

ENGLISH SUMMARY

Sigurður Línðal points out that in the Middle Ages law was, like language, conceived of by the Germanic peoples as formed gradually, independently of human will. When new laws were introduced, they reflected the people's sense of justice rather than the will of kings. In cases on which there were no known laws, the task was to discover the appropriate laws, not to create them. The kings were under the law like everybody else. They had to respect the rights their subjects enjoyed by law. Indeed, in the Scandinavian countries, new kings usually had to promise to uphold the ancient law of the land. In the 12th and 13th centuries the idea of a legislator had however gained ground, but he had to take into consideration the old laws, and build on them. Slowly, the European modern states came into being, not least as a response to the attempts by the popes to decide on legal issues. The new legislators, such as Emperor Frederick Barbarossa, followed the advice of legal experts, such as the professors at the University of Bologna who wanted to expand royal power. St. Thomas Aquinas taught however that the law had to follow reason and that this requirement constituted a constraint on what kings could legislate on their own.

Línðal argues that the main principle of law in the Middle Ages was that people were only bound by what they had consented to. Thus, new law had to be adopted by popular acclaim at assemblies, basically unanimously. There was no provision in the Germanic legal tradition for majority voting. Moreover, an important element in Germanic law was right of resistance. If the king violated the law or was in some other way unfit for office, he could be deposed, as many examples confirmed. Línðal points out that the 'Old Covenant' which the Icelanders made with the Norwegian king when they swore him allegiance in 1262 resembled the English *Magna Carta*. In the thirteenth century, it had become clear that laws could be

derived in two ways, from the ancient customary law on the one hand and from legislation, or positive law, on the other hand. For example, the Danish Law of Jutland, promulgated in 1241, was a compromise between those two kinds of law. But the kings steadily tried to increase their legislative power.

This was the background in which Snorri Sturluson (1879–1241) in early 13th century wrote *Heimskringla*, his history of the Norwegian kings and their subjects. Until 1262, Iceland was however the only Nordic country without a king, having been settled by refugees from Norway in late ninth century. Sigurður Línal provides many examples from *Heimskringla* of the ancient Germanic ideas that kings have to uphold the law of the land and that they were under this law like everybody else. Snorri seems to be in sympathy with these ideas. Good kings kept the peace and upheld the law, whereas bad kings were belligerent and disrespectful of the law. When it was necessary to revise old laws or to pass new laws, this was done by kings in consultation with noblemen and leading farmers and they had to be confirmed at popular assemblies. Again, people were only bound by what they had consented to.

Línal also recalls many cases in *Heimskringla* when farmers insisted on their right of rebellion, telling their kings that if they kept breaking the law they would be deposed or even killed. Perhaps the most famous account is of Swedish Lawman Torgny who told his king, Olof Ericson, that if he continued to wage war against his Norwegian counterpart, King Olav the Fat, he would be killed. It is also remarkable how an Icelandic farmer, Einar from Thvera, responded in 1024 to attempts to Norwegian king Olav the Fat to gain a foothold in Iceland. Einar said that it was well known that kings ‘turn out differently, some well, some badly’ and that therefore the Icelanders should just be friends of this king and his successors, not his subjects. This seems to have been the position of Snorri himself regarding Iceland.