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Knowledge of Law And the Administration of Justice in Late Medieval Galicia

On May 8, 1444, the scribe of the L'viv castle court wrote down in the register *one* of the stages of a lawsuit between two big lords of the L'viv land, Andrew of Sienno and George Strumilo of Kamianka. The case was one of the most common kinds of disputes between noblemen. It was a quarrel about a fugitive peasant. Siennienski complained that his peasant, a certain Jacob, had fled to Strumilo. The record focuses on the parties' debate concerning the plaintiff's right to plead his case before the court of the L'viv captain. Such a right was questioned by the defendant, George Strumilo, since it apparently went beyond the jurisdiction of the castle court. According to the Statutes of Warta the castle courts were restricted to dealing only with cases that fell under the so-called four articles. This point was emphasized in the defendant's speech with particular clarity. He claimed to support it by the law of the land (*iura terrestria*) as well as the Statutes of Casimir the Great. The plaintiff insisted that the defendant had to respond in the castle court, since Strumilo was present in the court during the rival's pleading and had listened to the accusation. According to the plaintiff's reasoning, this demonstrated the defendant's readiness to accept judgment in the castle court. The defendant's arguments seem not to have been considered by the judges as weighty enough. The judges remained uncertain about which court was proper for the settlement of this dispute. They decided to send the case to the palatine upon his arrival in L'viv to clarify to what kind of jurisdiction, castle or land, the case should be submitted.[1] This is basically all what we know about the case: no further legal actions or final judgment was recorded in the court register.

In the following analysis I shall be particularly concerned with an inquiry into several closely connected aspects of this case, that is, knowledge of statute law, uses of statute norms in disputes, and the procedure of prorogation of cases for further counsel. My first observation concerns the reference to the Statutes of Casimir the Great which is found in this case. To my knowledge this is the only explicit mention of the Statutes of Casimir the Great in the fifteenth-century court registers of the Rus' palati-

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1 *Akta grodzkie i ziemskie z czasów Rzeczypospolitej Polskiej, z archiwum tak zwanego Bernardyńskiego we Lwowie* (henceforth: AGZ), ed. A. Prochazka, vol. 14, (Lwów, 1889), no. 1074: "Dedimus ad dom. Palatinum *wthori pyathek* ad eius adventum et ibi invenire debet, si est articulus terrestris vel castrensis iuxta eorum citaciones, si debet amittere vel litisquestionem alias *prza* habere."

Ruthenica VIII (2009), 97–119

nate.[2] Furthermore, it is very important to observe that the reference to the Statutes of Casimir of Great seems to be rather irrelevant to the normative background of the dispute between George Strumilo and Andreas Siennienski. The debate was focused on the conformity of the case to the jurisdiction of the castle court, which was regulated by the so-called "four captains' paragraphs". These four paragraphs, however, were never listed in the Statutes of Casimir the Great. They were promulgated as the statute norm for the first time almost a century later, in the Statutes of Warta in 1423. These four captains' paragraphs were issued to regulate the official prosecution conducted against a few major wrongs and designated as public crimes, namely violent assault, public pillage, rape and arson.[3]

The reference to the Statutes of Casimir the Great in the context of this lawsuit raises some questions about the scope of familiarity with the norms of these and other Statutes in the fifteenth-century Kingdom of Poland. The case suggests rather poor knowledge of statute law in fifteenth-century Poland. It is reminiscent of the words of Jan Laski, who explicitly pointed to this fact in the introduction to his collection of statute law (*Commune incliti Poloniae Regni privilegium constitutionum et indultum publicitus deceretorum approbatorumque*), issued in the very beginning of the next century (1506). Jan Laski noted that in his time no one knew the old laws except two or three dignitaries and that he had met no one who possessed those laws gathered in one collection.[4]

The limited application of the norms of the statutes in the legal practice of the fourteenth and fifteenth centuries was noted by scholars of the late nineteenth century, such as Romuald Hube and Oswald Balzer.[5] Twentieth-century scholarship further highlighted this feature of the functioning of statute law in late medieval Polish society. For instance, the prominent legal historian Stanisław Roman drew attention to the ignorance of the norms of the Statutes of Casimir the Great in his study of time pre-

2 There is another reference to the *[s]tatuta Regis Kazimiri* recorded in the Halyč land court register under the date October 12, 1456: "Item Castelanus Haliciensis fideiubet pro Muszylone, quod officiales ipsius Snyathinenses [*non*] debent iudicare officiales nec servos Andree in villis nec in castro [*Snyat*] inensi, nisi pro quatuor articulis secundum [*st*]atuta Regis Kazimiri," see AGZ, vol. 12, (Lwów, 1887), no. 2774. If the year of this entry, 1456, coincides with the time of the described action, then it is possible that the Statutes of King Casimir are those of Casimir Jagiellonczyk, issued in Nieszawa and Opoki in 1454. One of the paragraphs of the Statute of 1454 confirmed the restriction of the captain justice to the four paragraphs. Consider the confirmation of this Statute by Casimir's successor Jan Olbracht in 1496 in: *Volumina legum* (henceforth: *VL*), vol. 1 (St. Petersburg, 1859), 115.1. However, there is also a possibility that the mention of the Statutes of King Casimir refers to that of Casimir the Great. The record could be regarded then as additional evidence for how problematic the knowledge of the statute law could be in the fifteenth-century Kingdom of Poland.

3 As for the legal regulation of the captains' jurisdiction by the Statutes of Warta, see *VL,* vol. 1, 34.2. The restriction of the captain's jurisdiction to the four paragraphs was constantly repeated in the legislation of the fifteenth century. See, for instance, the Privilege of Nieszawa from 1454 in *VL,* vol. 1, 115.1, the Statutes of Jan Olbracht from 1493 in *Jus Polonicum, codicibus manuscriptis et editionibus quibusque collatis* (henceforth: *Jus Polonicum*), ed. Jan V. Bandtkie (Warsaw: Sumptibus Societatis Regiae Philomathicae Varsaviensis, 1831), 324, and the Statutes from 1496 in *VL,* vol. 1, 118.1.

4 Quoted in Wacław Uruszczak, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* (Warsaw: PWN, 1979), 35.

5 Consider important remarks by Oswald Balzer in his "Uwagi o prawie zwyczajowem i ustawicznym w Polsce" (Poznań, 1889), esp. 102–4.

scription in Polish medieval law. S. Roman stressed that the paragraph of the Statutes of Casimir the Great that determined the period of three years as the time prescription valid for initiating legal actions was generally ignored in court proceedings in late fourteenth-century Kingdom of Poland.[6] Another Polish historian, Ludwik Lysiak, took up the point in his discussion of the knowledge of the Statutes of Casimir the Great in late medieval Poland. By examining the wide-spread practice of the postponement of cases and the frequent counsels about the proper ways of their judgment, L. Lysiak suggests that norms of the Statutes were rarely applied and knowledge of the statutes in legal practice was insufficient.[7] He maintained that the judges' inability to pronounce verdicts, which was expressed in the constant need for counsel, stemmed mostly from their poor knowledge of statute law. Bogdan Lesiński noted that during the whole fifteenth century there are no mentions in the sources that the judges made any use of the *prejudicates* when taking cases *ad interrogandum*.[8] Medieval law was by its nature a law of precedent. The *prejudicates* were recorded as a more or less stable set of court sentences and added to the Statutes of Casimir the Great. In this way the *prejudicates* were designed to function as precedents and were to be used as an important normative guide in the process of dispute settlement. According to B. Lesiński, the *prejudicates*, although they had been recorded in the Statutes of Casimir the Great, were almost never mentioned at court proceedings as a normative framework of reference usable for settling disputes. A similar picture appears from Bogdan Sobol's study of the legal and legislative aspects of the incorporation of the Principality of Mazovia into the Crown during the 1520s and 1530s. B. Sobol noted several times in his text how problematic was the application of the Crown's statutes in the legal practice of the newly incorporated lands and how ignorant or reluctant local nobles were to accept the Crown's legislation.[9]

However, the picture of the ignorance of statute law drawn by Laski and supported by the results of historical research should not be taken at face value. It can still be argued that the understanding of statute law was not as completely absent as a first reading of the case between Siennienski and Strumilo might suggest. One should not forget that the record shows that Strumilo was able to articulate the correct legal norm to support his objection to being sued in the castle court. This detail of the account suggests that local noblemen were shrewd, experienced and knowledgeable litigants, able to exploit and interpret the resources of the statute law in their own terms. It permits the development of a slightly different explanation.

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6 Stanisław Roman, "Z badań nad dawnością w prawie polskim XIV wieku," *Czasopiśmo Prawno-Historyczne* vol. XVII, no. 2 (1965), esp. 75–81.

7 Ludwik Łysiak, "Statuty Kazimierza Wielkiego w małopolskiej praktyce sądowej XV wieku," *Studia Historyczne* vol. 19, no. 1 (1976): 25–39. For a short but informative summary about gulf between statute law and legal practice in late medieval Poland, see also: Hanna Zaremska, "Grzech i występek: normy a praktyka moralnosci społecznej," *Kultura Polski średniowiecznej, XIV–XV w.*, ed. Bronisław Geremek (Warsaw, 1997), 539–40.

8 For this observation, see: Bogdan Lesiński, „Prejudykaty jako żródło prawa ziemskiego w dawnej Polsce," *Czasopiśmo Prawno-Historyczne* vol. XLII, no. 1–2 (1990), 20.

9 Bogdan Sobol, „O podstawie prawnej stosowania statutów i zwyczajów sądowych na Mazowszu w latach 1532–1540," *Czasopiśmo Prawno-Historyczne* vol. IX, no. 1 (1957), esp. 53, 55, 60–1.

The interpretation might be that the mention of the Statutes of Casimir the Great in this record referred to one of the numerous collections of statute law which circulated in the fifteenth century and which often contained several different statutes. In this regard it is worth mentioning the most popular and widely used fifteenth-century collection of statute law, known as *Digesta*. It contained the Little Polish version of the Statutes of Casimir the Great, some Great Polish paragraphs from these Statutes, and the Statutes of Warta.[10] The *Digesta* collection is often believed to have constituted a kind of official law collection of the kingdom in the fifteenth century. Furthermore, it was precisely the *Digesta* collection which was taken in 1488 as the basis for the first published book of Polish law, the so-called *Syntagmata*.[11] Since the various statutes were compiled as one collection, it is possible that some of its users felt free to substitute the norms from one part of the collection for another. This could be especially true since some of the paragraphs of the Statutes of Warta explicitly referred to those of the Statutes of Casimir the Great. From this point of view the Statutes of Warta were regarded by its compilers as a kind of novellae to those of Casimir the Great.[12]

Such a possibility is further suggested by some occasional evidence of precise citations of paragraphs or passages of the statutes by litigants during court debates. Litigants referred to the paragraph of the statute, but usually omitted to indicate what exactly statute they had in mind.[13] Quotations of precise paragraphs of statute law by litigants are rare indeed in the local legal records of the fifteenth century.[14] In addition to this type of evidence, legal records also provide very general references to statute law. Some records describe, for instance, how litigants insisted on their right to be judged according to statute law (*Ipse dom. Iohannes dixit: Domini, iudicatis me iuxta librum iurium*),[15] or how judges had recourse to consulting a book of statute law while resolving difficult cases (*et conscriptum est inter ipsos et quesicionem in libro*

10 Stanisław Roman, „Dygesta małopolsko-wielkopolskie a dążenia do unifikacji prawa polskiego na przełomie XIV i XV wieku," *Czasopismo Prawno-Historyczne* vol. X, no. 2 (1958), 106–7.

11 The *Syntagmata* was the first published collection of the Polish statute law, printed in the late fifteenth century (approximate date — 1488). It was in the version of *Syntagmata* that the Statutes of Casimir the Great were republished by Jan Laski in 1506 and in this way they became widely known in the sixteenth century. See, preface by Adam Vetulani and the introduction of Stanislaw Roman in: *Polskie Statuty Ziemskie w redakcji najstarszych druków (Syntagmata)*, ed. Ludwik Łysiak and Stanisław Roman (Wrocław-Kraków: Zakład im. Ossolińsich, 1958), 7–14, 17–21, 26–36. Some important observations about the date of its issue can also be found in Kazimierz Piekarski, "O średniowiecznych wydaniach statutów świeckich," *Kwartalnik Historyczny* vol. XXXVII (1923): 378–82.

12 This is suggested by one of the best experts on late medieval Polish statute law, Stanisław Roman, in his „Dygesta małopolsko-wielkopolskie," 107.

13 See, for example, the invocation of the statutes' paragraph with the incipient words *terminus ex modo cittacionis* in the debate held on the point whether the bailiff delivered summons to the right or wrong estate of the defendant in *AGZ*, vol. 13, no. 6161 (November 20, 1466). It is most likely that the paragraph the defending party had referred to was one of the Statutes of Casimir the Great. Consider the paragraph no. 48, "de fratribus in bonis paternis divisus" of the Statutes known in the version of Syntagmata, in *Polskie Statuty Ziemskie w redakcji najstarszych druków (Syntagmata)*, 83–84.

14 See, for example, the mention of the paragraph of the Statutes of Warta regulating the captains' jurisdiction which begins with its first words *relatum est nobis* in *AGZ*, vol. 17, no. 2202 (June 16, 1488).

15 Ibid., vol. 12, no. 2396 (February 1, 1451).

statutorum de causis ipsorum).[16] Some judges required that a litigant confirm his/her claim for transferring his/her case to another court with the support of the statutes (*Et iudex dixit ulterius: da michi ad statutum iuris terrestris et velle statuta ponere, si est articulus iste terrestris aut castri*).[17] The plaintiff was in danger of losing the case, even such a serious crime as rape, if he/she was not able enough to sue the wrongdoer under the required procedures of the written law.[18]

Furthermore, an appeal to the statutes was also sometimes employed by the nobility to guarantee the autonomy of noble justice and effectively challenge royal encroachment on noble privileges. These ideological implications of the diffusion of statute law were reflected in the course of disputes, as they were invoked in the speeches of litigants.

> We have Constitutions and a Law of the Kingdom which are confirmed by His Majesty the King, who assured us that he would keep them untouched. In addition we have one particular constitution about the royal letters, by which the Royal Majesty promised to give no one prejudicial letters.

— claimed one of the litigants while challenging the royal right to intervene in his suit by issuing letters of inhibition which gave the right to one of the parties to postpone the final judgment.[19] The words that the notary added at the end of his account of this litigation are significant. He noted that this speech was followed by the voices of nobles present in the court, who joined the speaker in their disapproval of the royal action:

> then all nobles and natives shouted, loudly protesting against judging the case in such a way, because it was believed to be harmful to the law of the land.[20]

With regard to the expansion of statute law during the fifteenth century, one should also mention that numerous clauses of the royal statutes and privileges speak frequently about the need to implement the statutes in legal practice. Such clauses fig-

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16 Ibid., vol. 14, no. 53 (July 29, 1440). See also another example: “Inter nob. Elizabeth de Ostrin actricem et dom. Iohannem de Lythwinow distulimus ad futuros terminos ad librum iurium seu statuta terrestria” in Ibid., vol. 12, no. 2399 (February 1, 1451). For similar cases: Ibid., vol. 14, no. 35, 37 (July 15, 1440).

17 Ibid., vol. 14, no. 3329 (May 5, 1455).

18 Ibid., vol. 15, (Lwów, 1891), no. 1286 (October 22, 1473): “hec Vowda proposuit super Baschynsky, quod eam stuprasset, sed non proposuit quod hanc stupracionem alicui denunciasset iuxta iura scripta, ergo Baschynsky paratus est evadere ipsam, prout ius decreverit. Cui decretum est evadere metseptimo in duabus septimanis cum testibus sibi similibus.” For further references to statute law in the local court registers from the middle of the fifteenth century see: “ergo ego eundem Iohannem Kmetham iuxta citacionem et statuta terrestria sentencio alias sdawan,” see in Ibid., vol. 11, (Lwów, 1886), no. 3366 (May 7, 1457); “tali conditione servata, si ius terrestre in Regno fuerit proclamatum,” in Ibid., no. 482 (November 2, 1431); “Et ipse flectabit ante Crucem et recepit hoc ad ius scriptum, si debet iurare vel iam in hoc stare” in Ibid., vol. 14, no. 2040 (April 5, 1448).

19 Ibid., vol. 15, no. 4553 (April 13, 1498): “…nos habemus et constitutiones terrestres et laudum Regni, quia Regia Maiestas ea confirmavit et promisit nobis tenere. Et precipue habemus unam constitucionem ad literas regales, quia Regia Maiestas se inscripsit nemini literas pariudiciales dare…”

20 Ibid.: “Et exinde omnes terrigene et nobiles clamoriosa voce dixerunt affectantes et petentes ne tales res iudicantur, quia hoc est in detrimentum iurium terrestrium.”

ured prominently in the fifteen-century legislative ideology of the Kingdom of Poland. Royal privileges and statutes regularly encouraged the local courts to make wider use of the norms of the statute law in their activity. This appeal reflected the trend in royal legislative ideology towards the unification of the legal norms and customs that existed in the various parts of the kingdom.[21] Because important royal privileges and statutes in the fifteenth-century Kingdom of Poland always bore the mark of the collaborative efforts of the king and nobility, the provisions of statute law must then have reflected to some extent the legal equipment and mentality of the representatives of the noble estate.

The proper assessment of the role of the law, enacted and promulgated in the form of the statutes, would be incomplete without taking into consideration the fact that statute law was complementary rather than a substitute to a vast realm of rarely specified and fluid *consuetudines et laudes terrestres*. Statute law in the fifteenth century failed to supersede the local legal customs which were thriving in that period of time. It is noteworthy that the same designations, like *statuta terrestria* or *lauda terrestria*, which were widely used to describe all existing kinds of law, sometimes make it difficult to discern between a reference to the kingdom's Statutes, local diet's statutes, and unwritten local customs.[22]

By contrast with some other lands of the Kingdom of Poland (Little Poland, Łęczyca), the local customs of Galicia were never recorded and elaborated as a distinctive body of customary law. Sources offer only occasional glimpses of how some of these local laws and customs were fixed and written down as statutes of the land or palatinate. Such local legal provisions were passed at local diets or court proceedings attended by a representative body of dignitaries and nobles.[23] Local legislation

21 Consider, for example, the clause of the general confirmation of the privileges and rights of the kingdom, issued by Wladyslas Jagiełło in Czerwińsk in 1422: "Caeterum cum omnibus terris quas Regni nostri ambitus comprehendit velut unicus princeps et dominus aequaliter dominemur, non est aeqvum, ut variis modis judicandi populus nobis subjectus et sub nostro existens regimine, in varios ritus judiciorum dilabatur. Propterea perpetuo edicto statuimus, ut omnes et singuli homines regni nostri cujuscunque conditionis, status, dignitatis aut gradus fuerint, causas in judicijs nostris terrestribus proponentes vel proponere volentes, singulariter singuli et generaliter universi eodem jure, modis, consvetudinibus et ritibus per Regnum nostrum potiantur; nec audeant judices sedibus et tribunalibus judiciorum nostrorum praesidentes alios modos, ritus et consvetudines, circa terminos et sententias observare: nisi illos quos praefati domini Casimiri praedictus liber et consvetudines doceant et informant, ad quem semper recurrant. Quidquid autem per ipsos aliter fuerit judicatum et sententiatum, irritum remaneat et nullius roboris vel momenti." See in *VL*, vol. 1, 37.2.

22 See the following examples: "tali conditione servata, si ius terrestre in Regno fuerit proclamatum" in *AGZ*, vol. 11, no. 482 (November 2, 1431); "quos recepisti ab reclinatione et tenes contra statutum terrestrem eosdem" in Ibid., vol. 12, no. 117 (October 29, 1436); "quia quinque porcos, unumqueque per marcam taxando, in silva sui domini recipiens violenter eosdem mactasti contra statutum terrestre" in Ibid., vol. 12, no. 491 (January 19, 1439); "decreverunt terminos particulares seu terrestres iudicare secundum statuta usque ad occasum solis" in Ibid., vol. 12, no. 3140 (February 21, 1464); "Et iudex dixit ulterius: da michi ad statutum iuris terrestris et velle statuta ponere, si est articulus iste terrestris aut castri" in Ibid., vol. 14, no. 3329 (May 5, 1455). For comparison, consider similar observations by Ludwik Łysiak about ambiguous and unspecified meanings of terms like *ius terrestre* and *consuetudo* in the judicial practice of Little Poland, see Ludwik Łysiak, "Statuty Kazimierza Wielkiego w małopolskiej praktyce sądowej," 34.

23 For the legislative activity of local diets in the fifteenth-century Rus' palatinate, see: Henryk Chodynicki, *Sejmiki ziem ruskich w wieku XV* (Lwów, 1906), esp. 56–73, 88–100, 111–112; Marjan Karpiński,

bore a court-oriented character and was most frequently concerned with the rules for settling disputes and the regulation of the courts' procedures. The local diets and gatherings of dignitaries often functioned as forums for clarifying conflicting and difficult legal issues. Such diets and court sessions frequently served as courts of appeal, to which nobles transferred their cases for verdicts. Judgments and decisions taken at such gatherings constituted the body of the official or semi-official legislature, and are often referred to in the sources as statutes. In fact, every significant verdict of a court could assume the character of a legal norm as a precedent and could be used subsequently as a prejudicate in court practice. Thus local courts became major sites for the creation and reproduction of local law, especially norms that concerned dispute settlement and court procedure.[24]

The scattered evidence offers the possibility of unfolding some details of the enactment of such statutes and norms. Some of these statutes were re-enacted and reconfirmed through the ritual of "reminding" and memorizing their provision which took place repeatedly during local diets. In this way the norms of such local statutes regained and re-established their importance in current legal practice. This was, for example, the case of the statute promulgated by the diet of Halyč land in 1444 regulating the persecution of thieves. The record of the diet's proceedings reveals that in addition to some newly enacted legal provisions the nobles present at the gathering "reminded" the law about thieves that had already been enacted at previous diets. The nobles also ordered that this law be written among other decrees passed at the diet.[25] The records further supply some revealing evidence regarding the disagreement between nobles engaged in local law-making, showing their debates over the conformity of the promulgated law of the land to the statutes of the kingdom. At the subsequent gathering of the whole palatinate judicial assembly (*Colloquium generalis*) the representatives of Halyč land were reproached by some dignitaries of other lands for enacting the aforementioned statute because it went against already existing statute law.[26]

Ustawodawstwo partykularne ruskie w XV wieku (Lwów, 1935), esp. 18–22, 27–29. On the concept of medieval law as collective activity of various groups and corporations, consult works by Susan Reynolds. See, for example, her "Rationality and Collective Judgment in the Law of Western Europe before the Twelfth Century," *Quaesiones Medii Aevi Novae* 5 (2000): 3–18. For a short overview see also: Warren C. Brown and Piotr Górecki, "What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970–2000," in Warren C. Brown and Piotr Górecki eds., *Conflict in Medieval Europe. Changing Perspective on Society and Culture* (Adlershot: Ashgate, 2003), 14–15.

24 On the role of diets in the procedure of interrogation see H. Chodynicki, *Sejmiki ziem ruskich w wieku XV*, esp. 11–112. For the attempt to compile and classify the body of the local legislation of the fifttenth-century Rus' palatinate, see Marjan Karpiński, *Ustawodawstwo partykularne ruskie*. M. Karpiński classified some court decisions as pieces of local law, but disregarded others. The principles of such classifications were not explained sufficiently. It seems that M. Karpiński underrated the fact that all court judgments could be considered as constitutive elements of local law.

25 *AGZ*, vol. 12, no. 1395 (July 2, 1444): "Primo memoraverunt invencionem felicis recordy magnifici Michaelis Pallatini Podolie et domini Odrowansch Pallatini et Capitanei terre Russie generalis, quod cum aliquem dominum vel terrigenam vel eius officialem predestinabit pro fure de castro." The short comment about this legislative provision of the Halyč diet can be found in Henryk Chodynicki, *Sejmiki ziem ruskich w wieku XV*, 95.

26 Ibid., vol. 12, no. 1525 (January 15, 1445): "Que statuta in generali colloquio coram domino Pallatino terre Russie generali naraverunt et domino Sencone et aliis dignitariis et terrigenis. Qui dominus Pallatinus et dominus Senco: male fecistis, quia ultra consweta statuta omnia hec fecisti, sed tamen

There were also attempts to enforce promulgated local law in practice. For example, the noble community of Halyč land put pressure on individuals who showed contempt for or were reluctant to accept some of the local statutes' provisions. Nobles could be sued in court for the reason of not adhering to the listed local norms. Some of them, however, justified their conduct by drawing on the fact of their ignorance of recently promulgated statutes. In such cases the court judges and assessors bound such contemptuous nobles to swear an oath to prove their ignorance of the new law.[27]

To further complicate the picture of legal diversity, it is necessary to say that dispute settlement in late medieval Polish law was often subjected to principles of *ius dispositivum*. This meant that litigants could arrive at a private agreement about some of the rules of conducting the litigation, which could vary from the prescribed norms of legal procedure as established by the statutes. By such agreements, the parties could choose the court where their case could be judged, even if such a case was not within its competence. Some private agreements concluded between parties explicitly excluded the possibility of canceling the terms of the contract or avoiding responsibility in court under the pretext of old, existing or future norms of statute law.[28] Taking a case out of the judgment of an official court and submitting it to private arbitration was also an expression of the principles of *ius dispositivum*. Parties could also diminish the number of court sessions needed for considering a case and delivering a sentence by establishing the first hearing of the case as the final one.

To what extent the enforcement of the statute norms in legal practice was often dependent upon the personal relationships between parties or between the party and judges can be exemplified by the application of four captains' paragraphs in practice. The evidence shows that its application was sometimes conditioned by special private agreements between captains and noblemen. Such agreements assured, for example, the captain's promise to not summon the noble's men and peasants to the castle court except for the wrongs listed in the four paragraphs.[29] All this demonstrates a restricted application of the norms of statute law, which did not operate as *ius cogens*, but was subject to reconsideration according to the interests and motives of the litigants.[30] The resulting picture was uncertainty about existing legal norms as well as a lack of clearly established rules and procedures.

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illud, quod statuistis, ante se procedat et iudicatur de premissis hominibus."

27 Ibid., no. 1539 (January 25, 1445): "Familiaris Teodrici reclamabat, quia Theodricus nescivit composiciones seu statuta istas novas de hominibus." Ibid., no. 1540: "Dominus Michael Buczaczsky iurare habet in duabus septimanis adversus dominum Iudicem pro homine, quod nescivit de composicione ista nova."

28 Ibid., no. 2969 (July 21, 1460): "et non Sbroslaum evadere Stansilaus debet nec mandatis Regis, nec colloquio generali, nec convencionibus generalibus neque particularibus, neque aliquo laudo antiquo, moderno et futuro."

29 This is nicely illustrated by the agreement between Andreas Fredro of Plešovyči and the Sniatyn captain, Michael Mužylo of Bučač, from 1456, recorded in the Halyč land court register. It foresaw the intercession of the captain in order to prevent him from judging Fredro's servants and peasants in the castle court unless their wrongs were punishable under the four captain's paragraphs. See Ibid., no. 2774 (October 12, 1456). The evidence is quoted in footnote no. 2.

30 For this aspect of the Polish legal process in the Late Middle Ages, see: Józef Rafacz, "Zasada dyspozytywności w dawnym prawie polskim," *Przegląd Historyczny*, vol. XXVIII (1929): 183–199.

The problem of the diversity of legal customs and norms repeatedly came into the focus of legislators during the Later Middle Ages. Already, the Prologue to the Statutes of Casimir the Great from the middle of the fourteenth century condemns the practice of judging cases in courts *secundum animorum diversitatem*. The Prologue further stresses that many vexations and disturbances were aroused among litigants because the same legal cases were pleaded in different ways and judged by different legal norms.[31] At the end it admonished judges to consider cases and deliver judgments in no other ways but in compliance with the norms of the statutes from the moment of their issue.[32] A multitude of evidence from the fifteenth century shows that the Statutes of Casimir the Great did fail in this purpose. During the fifteenth century the body of statute law was considerably enlarged and elaborated by the promulgation of new statutes. However, appeals for the unification of the law of the kingdom, frequently postulated by legislative provisions of the fifteenth century, had no success. To exemplify this situation it is enough to look at the royal privilege of Czerwińsk from 1422. While stressing the need to promulgate a unified statute law for the whole kingdom, one of its paragraphs again points to the existence of *variis modis judicandi populus nobis subjectus* and *varios ritus judiciorum*.[33]

The unification and codification of the law of the kingdom became an especially burning issue at the beginning of the sixteenth century. In that time a number of royal mandates was promulgated encouraging palatines to start collecting information about local legal customs and procedures that had not been regulated by the written statute law. The initiative was considered as a preliminary stage for the renewal of work that aimed at the creation of a unified law of the kingdom. The mandates are clear on the point that existing legal practice was evidently opposite to the objectives of the royal legislators. The complaints on the diversity of legal rules (*Quod ad diversitatem consuetudinem processus iudiciarii attinet, qui in omnibus regni terris diversus est*) that brought about chaos to the legal process and administration of justice were regularly repeated in these mandates.[34] Furthermore, some mandates contain sharp reproaches of judges, accusing them of administering justice according to their private understandings and ignoring the authority of the statute law. Such reproaches sound very similar to those of the Statutes of Casimir the Great.[35]

31 *Statuty Kazimierza Wielkiego,* ed. Oswald Balzer (Poznań, 1947), 242: "...in terris dominio nostro subiectis plereque cause in iudiciis non uniformiter sed secundum animorum diversitatem, quamvis super uno et eodem facto varie et diversimode deciduntur et diffiniuntur, ex qua varietate questiones seu cause plerumque post multiplces vexaciones." This reprimand was repeated in the prologue of the fifteenth-century Polish translation of the Statutes of Casimir the Great, named for Swiętosław of Wojcieszyn, who voiced similar worries about the state of the administration of justice. The author criticized the bad customs of contemporary courts that had become accustomed to employing different norms and rules in judging similar cases. See, Wacław Uruszczak, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku,* 24–5.

32 *Statuty Kazimierza Wielkiego*, 243.

33 *VL*, vol. 1, 37.1.

34 *Corpus Iuris Polonici*, ed. Oswald Balzer, vol. 3, (Cracow, 1906), № 69, 150.

35 Ibid., № 128, 261: "ut iudices regni non de suo private sensu, sed ex auctoritate legum iudicia recte exercerent."

This situation was equally deplored by many contemporary observers, mainly in the sixteenth century. According to the *Monumentum* by Jan Ostrorog, such a diversity of laws and legal traditions in a single kingdom was contrary to reason.[36] A similar critique was conveyed with particular vigour by Andrzej Frycz Modrzewsky who used the term "monstrous" to express the unnatural situation of the existence of such a great variety of laws in one kingdom.[37] He also considered the diversity of legal customs and norms as the main source for the proliferation of litigants' subterfuges in the courts, which in turn resulted in the endless terms of a great number of disputes.[38]

In general, the law of the kingdom consisted of competing and often irreconcilable norms and rules. Additionally, some other important factors set considerable restrictions on the applications of the statute law in the legal practice of local courts. The orality that governed the legal process, the fluidity of the court's composition, and the nonprofessional communal character of legal knowledge, which allowed almost every member of the community to participate in interpreting legal norms and adjudication, stand out as significant factors that led to the inconsistency and fluidity of applying norms.

As a consequence, agreement on what kind of norms and procedures to apply while judging a case was a matter of permanent debate at court sessions. A pattern which can almost always be observed in cases of the uncertainty about legal rules was postponing the lawsuit and taking it for further consultation. Prorogation of a case for further counsel appeared most often in the legal records in the form of the note *ad interrogandum*. Such clauses can be taken as one of the most noticeable clues indicating the ambiguity and multiplicity of norms invoked in legal actions in the late medieval Kingdom of Poland. Clauses *ad interrogandum* burgeoned in records of the fifteenth-century courts, attesting to the constant hesitation of court judges about the rules and norms of delivering final sentences.[39]

A poor knowledge of law can be seen as the most plausible explanation for a proliferation of *ad interrogandum* clauses. The legal records of the Rus' palatinate provide some evidence to support this point of view. Judges quite willingly and frequently confessed their inexperience or incompetence in judging cases. One can find

36 Joannis Ostrorog, *Monumentum*, 51: "quae diversitas in uno praesertim regno non est rationi consona."

37 Andrzej Frycz Modrzewski, "Liber de Legibus," in his, *Commentariorum De Republica Emendanda*, ed. K. Kumaniecki, in his, *Opera omnia*, vol. 1 (Warsaw: Państwowy Instytut Wydawniczy, 1953), cap. XXI.5, 224: "Nam hoc profecto monstri simili esse uidetur, ut in una respublica uiuunt quique uni principi obtemperant diuersis legibus utantur."

38 Ibid., 225: "Nam propter legum diuersitatem et professores diuersi sunt et multae iuris cautiones multaeque tergiuersationes natae, quae lites infinitas et multorum annorum spaciis durantes pepererunt."

39 Historians have not payed enough attention to such a widespread practice of postponement of cases and interrogation. The first observations about the practice of interrogation and its connection with a bad knowledge of law were made by Henryk Chodynicki, in his study of diets in the fifteenth-century Rus' palatinate. H. Chodynicki pointed out the role of local diets as institutions to which various sorts of courts turned for the interrogation while considering doubtful cases. See Henryk Chodynicki, *Sejmiki ziem ruskich w wieku XV*, esp. 58–63, 70. The most apparent parallel with this aspect of court proceedings in the Rus' palatinate is the study by Ludwik Łysiak of the application of the Statutes of Casimir the Great in the legal practice of fifteenth century Little Poland. It is important to mention that L. Łysiak has also identified a legal case containing an irrelevant reference to the Statutes of Casimir the Great, see L. Łysiak, "Statuty Kazimierza Wielkiego w małopolskiej praktyce sądowej," 32.

passages in the records on occasion of the prorogation of cases like *hoc nos discernere non valentes*,[40] *Ideo nescimus diffinire*,[41] *nos terrigene diffinire non potuimus*,[42] *Nos autem horum tamquam imperiti ad interrogandum recepimus*,[43] *Nos vero Iudices causam decernere ignorantes*,[44] *Unde pro tali articulo non su[mus] competentes*.[45]

The inability to resolve the procedural difficulties of a dispute was the most frequent source of such apparent hesitancy about legal rules. The practice of *ad interrogandum* encompassed a wide spectrum of issues related to legal procedures. Most of these aspects of legal procedures, like some intricate features of oath-taking,[46] or pleading,[47] were omitted by the late medieval legislation of the Crown. However, even if the statute provision pertaining to the procedural issue which was at stake in the dispute was available, it did not guarantee that judges would make use of it to resolve an existing difficulty. Sometimes the application of a legal norm was in doubt because of the diversity and inconsistency of statute law itself. To provide just one example, let us look more closely at the record of a dispute in which the scribe put down the note *unde pro tali articulo non su[mus] competentes* to signal the problems the judges faced at case hearings. This note has been already quoted among others to illustrate the ignorance of law. In this particular case the unfamiliarity of law was recorded to highlight the judges' inexperience in dealing with the procedure of delaying cases. At first glance the situation was a simple one - the plaintiff failed to attend a case hearing and insisted on delaying it for another court session. However, the judges evidently had no idea how to proceed with such a claim, doubting what the proper procedure for delaying such cases was and whether the next hearing had to be set as a final one for delivering judgment. It can be speculated that the existing legislation on delays was either unknown by the judges or considered insufficient for resolving all these nuances of procedure.[48]

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40 *AGZ*, vol. 14, no. 196 (February 25, 1441).
41 Ibid., no. 772 (June 21, 1443).
42 Ibid., vol. 11, no. 27 (February 15, 1424).
43 Ibid., no. 3317 (March 24, 1456).
44 Ibid., no. 2293 (October 25, 1446).
45 Ibid., vol. 12, no. 4233.
46 In one case judges were unable to determine whether a plaintiff had to be put under oath in order to convict a man suspected of a crime, see Ibid., vol. 11, no. 2498 (November 27, 1447). In another case judges did not know whether a mistake made by one of the oath-helpers while swearing an oath meant defeat in the dispute or that he simply had to undergo the procedure of oath-taking for the second time. See Ibid., vol. 14, no. 384 (April 20, 1442)
47 For example, judges postponed a case hearing because they were not sure whether it was a wrong or right way of pleading the case, in which an accusation of wounding was brought to the court not by the victim himself, but by his lord, see Ibid., vol. 14, no. 220 (March 17, 1441).
48 Ibid., vol. 12, no. 4233. In another case judges were uncertain whether the fact of the defendant's illness that had led to the prorogation of the case hearing had to be supported by his personal oath-taking. They postponed the case for interrogation, see Ibid., vol. 14, no. 41 (July 15, 1440). Frequent delays of sessions can be considered one of the most fundamental features of fifteenth-century litigation. Abuses of this practice were undoubtedly one of the biggest plagues of the legal process. As for delay by illness, the Statutes of Warta represented one of the earliest legislative attempts to establish the regulation of the practice of delays. Before the promulgation of the Statutes of Warta in 1423, customary practice allowed the testimony of a priest to prove that the serious illness caused the non-attendance at the court session. A priest, called upon to serve last communion and hear confession, had then to testify before

As it has been mentioned already, there were clear regulations in the fifteenth-century statutes about what kind of cases went to the castle court. Nevertheless, the question of where the defendant had to stand trial - in the castle or land court — represented one of the most significant procedural issues on which judges often voiced their doubts about the law and had frequent recourse for further counsel.[49] The dispute between George Strumilo and Andreas Siennienski mentioned at the beginning of our discussion about the knowledge of law can be taken as exemplary with regard to highlighting this aspect of litigation. To compel a defendant to accept a trial in the court suitable for a plaintiff, or for a defendant to insist on transferring a case to another court was one of the most frequently employed disputation strategies in fifteenth-century Galicia. For some noblemen arguments about a proper court for hearing cases seemed to have been a routine part of dispute settlement. This clearly emerges, for example, from disputes of the said George Strumilo. In 1455, ten years after his dispute with Andreas Siennienski, Strumilo brought to the local castle court a suit against Swyantochna, the widow of Nicolas of Orfyn. Swyantocha had to answer to the charge of accepting Strumilo's fugitive servant. The right to plead and judge the case in the castle court became the central point of this litigation. It is noteworthy that the arguments developed by the defendant's advocate were identical to those that Strumilo himself had adopted in his dispute with Andreas Siennienski. Swyantochna's advocate tried to convince the judge that the case belonged to the jurisdiction of the land court. This time, however, such a claim met an objection from the side of the judge. The record of the dispute relates that the judge challenged the advocate's claim by demanding to put before him the statutes of law in order to find out under what type of jurisdiction the dispute had to be settled (*da michi ad statutum iuris terrestris et velle statuta ponere, si est articulus iste terrestris aut castri*).[50]

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the court the fact of hearing confession by swearing an oath. One of the paragraphs of the Statutes of Warta criticized and expressed serious concern with this way of delaying cases. The paragraph speaks of the spread of "perverse customs," which led to improper ways of swearing an oath in the matter of postponing lawsuits and resulted in perjury. The legal provision specified that the procedure was endangered by perjury, mainly because the priest had sworn an oath to the fact of hearing confession, but not to the fact of illness. The provision then focuses specifically on delays of the sessions of two courts — the land court and the judicial assembly, the so-called *colloquia*. The Statutes established the possibility for defendants to miss two sessions of *colloquia* and three sessions of land court without any necessity to produce proof of alleged disease. Only the defendant's absence at the third session of the assembly and the fourth session of a land court had to be confirmed by the defendant at the next session by his personal oath. See *VL,* vol. 1, 32.1–32.2, "De antiqua consvetudine in transpositione terminorum servata." The Statute of Casimir IV from 1465 included one important amendment to the mode of oath-taking in cases of delayed sessions. It established that a defendant was required to bring two oath-helpers to back up his personal oath. See *VL*, vol. 1, 71.2, "De terminorum dilatione per infirmitatem."

49 The phrase *Ideo nescimus diffinire*, quoted above as one of the instances of bad knowledge of law, was recorded as a decision taken by the judges to postpone a case hearing because of the disagreement between the parties about the court appropriate for a dispute resolution. The account of the dispute has it that the defendant pleaded before the judges to send his case to the land court. According to his reasoning, the charges advanced by the plaintiff, accusing him of the raiding and destruction of land marks of her estate, did not fall under the jurisdiction of the castle court. See *AGZ,* vol. 14, no. 772.

50 Ibid., vol. 14, no. 3329 (May 5, 1455).

As a rule, disputants or their advocates knew enough about the four captain's paragraphs to be able to intelligently back up their claims for transferring a case from castle to land court. In addition to the evidence of the dispute between Strumilo and Siennienski this can be exemplified by the record of the lawsuit between Peter of Chlopčyci and Jan of Conušky that was held before the Przemyśl castle court in 1488.[51] Peter charged Jan with trespass on his property, cutting trees on the territory of his estate and breaking the royal pledge which had been previously imposed upon the parties by the court. Jan defended his right to be judged by the land court only. In his words, his case did not really fall under castle jurisdiction and was not in accord with the four castle paragraphs.[52] In a lucid explanation he clarified the real essence of the four paragraphs: *Duntaxat quatuor articulos iudicat: incendii, publice strata predacio, oppressio mulierum et violencia domestica, ut continetur in statutes in capitulo*. Nevertheless, Peter insisted on his right to take his case to the castle court by stating that the broken pledge had been laid down in this court itself and therefore the defendant should face trial there. In his turn, Jan justified his claim for transfer to the land court by alleging that the pledge was established by arbiters as a private agreement, and not imposed by the court. It seems that by pursuing this argument he managed to escape liability in the castle court.

The uses of the four captain's paragraphs in court proceedings clearly illustrate how local context framed the application of the statute law of the kingdom. All the cases considered so far suggest that a choice of jurisdiction, even if supported by the reference to the proper statute norm, was not something taken for granted, but was constantly challenged and tested in the course of the litigation. Plaintiffs often had to assert their right to plead and judge their cases in the court in fierce debates with defendants. A litigant's success in this matter depended greatly on his personal efforts and determination as well as shrewdness and knowledge in presenting and manipulating legal arguments in court. In this regard it is not surprising to find that exclusive prerogatives given to royal captains as heads of castle courts by the fifteenth-century statutes to judge cases of notorious violence, like assault on pubic roads and wounding, were repeatedly challenged by litigants. Some court records reveal that disputants reluctant to respond to charges of serious wrongdoings in the castle court could succeed in deferring such cases for further interrogation.[53]

It is important to add that the court proceedings and disputing process were dominated by highly ritualistic and formal rules that frequently run against the established statute provisions. Priority was usually given to legal ritual and the specificities of procedure over legal facts and norms in the court room. As a rule, a petition of the

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51 Ibid., vol. 17, (Lwów, 1901), no. 2202 (June 16, 1488).

52 Ibid.: "Prefato Conyvszeczsky controversia non intrante et petente se remitti ad ius terr. pro eadem cittacione cum pena trium marcarum dicente, quod iste articulus non esset iuris castri, quia nullum articulum ex quatuor, qui ad ius castr. pertinent, contingit."

53 Consult, for example, the evidence of the lawsuit between two nobles of L'viv land from 1454, in which Nicolas Zhuk accused Nicolas of Bartošiv of violent assault on a public road, wounding and detention. In his response, Stibor of Vyšnya, the defendant's advocate and a judge of the L'viv land, faced up these accusations by saying that the case belonged to the jurisdiction of the land court. The case was then deferred for interrogation, see Ibid., vol. 14, no. 3020 (January 15, 1454).

plaintiff was followed by an answer (*responsio, replica*) of the defendant. Before entering into a formal debate with an opponent, the defendant was entitled to plead legally permissible exceptions. Such exceptions usually had a procedural character. In their exceptions, defendants often insisted on delaying the hearing of a case for various reasons until the next court session. An exception could also mean an appeal to transfer a case to another type of court under whose jurisdiction the case should fall, according to the defendant's reasoning. Sometimes exceptions were more substantial and focused on procedural errors that an opponent had committed while pleading his case and advancing accusations. By presenting exceptions, defendants were at least able to gain time for mustering support and legal arguments. But some exceptions could result in the rejection of the defendant's claim and thus bring about the plaintiff's victory. There was always a risk that judges would consider a defendant's exceptions insufficient or, even worse, take them as a formal response to an opponent, or as a defendant's decision to accept the official verdict of the judges at this particular session. It was probably this sort of hidden danger of legal procedure that led to the insertion of numerous cautious clauses like *controversiam non intrante* into the texts of lawsuits on defendants' insistence.

The defendant's immediate response was the formal opening of the lawsuit (*litis contestatio alias prza*). In terms of legal process, a party's willingness to go for the *litis contestatio* meant that a lawsuit would have to result in a formal verdict of the court, to which a plaint and claim were presented. The beginning of the verbal exchange of arguments between parties at the first stage of the dispute precluded the transfer of the case to another judicial institution. It did not matter at all whether the case fell within the jurisdiction of the given court or not. In this regard, legal practice governed by ritual apparently tended to break through the lines of jurisdictions that fifteenth-century statute legislation sought to set up.

There were also other ways in which ritual and formal rules of conducting litigation exerted a strong influence on a process of dispute settlement. Frequently even minor and at the first glance insignificant issues related to the procedural track of litigation raised by disputants could result in postponing cases for further interrogation. For example, in a lawsuit between George Clus and Theodor Bučacki running before the L'viv castle court in 1441, the defendant proved that the plaintiff forgot to write in the register a *memoriale* while pleading his case before the judges.[54] The defendant pointed to this error as a sufficient reason for an acquittal of the case. Judges reacted in a predictable way by taking the case for interrogation and stating that *hoc nos discernere non valentes.* This was done despite the fact that Bučacki was summoned before the court on the very serious charges of violent assault on a private house. No further records are available in this case. There is no way of knowing whether interrogation really took place and what was the decision of the captain.

It is noteworthy that the notaries as well as litigants showed little interest in recording such important details of disputes as circumstances, justifying their violent conduct or explaining their misbehavior in terms of previous relationships

54 Ibid., vol. 14, no. 196 (February 25, 1441).

with their rivals, or emphasis on their emotional state at the time of the conflict. All these facts were largely ignored or found on the margins of written accounts of conflicts. Court scribes most often tended to write into the record of litigation the debates about the conformity of one's pleading to the established rituals of conducting litigation. These formal aspects of lawsuits sometimes seemed to be of more significance for the process of adjudication than the legal facts that had given rise to the lawsuit. The mode of conduct and speech in the court, that is, whether or not it conformed to the accepted legal rituals and procedural customs in the eyes of judges and the public, could strongly influence the course and outcome of the suit.[55]

The imposition of the proper penalty represented another domain where judges' uncertainties and anxiety about the law were revealed. It is not rare to find that judges adjudicated the case, but were unable to determine the precise size of the fine. For instance, in 1442 judges and assessors of the L'viv castle court managed to deliver a sentence, adjudicating the wounds of the plaintiff, but uttered their inability to define the fine which the guilty person had to pay: *sentenciamus, quod Woythka conthoralis eiusdem Korzyen lucrata est duo vulnera nobilia cruentata, sed solucionem vulnerum ignoramus sentenciare*.[56] With regard to a knowledge of law, and particularly of the Statutes of Casimir the Great, this record is a very revealing piece of evidence. As it is well known the Statutes of Casimir the Great listed a great variety of types of wounds, punishable differently according to the circumstances involved in the act of wounding. There is no indication however that the judges who heard this case had any knowledge of the system of penalties prescribed by contemporary statute law for wounding.[57]

Some other evidence spells out frequent doubts of judges about the size and type of penalty. In a case running before the Halyč castle court in 1460 the winning party wanted judges to sentence his rival with the fine of three marks because of an improper summons. However, the judges declined the request on the ground of their ignorance in this matter.[58] In 1441 judges and assessors of the L'viv castle court found

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55 This point is worth mentioning in view of the arguments developed by Susan Reynolds. S. Reynolds tends to question the image of medieval law and legal process as heavily irrationalized and dependent on ritual. In her opinion discussions held in the court must be taken as proof suggesting that the settlement of a dispute was not completely devoid of some elements of rationality. In her explanation, however, S. Reynolds has overlooked the possibility that those debates themselves could be strongly bound by ritual and formal procedures, which sometimes escape the possibility of being decoded as "rational" by the mind of modern scholar. See, her "Rationality and Collective Judgment," 9.

56 *AGZ*, vol. 14, no. 435 (June 22, 1442). Judges made similar statements about pecuniary fines adjudicated to other victims wounded in this conflict. See, Ibid., no. 440.

57 Consult especially the famous paragraph of the Statutes of Casimir the Great *de pena diversorum hominum,* in *Statuty Kazimierza Wielkiego*, no. XLIX. Consider also some other paragraphs of the said Statutes regulating the punishment of wounding, Ibidem., no. LX, LXII, LXIII, LXV The system of fines for wounding, as it was elaborated in the Statutes of Casimir the Great, has been analyzed in detail by M. Handelsman, *Prawo karne w Statutach Kazimierza Wielkiego* (Warsaw, 1909), 164–167.

58 *AGZ*, vol. 12, no. 3879 (August 25, 1460): "Denique nobil. Clemens penam vult habere trium marcarum, iudicio totidem, super ipso Orzechowsky officiali de Brzeszani racione inordinate cittacionis, sed Iudices cum dominis ipsam penam decernere ignoraverunt, sed ad requirendum plures dominos ad duas septimanas receperunt."

a plaintiff liable for a penalty, because he had summoned a defendant to the wrong court. But having difficulty to define *qualis et quanta debet fieri pena*, they decided to consult nobles and dignitaries who were about to convene in the nearest diet.[59] The hearings of another case held in the same Lviv castle court in 1440 were postponed, because the plaintiff left the courtroom, as he was dissatisfied with the pecuniary penalty that had been imposed on his opponent. The ignorance of law was then given by judges as justification for taking the case for counsel: *et ob hoc ignoramus, que pena illa fuit*.[60] Judges could also be hesitant about giving their verdicts in cases that prescribed a corporal penalty. In 1445 the judges and assessors of the Sanok castle court did not dare to sentence a defendant to the severe penalty of cutting his tongue, for which he was found liable because of his calumnious words against a plaintiff. Instead they took the case for further consultation to consider the possibility of substituting such a severe penalty with a pecuniary compensation.[61] Another court record suggests that a noble accused of theft and captured with stolen goods would most probably escape an immediate penalty, and judges would defer his case to the consideration of the noble assembly.[62]

The practice of endless postponement of cases for interrogation was often negatively assessed in the public opinion of contemporary society. It was considered one of the most evident shortcomings in the administration of justice in the late medieval Kingdom of Poland. Some sense of this negative side of the *ad interrogandum* procedure can be acquired by looking more closely at two pieces of evidence. Both concern long-lasting disputes and situate the reader in the middle of the litigation. In the first case, the plaintiffs blamed their opponent for refusing to return things which he had misappropriated after murdering the plaintiffs' father.[63] The opponent objected to this accusation by maintaining that the judges' sentence had freed him from both guilt and penalties. Both rivals then claimed to support their mutually exclusive statements by referring to the court sentence, which must have been written in the register. Upon consulting the register, it was discovered that no definite outcome had ever been reached in the case. Instead, it was revealed that some time before, the case had been postponed for the interrogation of the captain. However, because of the judges' or captain's disregard, such an interrogation had never taken place and hearings of the case had not been renewed until the time of this action.[64] This sort of evidence seems to suggest that an *ad interogandum* procedure served as an occasion for deliberate or accidental forgetting about cases in the practice of the fifteenth-century courts. The neglect of judges in consulting other officials about ways of settling a dispute could

59 Ibid., vol. 14, no. 316 (August 18, 1441).
60 Ibid., no. 13 (June 17, 1440).
61 Ibid., vol. 11, no. 2066. July 17, 1445: "Ideo recepimus ad interrogandum ad dominos, utrum lingwam sibi debet excidere vel si lingwam debet exemere alias *ocupicz*."
62 Ibid., no. 286 (August 14, 1428). It is most likely that the record represents a mere formulary, since it did not contain names of litigants and did not provide any specific details about the case.
63 Ibid., vol. 13, (Lwów, 1888), no. 5178 (June 13, 1463).
64 Ibid.: "Et in inscripcione secunda et libro tempore domini Slawsky invenimus, quia adhuc nullum lucrum ipsis filiis fuit adiudicatum, sed causa ad dom. Capitaneum suspensa fuit."

also be taken by one of the litigants as a favorable chance to raise a request for sending the case to be judged by another court.[65]

Another record, dated in the Przemyśl land register as June 25, 1505, demonstrates how much pressure the litigants must have sometimes exerted on the judges in order to obtain the needed advice of higher dignitaries.[66] Simultaneously the case shows that judges were able to abuse the practice of interrogation and pursue their own goals in the disputes by manipulating the procedure of interrogation. The text covers one of the last phases in the dispute between the plaintiff Jan Vyrzba of Grodna and Jadwiga Cholowska, the daughter of Budzywoj of Wovčyščovyči. By the time of the events described the case had been already postponed by the judge for the interrogation of the palatine. The record relates that Jan Vyrzba attended the court session in the hope of obtaining both the palatine's clarification and the judge's final sentence. However, his hopes were in vain. The judge admitted that he had not interrogated the palatine yet. The notary wrote into the register the following dialogue between Vyrzba and the judge on this occasion. The words with which Vyrzba addressed the judge imply that he did not believe the judge. It seems that he was inclined to think that the interrogation had in fact taken place: "I know that you did interrogate the sir palatine." However, the judge denied this fact. The judge justified his delay in interrogating in these words:

> Because of some errors in his writing the sir palatine badly informed me, therefore, it would be better for me to deliberate more on this issue and request the case to be considered again by the palatine in order to avoid the wrong judgment.

Following the judge's response, Vyrzba claimed the assistance of the bailiff and summoned the judge to a higher court (*movit judicem*). Accusing a judge of an unjust sentence was a widely utilized legal rule regulating the practice of appeal in fifteenth-century court proceedings. This meant that the judge was forced to expurgate himself before another, often superior, judicial institution. It opened automatically the possibility for a litigant to move his case up to the superior judicial institution.

The practice of prolonging interrogation was seen as *dilatio justitiae* and in this regard represented a serious abuse of the law. Postponing cases for further interrogations came to be viewed as a symbol of the negligence, inefficacy, and corruption of the courts. This point was strongly emphasized by Andrzej Frycz Modrzewski. In his *De Republica emendanda* Frycz Modrzewski voiced a contemporary opinion contending that the people who had suffered wrongs considered the prorogation of cases as the most odious custom. Instead those men who were blamed for wrongdoing benefited from the constant postponement of cases, making use of them in order to avoid punishment.[67] According to Frycz Modrzewski, judges must be charged with

65 Ibid., vol. 18, (Lwów, 1903), no. 4054 (April 5, 1502): "Iudex respondit non interrogavi alias *nye vypythalem*. Woyczechowsky pars citata postulavit dominum Iudicem, dum interrogacio non exivit date michi domine iudex ad dominum regem et non faciastis vobis difficultatem in isto…"

66 Ibid., no. 3421.

67 Andrzej Frycz Modrzewski, "Liber de Legibus," cap. XIIII, 191: "prorogationes dierum in nostris iudiciis receptae odiosissimae sunt hominibus qui patiuntur iniuriam, iis vero qui intulerunt optatissimae."

their part of the responsibility for this state of justice. The author said that judges who disregarded simple cases as difficult were deserving of much reprimand. Not caring to examine such cases and deliver justice, they postponed hearings for other dates. This mode of conduct was castigated by Frycz Modrzewski as abuse of the law, appropriate not for true judges, but for men who sought to corrupt the courts and turn this situation to their profit.[68] Another negative aspect of the practice of delaying judgments was revealed by Jan Ostrorog in his *Monumentum*. Ostrorog observed that as the mass of delays of cases increased, it was usually the representatives of aristocracy, who, due to their influence and power, got their cases adjudicated first. The poor and middle sort nobility were often left without settlement of their disputes.[69]

It is not surprising, therefore, that some local legislative initiatives approved by the king were undertaken to regulate this practice. For example, the legal customs of Cracow land, written down and confirmed by King Alexander in 1506, specified that if something dubious was raised in judging a case the judge could postpone the case for interrogation for no longer than until the time of the third hearing of the case.[70] The general period of time given to the judge for making the case expedient by interrogation was set by custom as seventeen weeks. Custom also forbade disputing parties to be present at the meeting where the interrogation was to be held.

However, these interpretations of the spread of interrogation did not exhaust all the possible ways in which meanings of the *ad interrogandum* procedure could be explained. It can be suggested that there were other reasons governing the decisions judges made to ignore the prescribed norms, to delay judgment, and to appeal for further counsel. The use of taking counsel in legal practice revealed the judges' constant worries about their empowerment to promulgate the verdict. This uncertainty about the legitimacy of their judgment, which led to cases being postponed, emerged with particular clarity from such court statements as *Et pro sentencia diffinitiva receperunt ad interrogandum, utrum sunt potentes eandem causam vadii adiudicare*.[71] In their pursuit of legitimacy and better justice, judges could first adjudicate the case to one of the litigants and, nevertheless, then turn for further counsel to institutions or men of higher position. Such instructions, received, for instance, from the royal court or land's judicial assembly, would be used to deliver a judgment as the decisive sentence.[72]

68 Ibid., cap. XVI.15, 203: "magno digni sunt odio isti, qui rerum quamlibet leuium causa difficiles se in adeundo praebent, causas exacte cognoscere not curant iusticiamque in diem ulteriorem reiiciunt. Non est hoc agere personam iudiciis, sed eius, qui sibi rebusque suis consulat et ad suum emolumentum omnia conferat."

69 Jan Ostrorog, *Monumentum*, 49, no. XXXI.,"De admittendis personis ad judicium."

70 *VL*, vol. 1, 149.1: "Item cum judex accipiet ad interrogandum aliquam dubietatem alias rem, ulterius protrahere non potest nisi ad tertios terminos, sed in tertijs terminis interrogationem dicere teneatur et Judex castren. in sedecim septimanis debet expedire interrogacionem, pro eo potest Judex moneri, si non expediverit interrogationem tempore medio ad interrogandum habito et praeterito; cum autem fit interrogatio partes nec interrogationi interesse nec eam audire debeant."

71 *AGZ,* vol. 13, no. 3717 (November 8, 1448).

72 Ibid., no. 3717.

The spread of *ad interrogandum* clauses was also closely linked with the idea of collective judgment.[73] The administration of justice was seen as a common right, even an obligation of all members of the local noble community. Legal knowledge and the right to interpret law did not represent a domain monopolized by a group of professional lawyers, but was rather dispersed among all those who belonged to the noble estate. In this regard, dispute settlement was often much more susceptible to what can be called, following Fritz Kern, a common legal sense of community, whose basic principals tended to strengthen the idea of equity and justice, rather than legal facts and norms of statute law.[74]

The idea of the collective judgment was also revealed in connection with the frequently emphasized paucity of men present at the court session. A small number of nobles attending a court session was seen as excuse enough for postponing the case for instruction. In one record the court assessors clearly stated that since there were only a few of them present at the court session they did not want to deliver the sentence, but instead suspended the case until the arrival of the captain as well as, in hopes of better attendance by nobles: *Tunc nos apparebat esse paucos et diffinire noluimus et suspendimus ad dominum Capitaneum, quousque plures fient nobiles*.[75] A similar line of reasoning can be found in many other records as well: *Ideo nos recipimus ad interrogandum ad diem crastinam ad pluralitatem dominorum eandem causam*,[76] *prorogamus a feria proxime ventura per unam septimanam, quia tunc pluralitas aderit dominorum magnatorum.*[77] The same pattern is visible in records in which the litigants themselves claimed the right to send the case to the consideration *ad plures dominos*.[78]

While judging a case the body of assessors was supposed to be as representative as possible. This meant not only the quantity but also the quality of the people who participated as court assessors in the adjudication process. In their quest for legitimacy and better justice (*meliora justitia*), as is revealed behind some of *ad interrogandum* clauses, the judges and assessors sought to provide, first of all, the participation of powerful men, whose opinion about a case could be indispensable for preventing a possible accusation of an unjust judgment.[79] Sometimes even very powerful men, gathered in court to participate in its proceedings, regarded it as better to postpone the case in view of the absence of some of their fellows. This was, for example, the case of a hearing in the Halyč land court held on October 18, 1462, attended by the highest

73 About the idea of collective judgment as central for the understanding of the medieval legal process and norms of procedure, consider Susan Reynolds, "Rationality and Collective Judgment," 8–9; William I. Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: The University of Chicago Press, 1990), 251.

74 Fritz Kern, "Law and Constitution in the Middle Ages," *Kingship and Law in the Middle Ages* (New York and Evanston: Harper Torchbooks, 1970), 156–158.

75 *AGZ*, vol. 11, no. 25 (February 15, 1424).

76 Ibid., no. 2498 (November 27, 1447).

77 Ibid., no. 2500 (November 28, 1447).

78 Ibid., vol. 12, no. 1525 (January 15, 1445): "dominus Iohannes Castellanus Haliciensis querelam proponebat contra dominum Clementem Byeleczsky pro homine, qui Clemens clamabat se ad plures dominos." For other evidence of postponing cases *ad plures dominos*, see Ibid., no. 3879 (August 25, 1460); 4229 (October 19, 1440).

79 On the role prescribed to the powerful to represent the law of the community in the Medieval West see: S. Reynolds, "Rationality and Collective Judgment," 6.

representatives of the local elite — the Halyč and L'viv castellans and the Halyč land judge. Despite their high status, those dignitaries expressed no wish to judge the case themselves (*soli discernere nolentes*), but postponed the adjudication to the Palatinate's diet, where the arrival of other members of local elite, including the catholic Archbishop of L'viv and the Rus' palatine and captain, was expected.[80]

For judges and disputants of the late medieval Rus' palatinate to speak about justice meant to speak first of all about collective judgment and overall community consent. Therefore, the prorogation of a case for further counsel indicates the hope of winning the time to seek terms of judgment on which all judges and assessors would be in concord. When, in 1446, for example, the judges and assessors of the L'viv castle court held seriously differing opinions in judging the dispute between Michael Mużilo and Christopher of Saint Romulo the decision was passed "not to hasten with delivering the judgment, but to aspire to gain equality for both parties," postponing the case for the next judicial assembly of the land.[81] Litigants too were known to appeal to this principle. In one case, for example, the litigant addressed the judge not to quicken with the decision in his case, because it might result in an unfair judgment. Instead he proposed to defer the case for the consideration of the "righteous lord" captain.[82] This principle postulating that final verdicts do not require haste is strikingly reminiscent of the words of Fredrick Maitland about one of the major principles of medieval law: "Law must be slow in order it may be fair."[83]

The insistence on legitimacy and collective judgment is also visible in attempts to justify the recourse *ad interrogandum* by the need to provide the parties with better justice, or as one record put it, *pro meliori iusticia*.[84] The best justice was one whose foundations were grounded on the consent and advice of all the members of community. This idea is clearly articulated in a legal text postponing a case for further deliberation:

> if all lords are not able to come and discuss the mentioned parties, then the captain should give the parties a further hearing with the participation of other lords in order to prevent the occurrence of any injury to both litigants.[85]

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80 *AGZ*, vol. 12, no. 4172: "Que premissa exaudientes et soli discernere nolentes, hanc rem dedimus ad rev. Archiepiscopum et mfcum. Palatinum et Capitaneum terre Russie generalem ad convencionem que in proximo celebrari debet Leopoli…"

81 Ibid., vol. 14, no. 1804 (October 20, 1446): "Et domini omnes prefati condictantes invicem, nolentes in hac causam precipitare, sed unicuique parti equitatem facere." For some other examples showing the lack of common consent as a cause for prorogation of a case for counsel see: Ibid., no. 2114 (September 4, 1448): "Et domini non potentes concordare sentenciare hoc factum, receperunt ad crastinam diem s. Michaelis, dom. Palatinum ad interrogandum."

82 Ibid., vol. 15, no. 2961 (February 7, 1500): "domine Iudex, nolite fieri tam promptus ad decernendum istam causam, quia videtur michi, quod est iniuria parti mee, sed digneris differre ad dom. Captm. Et quicquid videbitur Sue Dominacioni tanquam domino iusto in eadem causa, Sua Dominacio decernet. Iudicium."

83 Frederick Pollock and Frederick W. Maitland, *The History of English Law before the Time of Edward I,* 2nd ed. with a new introduction by S. F. C. Milsom, vol. 2 (Cambridge and New York: Cambridge University Press, 1968), 591.

84 *AGZ*, vol. 12, no. 4233.

85 Ibid., vol. 14, no. 552 (December 5, 1442): "Si autem omnes domini non conveniant vel non discucient

The principle underlying the delivery of judgment in the passage just quoted is the need to take further counsel "in order to prevent the occurrence of any injury to either litigant" clearly shows that not the law, but equity, that is the idea of "giving everyone something," was the dominant moral value operating behind the dispute settlement in late medieval Galicia. To realize how deeply the language of equity penetrated the ideology of the dispute settlement it is enough to mention that some cases of notorious violence were settled in accordance with the principles of equity. In 1424 judges and assessors presiding over a session of the Sanok castle court deferred the case for deliberation with the remark *ut mutua inter ipsos possit fieri iustificacio*.[86] This was done in spite of serious charges of brigandage and wounding the plaintiff advanced against the defendant. Another telling detail highlighting the importance of the principle of equity in the settlement of this dispute was that the case was not simply postponed, but the parties were actually forced to start a private reconciliation.[87]

To judge by other evidence this case was by no means exceptional. Room for private arbitration was open for settling even very complex cases of violence which involved different pleas brought by several victims of a wrongdoing. In fact, evidence shows that judges were able to utilize various procedural options combining judicial and extra-judicial means as judging such cases. This mode of delivering judgment can be found, for example in the dispute settlement between Stanislas Mitolynski, Jan Marszalek and peasants of Hrybovyči on one side, and Mykyta of Dubliany on the other side.[88] The case against Mykyta of Dubliany was brought to the L'viv castle court in 1440 on charges of violent raiding and wounding. The beginning of the case was marked by a formal verdict pronounced against one of the plaintiffs. His plea was declared null because he neglected to present oath-helpers to support his charges of violence against the defendant. As for the rest of the pleas brought by other plaintiffs, the judges deferred final judgment. They justified the postponement by the need to inquire into the book of statutes and search there for the paragraph of law relevant for considering the essence of the allegations brought by the plaintiffs. In the meantime, however, the litigation changed its track and the parties settled the dispute by means of private arbitration.

The prorogation of the case *ad interrogandum* was, therefore, seen as a means of avoiding *injuria* in delivering judgment and reflected the overall quest for *meliora justitia*. These principles underlying the spread of *ad interrogandum* clauses made the practice of consultation and prorogation close in meaning to private arbitration and peacemaking. In this regard it worth noting that there is a striking similarity between the wide use of *ad interrogandum* and *ad concordandum* procedures in the practice of fifteenth-century Galician courts. Both procedures could be seen as two complementary sides of the application of the same legal concept, aimed at promoting the ideology of good justice and communal agreement.

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partes predictas, extunc ipsis Capitaneis dabit terminum ulteriorem cum ceteris dominis taliter, quod utique nulla parcium fiat iniuria."

86 Ibid., vol. 11, no. 45 (May 13, 1424).

87 Ibid., no. 59 (June 10, 1424).

88 See, Ibid., vol. 14, no. 9, 11, 13, 19, 35, 53.

The process of public interrogation about doubtful cases presumably took a form of asking questions and receiving answers — procedures with essentially an oral character in late medieval Galicia.[89] Law-making implicitly involved in the procedure of interrogation was thus rooted in the oral mode of communication. This suggests that the meanings and interpretation of legal norms in the courts were elicited as a result of the public debate held in the courtroom. This made the presentation of the disputed norm too contingent on the oral, performative context of case hearings.[90] Therefore, the process of judgment and dispute settlement was less governed by impersonal written legal provisions. What was understood in fifteenth-century Galicia as the law was neither a systematic code of law, nor a body of written, abstract and unchanging legal provisions. In view of the spread of the practice of interrogation, the law and law-making appears as a process of constant oral communication and negotiation about the meaning and substance of legal norms.

This complex dialectic between statute law and local legal practice that considerably restricted and re-negotiated the uses of statute legal norms in the process of dispute settlement in the fifteenth-century Rus' palatinate remind us of the importance of the so-called "processual approach" in studying communal conflicts and disputes in traditional societies. Anthropologists working within a processual approach (Sally Falk Moore, Simon Roberts and John Comaroff) insisted on understanding social order not as body of abstract rules and norms to which social actors must comply in their daily life behavior, but as a corollary of subjective interpretations and understandings of these norms by people involved in the process of interaction. As a result, a central conceptual premise of the processual approach is an emphasis on the behavior, individual choices, and strategies of disputants, rather than on the rules, norms and institutions that framed the process of dispute. What was usually neglected by previous scholarship, scholars like S. Roberts and J. Comaroff have argued, was a certain degree of ambiguity in norms, and the possibility of manipulating and misunderstanding them in the context of a dispute. Perhaps nobody grasped the essence of this new approach better than Max Gluckman. In a famous statement he said that it is important to understand not only the rules of the disputing game, but "how the game was played."[91]

89 On the oral character of the procedure of interrogation about the law in the Middle Ages, see Hanna Vollrath, "Rechtstexte in der oralen Rechtskultur des früheren Mittelalters," in Michel Borgolte ed., *Mittelalterforschung nach der Wende 1989* (München: R. Oldenbourg, 1995), esp. 339.

90 On this aspect of the interrelation of the oral and textual in the context of the medieval disputes, see especially Patrick Geary, "Oblivion between Orality and Textuality," *Medieval Concepts of the Past. Ritual, Memory, Historiography*, eds. Gerd Althoff, Johannes Fried, and Patrick J. Geary (Cambridge: Cambridge University Press, 2002), 111–122.

91 The processual approach has been theorized and developed in such works as Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Oxford: Calrendon, 1979); John L. Comaroff and Simon Robert, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981); Simon Roberts, "The Study of Dispute: Anthropological Perspective," John Bossy ed., *Dispute and Settlement: Law and Human relations in the West* (Cambridge: Cambridge University Press, 1983), 1–24. On the theoretical contribution of Max Gluckman to the development of a processual paradigm, see recent comments by Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford and New York: Oxford University Press, 2003), 303–4. For a general historians' appreciation of a processual approach in historical studies of medieval and early modern dispute, consult Thomas Kuehn, "Introduction," *Law, Family and Women. Toward a Legal Anthropology of Renaissance Italy* (Chicago

In closing, it seems possible to suggest that the judges and litigants possessed some knowledge of the Statutes of Casimir the Great and other statutes, but still found it frequently more appropriate to delay judgment and take the counsel of some superior authority. Considering these circumstances, it would perhaps be more reasonable to speak not only about poor knowledge of law, but also about the place and meaning which were ascribed to the codified, written law in administering justice in a local context. The case in question seems to suggest that uses of statute norms were contingent upon the context of local knowledge of law, legal customs and rules accepted for court proceedings. It further suggests that the choice between the norms of local and statute law was a process of constant negotiation and power play among all the major actors involved in dispute settlement. It also shows that the ability to assess the relevance of norms from each of these normative systems and their applicability to the case judgment was not so dependent upon purely legal considerations, but was also related to the wider context of the politics of disputing and dominant values of the noble community.[92]

The practice of taking counsel thus represented a major channel for the constant reproduction of local legal knowledge, and was only partly influenced by statute law. The application of statute law and local customs in the disputing process appears to be a process of incessant negotiation about the norms and meaning of the law. In the process of permanent recourse to interrogation a local noble corporation constituted itself as a sort of "interpretative community", a community of common law. This aspect of noble justice served to enhance the ideology of intra-estate solidarity and cohesiveness, particularly important for a society torn by endless conflicts and enmity.

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and London: University of Chicago Press, 1991), 2–3, 11; Chris Wickham, *Courts and Conflict*, esp. 5, 303–12; Chris Wickham, "Conclusion," Peter Coss ed., *The Moral World of the Law* (Cambridge, 2000), esp. 247; Warren Brown and Piotr Górecki, "What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970–2000," Warren C. Brown and Piotr Górecki eds., *Conflict in Medieval Europe*, 6–10.

92 For comparison, consider the valuable observations by János M. Bak on the complex interplay between norms of statute law and customs in the process of dispute settlement in medieval Hungary. See: János M. Bak, "Introduction," *Custom and Law in Central Europe,* ed. Martyn Rady (Cambridge, 2003), 8–9.