and love fall into motivations that go outside the standard of *hof*, and the king's attempt to enforce this standard of justice upon his subordinates shows his own commitment to the ideal. Alfred, by determining the role of the king as an arbiter over legal proceedings, evolves the king into a figure who not only is responsible for his own honor but also ensures that his officers act with temperance. Alfred's legacy in the minds of Englishmen is equal to that of King Arthur, but in the eleventh and twelfth centuries his prestige was likely even more pronounced by memory's embellishments.<sup>86</sup>

<sup>85</sup> Ibid. 89.

<sup>86</sup> *The Anglo-Saxon Chronicle*, 76. Here Bede states that King Alfred was king of all the English, and ruled for nearly 30 years. When compared to any other English king, Alfred's legacy in this passage surpasses them greatly as he prevented the Kingdoms of England from falling to ruin.

In the consummate document of Alfred's reign, the Doms of Alfred, two articles appear to be well in line with the Scandinavian traditions discussed earlier. The first, article 37, discusses the process for a freeman changing his allegiance to a new lord:

If anyone wishes to go from one settlement into another to seek a lord, he must first have as witness the alderman in whose shire he was at first a follower. If he does so without such witness, the lord who takes him as a man shall pay a fine of 120s., dividing his payment so that the king will get half in the shire where the man was at first a follower and half in that to which he comes....<sup>87</sup>

This process is almost exactly the same in function and practice as the process of becoming a *thingman* in Iceland, and shows that in tenth century England a man's allegiance to a lord was still based on his personal relationship to that man rather than the land on which he lived.<sup>88</sup> The second article reflecting the ancient traditions is the 38<sup>th</sup>, in which a man who draws a weapon or spills blood at the *mot* shall be punished according to the importance of the *mot* he defiled.<sup>89</sup> This custom resembles closely the Norse tradition of the *thing* as a sacred space: a man who broke the peace at the king's court or *witenagemot*, equivalent to the *althing*, would suffer death unless the king wished otherwise, he was treated as a *varg I veum*.<sup>90</sup> The practice of punishing violence at the *thing* was as practical as it was spiritual, for these community assemblies were often invoked to settle feuds without recourse to bloodshed.

A comparison to the Icelandic tradition offers insight into why the Anglo-Saxons were hesitant to accept military burdens upon them in the form of taxes and the use of rights of *expeditio* outside of the context of national defense. "Again and again, for instance, they refuse

<sup>87</sup> *Sources of English Constitutional History*, 11.

<sup>88</sup> Einar Ól Sveinsson, 9-11

<sup>89</sup> C. Stephenson and F. Marcham, 10-11.

<sup>90</sup> 'wolf in the sanctuary', a reference to Fenrir's presence in the sanctuary of Åsgard.

to accompany a chieftain on an expedition, at the same time declaring their willingness to defend their own district.”<sup>91</sup> The community’s monopoly over military power and its right to refuse to fight under their lord’s banners when called to fight unjustly is documented in the *Anglo-Saxon Chronicle*, when the armies raised during Earl Godwin and King Edward’s struggle refused to engage in battle.<sup>92</sup> What is the significance, though, of these reforms? What do the Doms of Alfred offer to the history of liberty, and its Germanic roots? Alfred’s laws secured the rights of the people to choose their lords, and to be free from the hegemony of forced vassalage, as well as providing them with a sacred and well protected space to pursue justice. The Doms of Alfred gave Alfred the moniker ‘lawgiver’ and, in accordance with the English tradition, these laws set the stage for the developments of the next two centuries.

In the wake of King Alfred England saw several lesser kings, among them Æthelred the Unready, who had been exiled into Normandy in response to a particularly horrific example of medieval instability, the St. Brice’s day massacre, an event which galvanized the renewed hostility of the Danes.<sup>93</sup> Æthelred came into power and was utterly swept aside by a vigorous Dane, Cnut.<sup>94</sup> Not only a Scandinavian king, Cnut was an amalgam; a living example of the continuity between the Scandinavian and Anglo-Saxon worlds. In the *Anglo-Saxon Chronicle*, he

<sup>91</sup> Ibid. 11. note: While this term was not in use in 10<sup>th</sup>-11<sup>th</sup> century England, the practice of ‘calling the banners’ for a military expedition was still practiced before England was conquered by the Normans who did use the right of *expeditio*.

<sup>92</sup> *Anglo-Saxon Chronicle*, 132.

<sup>93</sup> William of Jumièges, Orderic Vitalis, and Robert of Torigni, *The Gesta Normannorum of William of Jumièges, Orderic Vitalis, and Robert of Torigni vol. 2*, ed. and Trans. by Elisabeth M. C. Van Houts (Oxford: Clarendon Press, 1992), 16-17. William of Jumièges states that Æthelred ordered his soldiers to fall upon the Danes in the eastern part of England, who according to William “He had murdered, in a sudden fury and without charging them with any crime, the Danes who lived peacefully and quite harmoniously throughout the kingdom and who did not at all fear for their lives. He ordered women to be buried up to the waists and the nipples to be torn from their breasts by ferocious mastiffs set upon them. He also gave orders to crush little children against door-posts.”

<sup>94</sup> Æthelred is returned to England, but betrays his people and takes much plunder and begins a civil war between himself and Edmund. *Anglo-Saxon Chronicle*, 113-115.

is described as having come into power in the aftermath of his defeat of King Edmund and the English lords at Assingdon where a huge number of Englishmen and Danes met their end.<sup>95</sup> Cnut, despite bringing bloodshed and slaughter to the people of England, is regarded in a very positive light by the author of the *Anglo-Saxon Chronicle*:

The Danes and Angles were united at Oxford under Edgar's law....this year king Knute in London, in St. Paul's minster, gave full leave to Archbishop Ethelnoth, Bishop Britwine, and all God's servants that were there with them, that they might take up from the grave the archbishop, Saint Elphege....as soon as he came to England he gave to Christ's church in Canterbury the haven of Sandwich....<sup>96</sup>

Cnut's reign is depicted as a pious and peaceful one for England. For twenty years the only mention of warfare involving Englishmen in the *Anglo-Saxon Chronicle* is the great battle of the holy river in Denmark, where Cnut brought a combined English-Danish army against a Norse coalition.<sup>97</sup> One of the greatest testaments to Cnut's rule as an Anglo-Scandinavian king (rather than a foreign invader) is that his son Harold was chosen by the moot to succeed him.<sup>98</sup>

Beyond his cult of personality and achievements as a ruler, Cnut also left behind a potent legal legacy. Like Alfred's, Cnut's laws have been understood to be a crucial moment in the constitutional history of England. One of the most sweeping changes that Cnut brought to English law was his formalization of the *fyrdwite*, a system whereby the king could call upon the men of England to prepare for war.<sup>99</sup> For the legacy of Scandinavian traditions, however, Cnut mandated that the borough courts and shire courts be held a minimum number of times per

<sup>95</sup> *Anglo-Saxon Chronicle*, 116.

<sup>96</sup> *The Anglo-Saxon Chronicle*, 118-120.

<sup>97</sup> *Ibid.* 119. though do note that here it is said that many Englishmen fell as well.

<sup>98</sup> *Ibid.* 121.

<sup>99</sup> C. Stephenson and F. Marcham, 22.

year, and that every man legally obligated to attend these courts must do so or be fined.<sup>100</sup>

Furthermore, Cnut mandated that all men ages twelve and up must be brought into the hundredsmoot by a tithing, a group of ten men who hold each other mutually in surety and to their legal obligations as freemen.<sup>101</sup> Cnut's legal reforms thus brought the Danish and English traditions together and advanced the policies of Alfred to strengthen the kingdom under the king, while simultaneously demanding that the common people become involved in local politics. Cnut seems to have understood that the *thing*, while it could be a challenge to his authority, allowed him to legitimize his power through the people's consent. By standardizing the *thing* at every level, and mandating that all freemen take part in it, Cnut ensured that he could use the English *mot* to disseminate his influence into every community in England without the use of force.

Not only did the process of king's choosing demonstrate the durability of the *thing* in eleventh-century England, but also the ways that Anglo-Saxon communities reacted to military reforms. In 1012, four years before the successful invasion by Cnut, Æthelred instituted a new tax called the *heregeld* for the purpose of maintaining a fleet of Danish soldiers.<sup>102</sup> The Danes were maintained in this way for decades until in 1051 the *heregeld* was abolished and the Danes sent away.<sup>103</sup> In the interim between the institution and abolition of the *heregeld*, the English people came to despise it as "that tax oppressed all the English people....That tax always came before other taxes, which were variously paid, and it oppressed people in many ways."<sup>104</sup>

<sup>100</sup> C. Stephenson and F. Marcham, 23.

<sup>101</sup> *Ibid.* 23.

<sup>102</sup> *Anglo-Saxon Chronicle*, 112.

<sup>103</sup> *Ibid.* 138.

<sup>104</sup> *Ibid.* 138.

The fullest manifestation of the English people's frustration came in 1041, when two of the huscarls of Hardacnute were slain by the people of Worcestershire.<sup>105</sup> The fierce English resistance to the imposition of military upkeep by the crown was not unique to the Anglo-Saxon tradition. For a Scandinavian example, in 1085 the Danish St. Cnut attempted to impose the practice of *expeditio*, known to the Anglo-Saxons as *fyrd*, upon the Danes – and paid for it with his life.<sup>106</sup>

One possible interpretation of the general resistance to military service and military maintenance by the common folk is that the role of the *thing* as a check to royal power, in addition to its electoral and judicial powers, was durable enough to empower violent backlash against royal authority. What is clear, however, is that the people of England had a concrete understanding of the limits to authority and power, else they would not have resisted the encroachment of royal power upon their rights. The attempt to develop a formal standing army, as opposed to the *fyrd*, in England by the Danish kings represents a turning point where the king sought to usurp the community's control over military forces, and thereby gain power over his earls. The struggle between the liberty of the people and the control of the ruler which comes to define the relationship between the English and their various kings.

### *The Modern Historiography*

Historiography on early English law is dominated by Frederick William Maitland, and Sir. Frederic Pollock who wrote most of their work in the late nineteenth-century. These two names

<sup>105</sup> Ibid. 123.

<sup>106</sup> Rumble, 33. *Expeditio* was a term used on the continent to describe the right of a lord to call his vassals together into military service, be it for the king or for a private military expedition. The Anglo-Saxon and Scandinavian traditions, as shown in this section were extremely resistant to this custom all the way back to Snorri's depiction of the *thing* where kings would have their warmongering denied by the community.

represent the great weight of twentieth-century historiography, the standard for how the evolution of political, and legal history in England should be understood. These works demand respect due to their immensely laborious studies of English legal texts, but I engage them and challenge them on one major issue: the roots of liberty in England. For Pollock and Maitland, English law was a long march through the darkness and chaos of Germanic influences, where “German and Roman law were making advances towards each other. If the one was becoming civilized, the other had been sadly barbarized or rather vulgarized.” In this statement Pollock and Maitland reveal their strong bias against the Germanic traditions upon which England was founded.<sup>107</sup> The idea that Germanic, and by extension Scandinavian, traditions and beliefs are fundamentally ‘barbaric’ or ‘uncivilized’ represents a dangerously teleological and oversimplified perspective on the history of the West. While the authors do at least credit the Germanic peoples for absorbing Roman law, the judgment that the original Germanic traditions are ‘uncivilized’ compared to the ‘civilized’ Roman tradition relegates the deep Germanic traditions to a subclass within Western history. To place Roman law categorically above the law codes of the Germanic peoples is to relegate to irrelevance one of the ancient, and undeniably influential, foundational cultures of the West. The denial does not stop with a condemnation of ‘Germans’, however, as Pollock and Maitland go on to argue that:

Cnut....If he is not the greatest legislator of the eleventh century....but it was not outside England that he learned to legislate....The Norman subdues, or, as he says, inherits a kingdom in which a king is expected to publish laws....<sup>108</sup>

<sup>107</sup> F.W Maitland and F. Pollock, 15.

<sup>108</sup> F. W. Maitland and F. Pollock, 20.

The Northmen were so victorious in their assaults on our island that they did less harm here than elsewhere. In the end it was better that they should conquer a tract, settle in villages and call the lands by their own names, than that the state should go to pieces in the act of repelling their inroads.<sup>109</sup>

The legacy of the Danes, and the Normans' 'Northmen' ancestors is oversimplified here. The 'Northmen', apparently had no other influence upon the future of England than simply raiding it and 'causing harm' until they settled down to farm, while the Normans are argued to have had no impetus for justice or law of their own. Such statements might be understandable, if not for the fact that the authors state in their introduction they admit to having little knowledge of Scandinavian traditions or works, and settle for "the fashion upon the continent to speak of Anglo-Norman law as a daughter of Frankish law" rather than take explore alternatives.<sup>110</sup> The language used in the dismissal of the Scandinavian tradition is subtle, as the authors make some concessions to Danish influences but do not offer them a major role in English development. While statements to this effect by the authors are understated, and seem trivial, they can be seen repeated throughout their work:

When at length the 'custom' of Normandy appears in writing, it takes its place among other French customs, and this although for a long time past Normandy has formed one of the dominions of a prince, between whom and the king of the French there has been little love and frequent war; and the peculiar characteristics which mark off the custom of Normandy from other French customs seem due much rather to the legislation of Henry of Anjou than to any Scandinavian tradition.<sup>111</sup>

<sup>109</sup> Ibid. 21.

<sup>110</sup> Ibid. c-ci.

<sup>111</sup> F. W. Maitland and F. Pollock, 66.



Not only do Pollock and Maitland argue that Normans, although expressing hatred of the French and peculiar customs from them, must have been more French than Scandinavian, but they adopt a stance of willful ignorance regarding the origins, and, most importantly the circumstances surrounding the Norman origin story. To suggest that Hrolf – and the huge number of warriors who followed him with their families – would forget where they came from and how they were exiled unjustly from their homelands in the span of no more than five generations derogates the durability of Scandinavian traditions.<sup>112</sup> This is not to say that the Normans in later generations did not adopt *anything* French, but to say that they completely changed culturally cannot be accepted.

Further, the assertion that Norman law was functionally French is only supported by the matter-of-fact statement by Steenstrup:

The oldest customs (meaning written records of customary law) of Normandy date from the twelfth century, and the law they represent is French, although there are some traces of the customs of the North. It would be incorrect to list these among the sources of Scandinavian law. They are a special type of law-making, Anglo-Norman.<sup>113</sup>

Here Steenstrup makes a fair argument that, by the twelfth century Norman law had many French elements, but still had ‘remnants’ of Scandinavian traditions. Pollock and Maitland,

<sup>112</sup> My assertion that Hrolf’s army would have contained many family units is based on the parallel exodus to Iceland, where thousands of men took in many cases their entire family tree with them to find a new home. Hrolf and his warriors were exiled on pain of death, it is unlikely they left their families behind. In addition, there is a distinct possibility that English historiography has leaned away from Germanic influences in response to the extreme anti-German sentiments which emerged after the first and second World Wars, while Maitland himself was not writing during these periods some his students and those who read his works certainly were.

<sup>113</sup> Pollock and Maitland, 66. “Les coutumes les plus anciennes de la Normandie datent du xii siècle, et le droit qu’elles nous présentent est français, quoiqu’il y ait quelques restes des coutumes due Nord. Il serait injuste d’enregistrer ces sources dans la législation scaninave; elles appartiennent a une législation special, a la législation anglo-normande.” Trans. Carol Neel.

however, have interpreted Steenstrup's statement in a very specific way; they read Steenstrup's remark, "Il serait injuste d'enregistrer ces sources dans la législation scandinave", to mean that there is no reason to trace Anglo-Norman tradition back to the Scandinavians of old. My interpretation of Steenstrup's assertion is that the Anglo-Norman tradition, which contained both Scandinavian and Frankish traditions, cannot be fairly assigned to only Scandinavian origin. Pollock's and Maitland's eagerness to reject the ancient traditions of Scandinavia as possible precursors of English constitutional law is reflected in their misuse of Steenstrup, as well as their admission of ignorance on the subject of Scandinavian tradition. In many of the places where the authors state the laws stem from no Germanic source the fact is they simply cannot recognize it.

Pollock and Maitland repeatedly make claims regarding the nature of English customs and laws, many of which, as comparison with Icelandic sources offers us, are entirely Germanic. One such example is the assertion that within the county and hundred courts, which served the same purpose as the *thing*, "nothing in it is peculiarly English, not much is peculiarly Germanic."<sup>114</sup> To say that the moot style of government is not something peculiarly English is fair, as we have seen in the prevalence of the *thing* across Scandinavia, but to argue that it is not 'peculiarly Germanic' is unsupported. Furthermore, Maitland presents contradictory claims about the origins of England in general in "Anglo Saxon Land Books and Charters" where he says "We are compelled to say that our true villages, the nucleated villages with large "open fields, are not Celtic, and not Roman, but are very purely and typically German....[We] seem bound to suppose that at one time there was a large class of peasant proprietors....free men

<sup>114</sup> Pollock and Maitland, 43.

who tilled the soil that they owned...."<sup>115</sup> The statement that the English village was essentially German and neither Roman nor Celtic, stands in stark contrast to Maitland's statement that the government of these villages, in the form of the moots, was *not* Germanic.

Maitland appears to be arguing against Germanic heritage whenever it suits his argument, the bias of which is well outlined in as he says:

As regards the legal ideas in which feudalism is expressed a general question may be raised. If we approach them from the standpoint of modern law, if we approach them from the standpoint of a classical Roman law, they are confused ideas....the Gaul of Merovingian times as being in the main governed by Roman ideas and institutions, which have indeed been sadly debased....there are other historians who can discover in this same Gaul little that is not genuinely *German and barbarous*....<sup>116</sup>

Here again Maitland relies on the argument that, because Roman law was good, the barbaric German law which changed it and mutated it must be bad. Therefore that which stems from 'pure' Roman law must be good in the same way our modern 'Romanized' laws are good. What is the truly 'sad', from another perspective, is the dismissive treatment the traditions of the Germanic peoples have been given by scholars, who argue for the greatness of Roman law even in the face of the atrocities committed by the Roman state upon the 'barbarians' in Western Europe in the name of conquest.

Pollock and Maitland's mutual internal contradictions regarding the nature of English tradition – and the roots thereof – show the intentional nature of their rejection of Germanic and more specifically Scandinavian sources and tradition. In order to maintain the idea that

<sup>115</sup> Frederic William Maitland, "Anglo Saxon Land Books and Charters", in *Selections from his Writings*, ed. Robert Livingston Schuyler (Berkeley: University of California Press, 1960), 149.

<sup>116</sup> *Ibid.* 151.

England and its constitutional law stem from 'legitimate' and 'civilized' sources such as Roman jurisprudence and the Romanized Frankish law, Pollock and Maitland have chosen to write the Scandinavian influence out of English history. They color the traditions of the ancient English, Germans, and Scandinavians as 'barbarous', and 'savage' in contrast to the 'sadly debased' Roman law that the English constitution is 'founded' on presents liberty in the West as belonging to the Greco-Roman tradition only. The conclusions drawn by Pollock and Maitland surrounding the heritage of English law and the importance of Scandinavian tradition should be rejected not only because of the strong biases present in their works, but also because Maitland was not educated on Scandinavian history or culture.<sup>117</sup>

Evidence abounds in both the Anglo-Saxon, Anglo-Norman, and Scandinavian traditions for the phenomenal durability of the system of community, evident all over the Germanic world even during the height of Roman power.<sup>118</sup> Rejection of the influence of the *thing* on the development of the English political system by scholars such as F.W Maitland and Sir F. Pollock is poorly supported by the evidence. A long historiography does not acknowledge the importance of the Icelandic tradition and the events surrounding the exile of Hrolf adequately the Norman system which dominated England in the eleventh century onwards. Hrolf's heritage and the circumstances of his exile must be acknowledged when discussing the Normans and their legacy. A discussion of the Norman Conquest, the legal tradition of the Normans, and the influence of their Norwegian heritage will emphasize this point.

<sup>117</sup>Frederic William Maitland, *Domesday Book and Beyond*, ed. James C. Holt (Cambridge: Cambridge University Press, 1987), XII-XIII.

<sup>118</sup> Cornelius Tacitus, *Complete Works of Tacitus*, trans. Alfred John Church, William Jackson Brodribb, and Lisa Cerrato (New York: Random House, Inc. Random House, Inc. 1942), chapter 11.

*The Normans, conquest, and liberty*

The Norman Conquest represents a major transition in English history regardless of one's interpretation of Norman heritage and legacy. William the Bastard, the latest in the line of Hrolf, invaded England in 1066 to find the king Harald and his army already exhausted and battered after the battle of Stamford Bridge, where the English slaughtered thousands of Norwegians and killed King Harald Hardrade in battle.<sup>119</sup> The Battle of Hastings, where the strength of the English kingdom was utterly broken by the Norman host, marked the end of Anglo-Saxon kingship of England once and for all. If Anglo-Saxons would no longer rule England, who had succeeded them? Who were the Normans? The answer, as we have seen, is more complicated than a simple ethnic identity. The history of the Normans, as depicted by medieval author Snorri and confirmed by modern historians Andersson and Baetke, began in the early tenth century under Duke Hrolf, or Rollo, with their exile by Harald Harfrage. What occurred after the conquest of Normandy by Hrolf, however, is where modern historians have chosen to separate the Normans from their Scandinavian heritage and mark them as 'Frenchmen'. Discussion of the history of the Norman people, and a comparison of their traditions to those of England, Iceland, and Denmark will show that these 'Frenchmen' were much more complex in their cultural allegiance than Maitland's assessment implies.

*The coming of the northmen*

The medieval Norman scholars William of Jumièges and Orderic Vitalis, writing in 1060 and 1105 respectively, offer their perspectives on the ancient history of the Norman people,

<sup>119</sup> *The Anglo-Saxon Chronicle*, 148. Note: The author mistakes Harald Hardrade for his predecessor Harald Harfrage, the fair-haired.

and of the princes who ruled them leading up to the conquest of England. At the very opening of the *Gesta Normanorum ducum*, the author describes the legend of Ragnar Loðbrok and his son Bjorn Ironsides, showing that he, and his source Dudo, had some knowledge of Scandinavian culture.<sup>120</sup> William's knowledge of folklore here suggests that the Norman people retained that cultural heritage and were capable of conveying it to the monastic community. It is impossible to say for sure that the Norman nobles would have known much about their past or the traditions of their people, but it is equally impossible to say they did not. William continues to claim that the northmen first arrived to raid Normandy in 851, while ecclesiastical records show that the first Viking raids were in 841 CE.<sup>121</sup> While these initial raids are not related to the arrival of the Normans, they do show that the region had seen many Scandinavian raids prior to Hrolf's arrival. William goes on to give 876 CE as the date for the arrival of Rollo, placing the invasion of his host several years after Harald Hairfair's unification of Norway.<sup>122</sup> The close correspondence of Harald's reign and Hrolf's arrival suggests that the date 876, while not exact, is close to correct. Further, William's description of Hrolf's conquest of Rouen shows him to operate as a Scandinavian warlord should:

By lot they chose one of their number, named Rollo, and appointed him to be lord and leader of the army, promising fealty to him. And so Rollo, appointed as leader, discussed with deceitful intention the destruction of Paris with his men, for as a heathen at heart he thirsted like a wolf for the blood of

<sup>120</sup> William of Jumièges, *Gesta Normanorum Ducum*, ed. and trans. Elisabeth M. C. Van Houts (Oxford: Clarendon Press, 1992), 11 and 17.

<sup>121</sup> William of Jumièges, 19.

<sup>122</sup> William of Jumièges, 53.

Christians....Hasting addressed the Danes with these words....Please tell us the name of your lord....We are Danes and we are all of equal lordship.<sup>123</sup>

Although this passage contains two distortions, that Hrolf and his men were Danes and that Hrolf was not already their leader, it offers an image of the Normans as operating under the *thing* to the point that even Hrolf, their elected king, states they are equals. It is notable that warrior bands likely operated on a more egalitarian level than other social units, but in the case of Hrolf's army we have shown that they were more than a warband. While the dialogues in medieval histories are almost always set pieces invented by of the authors, they are often based on actual events. Hrolf may never have said '....we are of equal lordship.' William may instead be making reference to the strong sense of community that emerged in Norman society. The Norman host quickly laid waste to much of northern and central France, defeating every army that met them in open battle. In 911, King Charles of France and his vassals pleaded with Hrolf to accept a charter granting him the lands of Normandy and the vassalage of the Britons on the condition that he accept the Christian faith:

At first the king had wanted to grant the province of Flanders as a means of subsistence, but Rollo refused to accept it as being encumbered by marshes. When Rollo received the duchy of Normandy and refused to kiss the king's foot, the bishops said: 'whoever receives such a grant should greet the king's foot with a kiss.' But Rollo Answered: 'I shall never bow my knees before any man's knees nor kiss the foot of any of the Franks.' Pressed by their prayers he eventually ordered one of his soldiers to kiss the king's foot. The man promptly took it, lifted it to his lips, and pressed a kiss upon the foot while standing upright, so that the king fell over backwards. This resulted in a great roar of laughter and a mighty tumult among the people. But King Charles, Robert, duke of the Franks, and his counts and barons, bishops and abbots,

<sup>123</sup> William of Jumièges, 53-55.

swore to the prince Rollo, with oath of Catholic faith, upon life and limb and the honour of the whole kingdom, that he should hold and possess the territory described above and pass it to his heirs....<sup>124</sup>

This passage, once again filled with fanciful dialogue, should be taken as an allegory for the character of the relationship between the Normans and the Franks for the next 150 years. Hrolf and his kin show homage to the French king, but only nominally, while the French in defeat are forced to swear mighty oaths to uphold the mutually binding nature of feudal allegiance.

Throughout William's history of the Norman duchy this scene is played out again and again, with the French breaking their oaths to the Norman duke, and the Normans in turn threatening harsh vengeance. This relationship of utter contempt and distrust makes Pollock and Maitland's assertions that the Normans were 'French' hard to believe, especially when the contemporary French would never have agreed.

Further, after Hrolf had secured his newfound kingdom and the right of *odal* to it he chose to do something that has an undeniably Norse foundation; he distributed his land to all of his followers. The significance of this event is its confirmation of Hrolf and his people's motivations for fleeing Norway according to Snorri. Snorri claims that Harald was 'hard ruling' and that he was stripping *odal* from many men, therefore, it makes sense for Hrolf to found a kingdom based on the security of that right. Orderic here makes particular note of Hrolf's choice:

He divided his land among his retainers by rope, resettled the whole country, for so long deserted, and populated it with his soldiers and with immigrants. He granted the people rights and everlasting laws, sanctioned and decreed by the will of their leaders, and forced them to live together in a peaceful manner

<sup>124</sup> William of Jumièges, 66.



of life. He rebuilt churches which had been razed to the ground and restored temples destroyed by the constant raids of heathens....He subjugated the Breton rebels and fed the whole country granted to him from the foodstores of Brittany.<sup>125</sup>

Hrolf not only declares the *odal* right for himself and his close retainers, but gives 'rights and everlasting laws' to all the soldiers and people of his country. He succeeds in creating what Harald took away from him and his followers, a country where they may be free and live in relative peace. Granted, the reason Normandy had been 'so long deserted' and that the churches had been 'razed to the ground' was that his armies and other Vikings had been pillaging the region for close to fifty years. Nevertheless, Orderic and William show Hrolf as committed to establishing a kingdom that maintains the Old Norse traditions of freemen land holding, the *thing*, and the right of *odal* for all land owners. We shall see, however, that while the Norman duchy does evolve and take on some of the feudal practices as described by Ganshof, it retains the core principles laid out here by Hrolf.

### *The durability of tradition and hatred*

Upon Hrolf's death, his son William Longsword was accepted by the duchy as successor by unanimous vote.<sup>126</sup> The Normans retained the custom of king-choosing, and this practice continued even to William the Bastard's ascension to the duchy in the eleventh century.<sup>127</sup> The durability of the ancient customs brought to Normandy by Hrolf's settlers is evident in the way that the Norman lords continued to exercise their right to choose the king. Although each duke

<sup>125</sup> Orderic Vitalis, 69.

<sup>126</sup> William of Jumièges, vol 1., 73.

<sup>127</sup> William of Jumièges, 89. William of Jumièges, vol. 2, 47, 97.

to be chosen was, indeed, a son of Hrolf's line, William and Orderic specifically mention that it was only with the consent of the lords of Normandy that these men gained power. The cultural identity of the Normans, even though they have surely adopted French as the language of power and have taken Christian names almost exclusively after baptism, evidently remains complex as they demonstrate their cultural and political affinity for other Scandinavians. In 944, William discusses the first French betrayal of the Normans as Hugh the Great, count of Paris, King Louis, and Count Arnulf of Flanders combine their forces to wage war on Normandy.<sup>128</sup> Prior to the betrayal of Count Hugh and the king, Count Arnulf had murdered Duke William Longsword during peace negotiations, and in the ensuing fallout with Normandy urged the king to offer Hugh all of Normandy, in exchange for his support. The Normans, realizing that they could not stand alone, call for aid from an unexpected quarter:

....so he sent messengers secretly to Harold, king of the Danes....that Harold with a hostile force should organize attacks from the sea on Normandy. This would compel King Louis to come and confer with Bernard against Harold, which would give Bernard an opportunity to avenge the blood of his friend William upon his enemies.... It then happened that one of the Danes recognized Herluin, Count of the town of Montreuil among the bystanders, for whom the duke had died; inspired by friendship for the duke, the Dane killed Herluin....by driving his lance through him....the heathens offered resistance and, in the heat of battle their swords pierced eighteen French leaders....whom they sent to fiery hell.<sup>129</sup>

The Danes here are shown to be utterly willing to risk their lives to support the Norman cause, suggesting that the two groups felt a strong kinship to one another.

The ability of Norman lords and dukes to 'summon' the Danes to support them becomes

<sup>128</sup> William of Jumièges, vol. 1, 107.

<sup>129</sup> William of Jumièges, vol. 2, 111-113.

a common theme in the history of Normandy. The bonds between the Normans and the Danes appear to be based on their common ancestry and culture, as is affirmed by the way that the French perceive the Normans. In the decade 960-970 CE the French nobility and crown were still utterly hostile to the Normans and the duke is described as being “threatened by the many treacherous attempts of the king and the united fury of the counts of the Franks.”<sup>130</sup> In response to the threat of another French incursion, Duke Richard once again calls upon the support of “Harold, king of the Danes.”<sup>131</sup> Once again the combined fury of the Normans and the northmen is too much for France, and the enemies of Normandy are crushed. The final example of the large scale, Norman-sanctioned Norse invasions of France is in King Olaf of Norway’s utter annihilation of Count Odo of Chartres’ holdings: “they were subjected to so savage an assault that only a few could escape the carnage. From there the heathens advanced and laid siege to the town of Dol, and having captured it, they set fire to it....”<sup>132</sup> The onslaught of the Norwegians represents a powerful alliance between the Normans and various communities of northmen, whereby the Normans were held in such respect that these kings would reliably come to their aid. While there are many possible explanations for why a Norse king would ally himself to the Normans, any of them require one crucial element: cultural affinity.

The repeated incursions by the French into Normandy suggest that the Normans, while they inhabited France and likely spoke French, were still considered to be foreign and outsiders. The warfare between France and Normandy was nearly constant from the period of 944 to

<sup>130</sup> Ibid. 127.

<sup>131</sup> Ibid. 127.

<sup>132</sup> Ibid. 89. Ibid. 27.

1030, as is demonstrated by the numerous instances of Danish/Norwegian reinforcements being summoned, the bloody battles fought between Normans and French, and the brutal reprisals of the French king. While warfare was nearly a constant for all of Europe at this time, the violence between the Normans and the French has the characteristics of a blood feud, rather than more typical wars for resources or power. If, as Pollock and Maitland suggest, the Normans were more 'French' than anything else, why then did the French despise them so? The clear answer from the evidence is that the Normans were not, in fact, very French at all.

William's description provides examples of how the Normans retained their culture:

They (the counts and barons) willingly swore fealty to him and accepted him as duke of the whole duchy of Normandy and Brittany. Immediately afterwards his father sent him to Bayeux, where he entrusted him to the leader of the army, Boto, to be educated by him and to learn Danish there, so that he could reply aptly not only to his own men but also to those overseas.<sup>133</sup>

Why should a French noble learn to speak Danish (Old Norse)? This circumstance suggests that the majority of Normans even in the 940s still spoke their ancestral tongue, and that this speech was expected amongst the nobility as well. While the Norman nobles often married French noblewomen and therefore their families spoke French, the army that came with Hrolf also brought their entire families. The durability of the Norse language in Normandy was almost certainly due to the fact that men and women of Scandinavian origins were able to marry. So the Norman soldiery continued to speak 'Danish'. That the Normans were still able to rely on King Olaf for aid in the eleventh century suggests that this custom of retaining an understanding of Norse had survived in the house of the Norman duke. The authors of these

<sup>133</sup> William of Jumièges, vol. 1, 89.

histories, William, Dudo, and Orderic Vitalis were writing these histories for the Norman lords and so it unavoidable that they should be biased. However, if this history was intended to legitimize the rule of the house of Hrolf it should contain more confirmations of their 'Frenchness' rather than making them out to be pseudo-Norse. It made sense, therefore, for the French to consider the Normans to be 'others', as the common folk did not even speak their language, and their nobles still associated with heathen northmen to the point of unleashing them like packs of wolves upon their foes. The events leading up to the Norman Conquest thus confirm a cultural divide between the French and Normans. The French king, Henry, along with many counts and barons, looted and burned all along the borders of Normandy, taking advantage of the chaos surrounding the ascension of William the Bastard.<sup>134</sup> Even after William had stabilized the duchy and come into his own power, the French king and his nobles continued to attempt to wrest control of Normandy from him:

Ever since the Normans had begun to cultivate the lands of Neustria, the French had made it their custom to envy them; they incited their kings to turn against them and asserted that the Normans had taken away by force from their ancestors the lands now in Norman hands. King Henry....launched a double attack on Normandy, which he entered with two armies; one consisting of chosen and valiant noblemen under the command of his brother Odo....he led the other one with Count Geoffrey of Anjou....As soon as the duke saw to what extent he and his people were under attack...he himself set out for the king with the intention of inflicting punishment upon him....the other Normans found the French at Mortemer totally preoccupied with arson and the rape of women....the defeated French took to flight....the greater part of the French nobility was slain....<sup>135</sup>

<sup>134</sup> William of Jumièges, vol. 2, 93.

<sup>135</sup> William of Jumièges, vol. 2, 145.

This passage, though fraught with biased statements such as “....preoccupied with arson and the rape of women....,” demonstrates the continuation of the century-long feud between the French and the Normans coming to a head. The French nobility is utterly committed to bringing ruin to the Normans. As they state in this passage, their motivations go all the way back to the conquest by Hrolf and his warriors. All of these instances point to the conclusion that although the Normans adopted what pieces of French culture they needed to maintain their rule, the differences between the two peoples were significant enough to prevent their reconciliation. The Normans, by the time they began their conquest of England in 1066, were still very recognizable as Scandinavians even given the Frankish influences they must have felt.

*The Norman Conquest, and beyond.*

During the Norman Conquest and the century and a half that followed it, the Scandinavian traditions of the Normans, along with their Frankish influences, merged and evolved with the Anglo-Scandinavian traditions of England. The *Anglo-Saxon Chronicle*, along with William of Newburgh’s *History of English Affairs* offers insights into the deeds of Duke William and the effects of his policies from an English perspective. In the *Anglo-Saxon Chronicle*, the Normans are often referred to as Frenchmen, which is entirely reasonable from the English perspective.<sup>136</sup> The Norman lordship did not speak the language of the English, choosing to use French likely in order to separate themselves from their subjects, many of whom, as a result of countless Norse conquests and incursions, were Danes or northmen. Furthermore, according to the *Chronicle*, the Normans showed contempt for the lives and property of Englishmen:

<sup>136</sup> *The Anglo-Saxon Chronicle*, 149.

This year came the king back again to England on St. Nicholas's day; and the same day was burned the church of Christ at Canterbury....The king this year imposed a heavy guild (gild) on the wretched people; but, notwithstanding, let his men always plunder all the country that they went over; and then he marched to Devonshire, and beset the city of Exeter eighteen days....<sup>137</sup>

In contrast to their church-building habits in Normandy, the Normans were in some cases the despoilers of the holy places on England, even though William also constructed some churches. Again and again the Normans are shown to have little regard for the property of the Church or the lives of clergymen:

The abbot, however, would hear nothing of this; but evil entreated them, and threatened them worse. One day the abbot went into the chapter-house, and spoke against the monks, and attempted to mislead them; and sent after them some laymen, and they came full-armed into the chapter-house upon the monks....The Frenchmen broke into the choir, and hurled their weapons toward the altar, where the monks were....the wretched monks lay about the altar....they continued to shoot their arrows; whilst the others broke down the doors, and came in, and slew some of the monks to death....so that the blood came from the altar upon the steps....<sup>138</sup>

The brutality of the Normans as portrayed by the *Chronicle* is almost ridiculous in its severity. While, to be sure, the Normans were hard rulers and placed heavy burdens upon the English, the examples provided of their obscene cruelty were out of the ordinary from the medieval perspective. William of Newburgh offers a similar perspective on the Normans, that they were monstrously cruel and ungodly in their actions against the people of England. William insists on calling Duke William by his ignoble title, William the Bastard, and argues that the Normans

<sup>137</sup> Ibid. 151.

<sup>138</sup> Ibid. 163.

were utterly wrong in their conquest and slaughter of fellow Christians.<sup>139</sup> Both William of Newburgh's and the *Anglo-Saxon Chronicle's* opinions of the Normans support my assertions that the Norman people, including their leaders, were nominally 'French' in faith and language. The behavior of the Normans is much more akin to the Danes who are described by the *Chronicle* as targeting monasteries:

They understood that the king had given the abbacy to a French abbot, whose name was Thorold;- that he was a very stern man....Early in the morning came all the outlaws [Danes] with many ships, resolving to enter the minster....Then they laid on fire, and burned all the houses of the monks and all the town except one house....They went into the minster, climbed up to the holy rood, took away the diadem from our Lord's head....seized two golden shrines, and nine of silver....The Danes, believing that they should overcome the Frenchmen, drove out all the monks....Then came abbot Thorold and eight times twenty Frenchmen with him, all full-armed...The two kings, William and Sweyne, were now reconciled; and the Danes went out of Ely with all the aforesaid treasure....<sup>140</sup>

This passage shows that the Danes and the Normans still possessed a kinship and alliance whereby, even though the Danes had caused slaughter and despoiled an English holy site, the Norman forces within reach of them are content to avoid battle. Regardless of the historicity of this particular event, the relationship between the heathen Danes and Christian Normans is clearly genial, as it was in the days of the early dukes. Despite the anger present in the *Chronicle's* account of William's government, the king is shown to have participated in the traditional assemblies "This year the king bare his crown, and held his court, in Winchester at

<sup>139</sup> William of Newburgh, *History of English Affairs: I*, trans. and ed. P.G Walsh & M. J. Kennedy (Warminster: Aris & Phillips, 1988), 41.

<sup>140</sup> *The Anglo-Saxon Chronicle*, 155.



Easter....<sup>141</sup>” This passage is brief, but appears to be the inception of the Norman-Angevin tradition of holding a *Witenagemot* (equivalent to the *Althing*) thrice a year, at the Whitsun, Easter, and Christmas: “An assembly of bishops, abbots, and magnates was gathered at London, to deal with royal business and confirm the peace of the kingdom.”<sup>142</sup> The Normans, although given little love in the texts by the *Chronicle* and William, upheld the ancient traditions of their own people as well as the English in maintaining the *althing* as an assembly of national authority.

### *The Great Angevin King Henry II*

The rise of the Franco-Norman Angevin dynasty in the early twelfth century brought much change, but also reinforced the status quo in many ways. From the perspective of the French nobility and crown, the rise of the Angevins was more of the same: a Norman power grab to be countered. From the viewpoint of Anglo-Norman political traditions, however, the rise of Henry II forced the ancient traditions of their Scandinavian forefathers to evolve. William of Newburgh describes the circumstances of Henry’s ascension to the English throne as providential, since the unfortunate death of King Stephen’s young son forced a recognition of Henry as the heir.<sup>143</sup> Stephen’s acknowledgement then allowed Henry to make possibly the most important move of his life: he was able to secure the hand of Eleanor of Aquitaine from King Louis after their divorce.<sup>144</sup> As the duke of Normandy and the heir to both the throne of England and consort of the duchy of Aquitaine, Henry found himself in a position of enormous

<sup>141</sup> *The Anglo-Saxon Chronicle*, 163

<sup>142</sup> Robert Bartlett, *England Under the Norman and Angevin Kings* (Oxford: Oxford University Press, 2000), 143.

<sup>143</sup> William of Newburgh, 123.

<sup>144</sup> *Ibid.* 127.

power. According to the *Chronicle*, when Stephen died in 1154, such was Henry's power that "...no man durst do other than good for fear of him...." and he was crowned king of England with much haste.<sup>145</sup>

The nineteenth-century historian J. R. Green's *Henry II* offers detailed insights into the policies and possible motivations of the Angevin king. Green's analysis represents historiography contemporary with the works of Pollock and Maitland. Green's work was not adopted as the standard for English constitutional history, and therefore cannot represent the roots of more modern viewpoints, but it does offer a very different perspective from Maitland's. Green gives a potent analysis of the general nature of the twelfth century in England, stating that the rise of community opposition to royal power led to "...signs of the great contest which in one form or another runs through the whole of the twelfth century, and gives its main interest in our eyes to the English history of the time, the struggle between the iron organization of medieval feudalism and those nascent of modern civilization which were fated in the end to shatter and supersede it."<sup>146</sup> Here Green makes the highly plausible assertion that the twelfth century was a period of political and social upheaval in England, where the power of the king was challenged in unprecedented ways by the people and the baronage. Green's claim, however, that the 'nascent forces of modern civilization' should be given credit for these changes needs to be qualified. The emergence of 'modern' civilization in England was not due to a new and unprecedented force arising, but the resurgence of the very old and deeply rooted values and traditions of the Anglo-Scandinavian people now living in

<sup>145</sup> *The Anglo-Saxon Chronicle*, 212.

<sup>146</sup> J. R. Green, *Henry II* (London: MacMillan and Co, 1888), 40.

England.

Green goes on to assert that the Norman custom of the trial by jury has its roots in the Domesday inquest, ordered by William to assess his kingdom's finances. Here her assessment is in conflict with Pollock and Maitland's interpretation that the Domesday inquest and therefore the jury trial are the result of a Frankish influence through the prerogative of *inquisitio* held by the Frankish kings.<sup>147</sup> Maitland's argument is contradicted by one of his own statements: "The old dooms are written law; they have not been abrogated; they have been confirmed; other written law there is none or next to none; Normandy has none; Northern France has none, or none that is effete."<sup>148</sup> Here, much as in his earlier assertions that Scandinavian influence on Norman and English law was minimal, Maitland makes a claim about the Norman adoption of the Frankish inquest *when there is no record of it*. The crack in Pollock and Maitland's argument is noted to great effect by David Roffe, who, in 2000, stated, "The inquest is little evidenced in Old English law codes....It is however not unknown. Maitland himself acknowledged that something like the inquest was found in the Danelaw....It is declared that 'a meeting is to be held in each wapentake, and the twelve leading thegns (the Norman jury had twelve jurors), and with them the reeve, are to come forward and swear on the relics which are put into their hands that they will accuse no innocent man nor conceal any guilty one."<sup>149</sup> Roffe's insight into the Danelaw, along with Pollock and Maitland's dismissal of the very same evidence in favor of a conclusion unsupported by written evidence, shows that the dismissal of Scandinavian

<sup>147</sup> F. W Maitland and F Pollock, 140-141.

<sup>148</sup> F. W Maitland and F Pollock, 105.

<sup>149</sup> David Roffe, *Domesday, the Inquest and the Book* (Oxford: Oxford University Press, 2000), 55.

influence on Norman law relied on the dismissal of evidence on the part of Pollock and Maitland.

*Magna Carta, Norman hof embodied*

Roffe's and Green's works support an argument that the culmination of the 'forces of modern civilization' in the thirteenth centuries, the Great Charter, was strongly founded upon ancient Scandinavian principles and traditions. My analysis here now turns to the bloody civil wars of the twelfth century, their roots in early Norman and English history, and how the reaction to the devastation wrought by Henry II upon the rights of the baronage and the people came in Magna Carta. In 1172 the baronage of Normandy and Brittany, along with some of the Angevin nobility, rose up in collective support of the 'young king', Henry's son and claimant to the duchy of Normandy. Green lists the grievances of the nobles as "old hatreds [that] had deepened year by year as Henry had gone on steadily seizing castles and lands which had fallen out of the possession of the crown. In 1171 he had doubled the revenue of the duchy by lands which the nobles had usurped....[they joined the young king] in fierce defiance of a rule intolerable for its justice and severity.<sup>150</sup>" While the barons revolted mostly due to financial oppression and violation of their *odal* rights, the freemen of England and Normandy were no less oppressed in their rights:

The assize of Clarendon laid down the principles on which the administration of justice was to be carried out. Just as Henry had undertaken to bring Church courts and Church law under the king's control, so now he aimed at bringing all local and rival jurisdictions whatever into the same obedience.<sup>151</sup>

<sup>150</sup> Green, 175.

<sup>151</sup> Green, 116.

Article 1 of the Assize of Clarendon:

....in every hundred through twelve of the more lawful men of the hundred and through four of the more lawful men of each vill, [shall be made to put] on oath to tell the truth, whether in their hundred or in in their vill there is any man accused or publicly known as a robber or murderer or thief....and let the justices make this investigation in their presence and the sheriffs in their presence....<sup>152</sup>

In this ordinance Henry declares that his royal officers, the sheriffs and the justices, have full jurisdiction over the courts of laymen down to the smallest of them, the village moots. This expansion of royal prerogative was not only an attack on the liberties of the freemen of England, but also on the finances of the baronage. Traditionally, the lords who ruled a region had authority over its baronial and manorial courts, but under the new assize not only had they lost authority in hundreds moots and village moots, but even in their hall moots.<sup>153</sup> As both nobleman and freeman found their privileges under assault, they sought the only recourse available to subjects of an unjust king, the sword. This rebellion, and the one that followed immediately after it leading to the Great Charter, were of a very different character than those rebellions which the Norman dukes had suppressed nearly a century before.

Robert Bartlett, in his 2000 *England under the Norman and Angevin Kings*, discusses the nature of Anglo-Norman rebellion with a focus on the eleventh through thirteenth centuries.

Bartlett divides the rebellions of Norman lords into three types:

First was the instinctual reaction of individual lords kicking back at real or supposed infringements or threats emanating from the royal government....More threatening than rebellion of this individual and

<sup>152</sup> *Sources of English constitutional history vol. 1* 77.

<sup>153</sup> *Ibid*, 77-78.

visceral kind was a general movement among the aristocracy in support of a rival ruler....The third type of opposition went beyond this. On occasion, aristocratic rebels clearly had a programme, couched in the language of principled reform....<sup>154</sup>

Bartlett here argues that the different types of rebellions, although they had much in common, were distinct in their goals if not their methods. Even in 1215, many of the lords who backed the Charter were men with long standing, sometimes century-old, grievances against the crown that motivated their drive for change. In 1174, Henry succeeded in finally breaking the power of the Norman baronage, as they were defeated in crucial battles and their castles thrown down by Henry's armies.<sup>155</sup> Such was his success that as Green claims, "...no armed revolt of the feudal baronage was ever possible in England."<sup>156</sup> Yet, despite their utter defeat and shame at Henry's hands only 31 years later the Great Charter was forced upon King John.

Magna Carta was not created out of thin air, however. As James C. Holt notes in *Magna Carta and the Idea of Liberty*, a German custom of similar import was already in effect on the continent:

Magna Carta was simply an assertion of a generally accepted axiom. It received its first clear statement in the edict of the Emperor Conrad II of 1037 which laid down that military tenants were not to be deprived of their fiefs "except by the laws of our ancestors and the judgement of their peers."....in Normandy, it was bluntly stated in the Ancient Customal of c. 1200 in the form – "peer ought to be judged by peer."<sup>157</sup>

<sup>154</sup>Bartlett, *England Under the Norman and Angevin Kings*, 51-52.

<sup>155</sup> Green, 184.

<sup>156</sup> Green, 185.

<sup>157</sup> James C. Holt, *Magna Carta and the Idea of Liberty*, 123.

Holt shows that the article 21 of Magna Carta has precedence in the broader Germanic traditions on the mainland, and the fact that Conrad mentions ‘the laws of our ancestors’ suggests that these societal norms were understood to be very ancient.<sup>158</sup> Within the body of the Great Charter, several articles fall directly in line with the Scandinavian traditions traced throughout this analysis:

Article 14:

And in order to have the common counsel of the kingdom for assessing aid other than in the three cases aforesaid, or for assessing Scutage, we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned by our letters individually; and besides we will cause to be summoned in general, through our sherrifs and bailfis, all those who hold us in chief....<sup>159</sup>

Article 61:

....the four barons aforesaid shall refer that case to the rest of the twenty-five barons, and those twenty-five barons, together with the community of the entire country, shall distress and injure us [the crown] in all ways possible....<sup>160</sup>

In these two articles the baronage reasserts two ancient freedoms of Scandinavia: the right to deny the king military service (scutage), and the right to depose a king through legal means should he present himself as *ojafnadarmadr*. The fourteenth article in particular institutes an assembly that is directly comparable to the *athing* as practiced in Iceland, where the leading men along with all their freemen followers convened to offer mutual council. Magna Carta reaffirms the power of the community over the crown, and attempts to place the king back into

<sup>158</sup> Marcham, 119.

<sup>159</sup> Marcham, 118.

<sup>160</sup> Marcham, 125.

his traditional position as defender of the realm rather than a wielder of arbitrary power.

Maitland himself states that “on the whole, the charter contains little that is absolutely new. It is restorative.”<sup>161</sup> a statement with which I agree wholeheartedly. Magna Carta though it can be argued as a document seeking to re-establish the feudal power of the baronage as it shielded the baronage from the crown, its reforms also did much more than that. Many of the most robust articles of Magna Carta apply to all freemen, such as the 3<sup>rd</sup> through 6<sup>th</sup>, and support the right of *odal* for all freemen in England.<sup>162</sup> The ancient value of *hof* is a major motivation for Magna Carta as many of the articles are concerned with limited the ability of *ojafnadarmadr* to bring injury to freemen, and most importantly it allows for the community to replace kings who are overbearing and hard ruling.

Magna Carta codified and further reinforced the importance of assemblies in England, not only creating a new baronial assembly but also, in the 1217 reissue, emphasizing the importance of regular assemblies.<sup>163</sup> The reissue of Magna Carta is a moment when the roots of Scandinavian tradition in the Norman nobility can be clearly seen. John, a staunch opponent of Magna Carta, accepts it in the end because it draws upon a political culture that he cannot avoid being familiar with, and it is so deeply rooted in Anglo-Scandinavian society that it cannot be suppressed. Bartlett explains that even in twelfth-century England, it “was an assumption of the ideal of good lordship which the king shared, that lords would seek advice from their men....even the most autocratic of rulers paid lip-service to the ideal.”<sup>164</sup> Magna Carta forced

<sup>161</sup> F. W. Maitland and F. Pollock, 172.

<sup>162</sup> Marcham, 120-121.

<sup>163</sup> Bartlett, 150.

<sup>164</sup> Bartlett, 145.



the king to take his councils seriously just as kings in ancient Scandinavia once did, and the importance of this relationship to Scandinavian society is demonstrated by Torgny's speech:

Torgny the Lawman's speech to Olaf Haraldson:

....The king we have now got allows no man to presume to talk with him, unless it be what he desires to hear. On this alone he applies all his power, while he allows his scat-lands in other countries to go from him through laziness and weakness. He wants to have the Norway kingdom laid under him, which no Swedish king before him has ever desired, and therewith brings war and distress on many a man. Now it is our will, we bondes [*boendr*], that thou King Olaf make peace with the Norway king, Olaf the Thick, and marry thy daughter Ingegerd to him. Wilt thou, however, reconquer the kingdoms in the east countries which thy relations and forefathers had there, we will all for that purpose follow thee to the war. But if thou wilt not do as we desire, we will now attack thee, and put thee to death; for we will no longer suffer law and peace to be disturbed....Then the whole public approved, with clash of arms and shouts, the lagman's [*logsogumadr*] speech.<sup>165</sup>

Torgny's words reveal the essence of the Scandinavian tradition of *hof*, and the role of the king as a leader whose will should be that of his people. To Torgny, the Anglo-Scandinavian people of England, and the Normans the people are not a flock to be shepherded by the king, but a pack of wolves to be led on the hunt. This is the true nature of the Germanic king, a leader empowered by consent, he leads his people in peace and war with the knowledge that, should he betray their trust, his fall shall be swift and deadly.

Magna Carta, as a symbol of Western liberty and the conflict between the central power of the crown and the rights of the community, undoubtedly has Germanic roots. The extent, however, to which Magna Carta is descended from the broader Germanic political tradition is

<sup>165</sup> Snorri Sturlason, *Heimskringla*, 351.

generally understood to be categorically inferior to that of the Franco-Roman tradition.

Scholars such as Maitland have relegated the Germanic, and to a greater extent the Scandinavian, roots of Magna Carta to an accessory role by arguing that it is the French, and therefore Latin, influence on England that led to the Great Charter. Against these generally accepted conceptions I have arrayed a substantial body of evidence, beginning with the historian Snorri Sturlason's portrayal of Norwegian history and an analysis of Icelandic political traditions and culminating with an analysis of Magna Carta itself. The evidence presented here shows that in the evolution of the English tradition it came to strongly resemble the traditions of the Norwegians and Icelanders. This close resemblance, while not itself evidence of derivation, suggests that Scandinavian political traditions might have been important elements in English development. The conclusion that the Scandinavian traditions simply resemble the English ones without being a factor in their development is the crux of Maitland's analysis of the roots of English tradition. It is, however, equally impossible to disprove that Magna Carta and the evolution of English tradition are not derivative as it is to prove such a relationship. Furthermore Maitland's admission of his own relative ignorance on the subject of Scandinavian history and political tradition makes his dismissal of it difficult to accept.

Beyond ignoring the importance of Scandinavian tradition Maitland also marginalizes the impact that these peoples had within England itself. The Danes and Normans (Norwegian settlers) impressed themselves so forcefully upon England from the ninth through eleventh centuries that they almost certainly had an effect upon political organization. King Cnut, and later the Norman kings of England, were descended from various Scandinavian peoples and displayed their heritage through political and cultural traits. Cnut increased the power of the

*thing* and brought the Danish and English people together. The sons of Cnut, after his death, were even chosen to be the next kings even in the face of stiff opposition from English lords. The Normans spoke 'Danish' and often showed an affinity for other Scandinavian peoples, forming alliances with them and waging war against France alongside them. Both Cnut and the Norman kings, beginning with Hrolf in the ninth century, upheld the rights of freemen known as *odal* which defined the Scandinavian laws of inheritance. *Odal*, and the attacks upon it by the crown, defined the struggle between both Hrolf and Harald Harfrage and the Norman barons against Henry II. In both instances, nobility and common men were having their rights to community authority and land ownership diminished by ever increasing central authority. Henry II inserted his legal power into all courts in England, and dispossessed many nobles of their land, thereby diminishing their military power as well as the political autonomy communities once enjoyed. Harald seized land for himself and installed his own men to gain their loyalty. Hrolf and his companions fled from Harald and built the Norman duchy where he granted *odal* to all his soldiers. The Normans, descendants of Hrolf, took back their *odal* rights and reformed the government of England to prevent abuses of royal power. While saying that Hrolf's exodus and the creation of Magna Carta are one and the same is beyond conception the rebellion of 1215, however, stands in a long tradition of Scandinavians refusing to accept the yoke of royal power.

The *thing* and the traditions which resembled it in England were central to the evolution of English political tradition. The community assemblies that permeated every level of English society allowed the people to interact with their lords and pursue policies which benefitted them all. Just as in Scandinavia, the king attended a national assembly on a regular basis and at

the *althing* conferred with his barons, dukes, earls, bishops, and archbishops to guide the realm down a path they consented to. Cnut is shown to have honored these assemblies, as are the dukes of Normandy, but when the Angevin dynasty began to diminish the authority of the *althing* by weakening the church and the baronage a reform was needed. Two of the cornerstone articles of Magna Carta, articles 14 and 61, reinstate the *althing* and require all leading men of the state to attend along with their dependents and create a council of barons to oversee royal power. Forcing the king to recognize not only the *althing* but also uniting the baronage against the king Magna Carta enshrined two ideals of Icelandic politics: *hof* and *drengskapr*. For a person to have *hof* they must show a moderation when using power, and *drengskapr* is the notion of honor derived from one's respectful conduct. Good leaders in Icelandic, and by extension Scandinavian, society possessed both *hof* and *drengskapr* as they did not abuse their power for gain at the expense of their subjects, and treated their dependents with honor and respect. Article 61 of Magna Carta forces the crown to operate with *hof*, and by forcing the king to accept the terms of the Great Charter the baronage restored the English system to its roots.

Whether or not the Scandinavian peoples and their traditions are the originators of English political tradition, the Scandinavians who conquered, settled, and reformed England had those deep roots in the ideals held by Icelanders. It is less important to discover whether or not the English tradition owes anything to the Scandinavians, then vital that they be acknowledged and be brought back from the fringes of history. It cannot be argued that the Normans, and the English after them were free from French and Latin influence in the Middle Ages, but the primacy of those cultures cannot be argued without equally acknowledging the

importance of the Norwegian and Danish influence. To cast aside the Scandinavian tradition is to ignore one of the last cultures in Europe to have remained nearly isolated from the Roman invasion and assimilation of Gallic and Germanic peoples. The Scandinavian tradition represents a window, albeit tinted and worn, into the distant past before Caesar's legions swept across Europe and the Huns drove the migrators south and west. These peoples have been relegated to the category of 'savages' 'barbarians' and 'despoilers' when it is these very 'detriments' that make them so important to our understanding of Western history and liberty. Despite their portrayal as violent, and warlike tribes who cared not for the 'civilized' life of southerners any student of their history sees that they possessed a liberty not entirely alien to that which has been idealized in the United States – hard won, cold, and often bitter liberty that pushes people to reject central authority and find power in their own community. This sense of community and the right to liberty pushed the English to reject King John's oppression. The Scandinavian traditions of the *thing*, *hof*, and *drengskapr* are the well from which the water of Magna Carta was drawn in 1215, even if the Norman barons could not see the roots of Yggdrasil in the dark depths of their past.

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