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**OATHS IN
PREMODERN
JAPAN AND
PREMODERN
EUROPE**



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Volume 19

Oaths in Premodern Japan and Premodern Europe

Guest Editors:

Philippe Buc and Thomas D. Conlan

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Table of Contents

Editorial Ingrid Hartl and Walter Pohl	2
OATHS IN PREMODERN JAPAN AND PREMODERN EUROPE <i>GUEST EDITORS: PHILIPPE BUC AND THOMAS D. CONLAN</i>	
Oaths in Premodern Japan and Premodern Europe. An Introduction Philippe Buc	3
Before Written Oaths (<i>kishōmon</i>): Oaths (<i>sensei</i>) in Ancient Japan Yoshikawa Shinji	22
The Gods Are Watching: Talismans, Oaths, and Political Allegiance in Medieval Japan Thomas D. Conlan	40
Writing Oaths: Embodied Evidence in Fifteenth-Century Japan Megan Gilbert	65
Oaths and Divine Punishments in Warring States Japan from the Princeton University Collection Horikawa Yasufumi	86
Loyalty Oaths and the Transformation of Political Legitimacy in the Medieval West Stefan Esders	119
The Promise of History: Oaths in Frankish Historiography Helmut Reimitz	141
Oaths as an Instrument of Power in Southern France, 11th-12th Centuries Hélène Débax	163
Oaths and Socio-political Hierarchies in the Urban »Sworn Society«: South-west Germany in the Late Middle Ages Olivier Richard	195
INDIVIDUAL ARTICLE	
Nicholas in the North: A Fragment of <i>Nikolaus Saga Erkibyskups</i> in Oslo, Nra 69 – Text, Translation and Commentary Elliot Worrall, Rutger Kramer and Thomas Grant	216

Editorial

Ingrid Hartl and Walter Pohl

Writing, signing, burying, touching, speaking before witnesses – these were all methods employed during the Middle Ages to make oaths visible and effective. Scholars today distinguish between various types, such as »promissory oaths«, »probatory« or »purgative oaths« but also have evidence for mixtures of both. Oaths might be unilateral or bilateral, they might be taken by an individual or by a group. In short, oaths were versatile means to achieve a variety of ends, and changed over time as people made use of them. With established scholars and upcoming talents in this field contributing, our thematic section *Oaths in Premodern Japan and Premodern Europe* not only presents case studies, which showcase examples of this wide array of oath-taking practice, but also provides in-depth analyses of changes over longer periods of time. Thus, material, social and spiritual aspects of oath-taking are elucidated in their Japanese and European contexts, enabling a comparison of their differences and similarities, which is skilfully provided.

In our individual articles section, we present a normalization and commented translation of an Icelandic fragment of the *Nikuláss saga erkibiskups*, the Saga of Bishop Nicholas. In time for Saint Nicholas Day it contributes to the lively scholarly discussions around this universal saint.

Oaths in Premodern Japan and Premodern Europe. An Introduction

Philippe Buc*

This introduction to this collection of articles on oaths in premodern Japan and premodern Latin Europe aims merely to survey the data presented in the articles, and some comparativist findings. It considers terminology, chronology, avoidance of oath-taking, identity of oath-takers, diversity in formulas and practices of swearing, depending on hierarchy and situations, sanctions for perjury, and the efficiency (or not) of oaths.

Keywords: Oaths, Japan, Europe, perjury, ordeals, symbolic communication

This introduction will not summarize the articles in this volume; abstracts exist for a purpose.¹ Rather, it aims to explore some issues arising from the encounter between these contributions and from the intensive discussions that took place at the workshop devoted to the theme (Vienna, Austria, October 2021). It will begin by presenting the agenda of the workshop, and by clarifying our common terminology and lexicon, and then reflect on the origins of the oath in Late Antique and medieval Japan (to ca. 1600 CE) and medieval Latin Europe or »Western Europe« (to ca. 1500 CE).² It will discuss the relationship between oath and power, including social and political hierarchies, and finally ponder oaths' efficacy. These pages are thus deliberately comparativist, in juxtaposing practices that belong to two distinct and unconnected contexts.³

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This article introduces thematic section *Oaths in Premodern Japan and Premodern Europe*, guest editors: Philippe Buc and Thomas D. Conlan. To read all related articles, please access: doi.org/10.1553/medievalworlds_no19_2023.

- 1 In the bibliographies, author names follow national conventions, thus for the Japanese, Family Name followed by First Name (Yoshikawa Shinji and Horikawa Yasufumi).
- 2 We do not mean that »Europe« does not include today the areas that East Rome had ruled prior to 1453 (date of the Ottoman conquest of Constantinople), or that some research themes should not include for the premodern era both western and eastern Europe. For our subject here, however, Constantinople's past sphere of influence is beyond the scope of our topic.
- 3 For a panorama of the evolution of the comparative method since WW2, see Gingrich, *Multiple histories*, 111-115.

Agenda and Comparison between Medieval Japan and Medieval Western Europe

The choice of Japan and part of Western Europe as comparanda – and as sole comparanda to the exclusion of further terms – may not be evident to all readers. A tripolar comparison might indeed have been more instructive, but, firstly, a binary one can be already fruitful,⁴ and secondly, we meant to address a long history of juxtaposing Japan and Europe. It was initiated by Japanese scholars in the wake of the Meiji restoration of 1867-1868, who borrowed from the so-called West historiographic concepts and frameworks. One motivation was to fit the Japanese polity in the European historical narrative, to serve as a barrier against the imperialism that was dislocating neighbouring China. Not to be a victim, Japan had to be comparable to the West. This explains the adoption of »medieval« (中世) as a period, and later the popularity of »feudalism« (封建制度) as a concept. Similarly, Japanese political elites considered that they had to have colonies if the Western powers were to admit Japan as a sovereign nation-state, thus not as a barbaric, thus legal target for colonization. This is how »the terms of international law entered modern Japan's discourse of power.«⁵ In time, with Japanese success at modernization (and imperialism), the discourse of comparability became a scholarly explanation for this happy trajectory. As a result (I have summarized studies on this process elsewhere) historians East and West begun to establish parallels, and enter in dialogue.⁶ Most famous perhaps are the musings of Marc Bloch, the acknowledged giant of twentieth-century French Medieval History, in his *Feudal Society* (1939-1940), as to whether there had not been only two feudalisms in world history.⁷ Sustained or not, comparison was also fostered by the importance in the two premodern ensembles of warrior elites. At the very beginning of the twentieth century, Japanese scholars began to put side-by-side late Antique European warbands (and later in the century the European knights of the so-called feudal age) and the Japanese bushi who founded the Kamakura Shogunate in the late twelfth century.⁸

Until recently, such comparisons looked either for similarities or differences between the two societies as wholes. They were thus well fitted to implicit or explicit Eurocentric master narratives, looking to paths taken or not taken toward a modernity defined by the West's experience. Recent scholarship on the comparative method, however, has underscored that it is likely safer and more productive to consider smaller objects,⁹ here, the oath.

We started from a common questionnaire: What did one take oaths about? Who could swear oaths, or otherwise put, were there people who could not swear oaths? Who were the persons receiving oaths? How frequent was oath-taking? Which forms did oath-taking assume? What were the sanctions for oath-breaking (religious, social, political)?

4 Buc, *Sectarian Violence*, 373-376, justifies a binary comparison between a Japanese configuration and a West European configuration.

5 See Dudden, *Japan's Colonization of Korea*, 4.

6 Buc, *Civil war and religion*, 2-5. See as well Adolphson, *Social Change*.

7 Bloch, *Société féodale*. The recent comparison between the ethos of West European and Japanese warriors by Barthélemy, *Chevalerie européenne*, ends on a note of difference, despite their military societies being organized via vassalage.

8 Kawai, *Medieval warriors*, 311.

9 See for example van der Veer, *Value of Comparison*. I reflect on this in Buc, *Introduction to premodern war and religions*, 4-5.

Terminology and Boundaries of the Concepts

To be consistent, all contributions to the dossier of articles call the person or persons swearing an oath the »oath-taker(s).« Oaths belong to two main types.¹⁰ A first type is the »promissory oath,« which addresses the future. A second type is the »probatory,« »purgative,« »exculpatory,« or »assertive oath,« addressing the past or the present. Promissory oaths may be one-sided (unilateral), with just one oath-taking party, or oaths exchanged (bilateral) between two parties who swear to each other, and they may all be individual or collective (group oath-taking).¹¹ Some oaths straddle the two types (promissory and probatory). Western and Central Europe's oaths are called, in Latin, *sacramentum* or *iuramentum*; the articles on Japan focus on a written form called *kishōmon* and its predecessors or contemporaries. The impression yielded by an international conference three decades ago that brought together anthropologists and historians working on many cultural areas, was that »political oaths,« thus necessarily of the promissory kind, were across cultures much less frequent than purgative oaths. Thus oaths with a judicial function (»probatory«) were by far the most common.¹² The articles here gathered suggest that this was not the case. The European areas studied in this collection, that is, H  l  ne D  bax's twelfth-century southwestern France and Olivier Richard's late medieval southwestern German and Swiss cities, demonstrate at least the intensive use of promissory oaths.¹³ It goes without saying that only a much larger research project could establish whether this was true across Latin Europe. And it is evident that not only the dynamics of urbanized and semi-autocephalous communities but also the policies of autocratic lords foster the political oath.

Earlier studies underlined the presence (and sometime identity) in many societies of the purgative oath and of the ordeal (*Ordal*, *Gottesurteil*, *jugement de Dieu*), whereby a deity or the Deity passed a verdict on the assertions presented by a suspect (or on his or her standing vis-  -vis this deity). The once lively scholarly production on the Latin European trials by water or fire revealed its many functions, which are also those of the oath: the person(s) proposing to take the (purgative) oath or requesting it may: seek to establish through it an objective truth (hard to determine in the case of alleged crimes without witnesses); try to assess the subjective standing of the oath-taker vis-  -vis the god(s); or use it to try to reconcile a group (within itself or with its neighbors or with its lords or with a lord's dependents).¹⁴ The oath can share structural features with the ordeal, for instance, to make a subordinate take an oath rather than take it oneself parallels to make a subordinate undergo an ordeal rather than submit to it oneself. As the articles show, both are dangerous and both be considered humiliating or not befitting one's rank. Thus, unsurprisingly, Thomas Conlan's contribution features some purgative oaths that functioned as ordeals, and the divine sanctions that were

10 See Fezas and Jacob, *Fonctions sociales du serment*, 219.

11 A distinction underscored by Megan Gilbert in this collection. Gilbert also points to a different distribution of the two sorts in the sources, originals often featuring plural parties, and, in narrative sources, often (perhaps for dramatic effect) one-sided...

12 Jacob, *Anthropologie et histoire*, 238-239.

13 In the one case, frequency may be owed to frequent conflicts (regularity), in the other, regular oath-taking by the population is part of the routine fabric of power with its implicit rules (rule-bound).

14 To cite a few among these studies, Brown, *Society and the Supernatural*; Bartlett, *Trial by Fire and Water*; White, *Proposing the ordeal*; Barth  lemy, *Diversit   des ordalies*.

expected should the oath-taker(s) have lied. Interestingly for Japan, promissory oaths too came with a form of ordeal: the gods were supposed to strike swiftly persons who had no intention of following up on their promise within a limited period of time straight after the oath-taking. Conlan's article features a remarkable finding about Ashikaga Takauji's manipulation of this timing: The warlord broke his promise to the Kamakura Shogunate's leadership immediately after the expiry of the two weeks during which the gods would have intervened to punish him, and turned against those to whom he had sworn, with devastating consequences for the regime. For Japan in particular, then, we consider oaths and ordeals to be on a continuum.

Origins

Political oaths, called »sacraments of power« by Paolo Prodi – an author discussed in this collection by Olivier Richard and mentioned by Stefan Esders and Helmut Reimitz – are attested early on both in Japan and in Latin Europe. In both areas, they appear in the record within very specific historical matrices. As Esders explains in this volume, Frankish Carolingian oaths of fidelity, whose formulas are the ancestors of those of many later oaths in Western and Central Europe, derive from Late Roman military oaths. The Frankish interest in the imitation of Rome is well known. And for the Frankish kingdoms as well as its neighbors, Esders argues that the military oath served as the backbone of post-Roman »barbarian« polities (ca. 500 to ca. 700). As for the Japanese oaths, they are also exogenous, an import from Tang China (618-907), whose strength and expansionism Japan's imperial court feared, and thus whose institutions it copied for defensive purposes over the course of the seventh and eighth centuries of the Common Era. Both historical matrices involved internal political crises or violent reconfigurations. Helmut Reimitz underlines the reconfiguration of the royal families in the aftermath of the coup d'état in 751-754 that brought the Pippinids (a.k.a. Carolingians) to the throne and displaced the Merovingian dynasty (coronation in 751, papal blessing in 754). The coup did not entail merely a change in the Frankish royal family; it took place in the midst of a longer process of frequently bloody internal pruning of the major aristocratic kin groups in Francia and neighboring polities, which were often related by marriage. In Japan too, according to Yoshikawa Shinji's reconstruction, coups d'état and power reconfigurations involved the political oath. We can highlight here two moments among those discussed by Yoshikawa. Through a veritable palace coup in 645 CE, the future emperor Tenji and his allies displaced the then hegemonic main branch of the Soga clan, and immediately introduced Chinese-style laws to reform and strengthen imperial rule (the Taika reforms, same year). And in 671-672 CE, the accession of Tenmu Tennō took place after a brief civil war against the legitimate imperial heir, his nephew Prince Ōtomo a.k.a. Kōbun Tennō. Factions in both cases (the winners in the first, the losers in the second) swore Chinese-style loyalty oaths.¹⁵ Comparatively, one might submit that the oath was

15 For a very different understanding of Chinese influence on oath-taking, see Héral, Réapparition du serment. According to this great scholar (the doyen of Japanese studies in France in the second half of the twentieth century), the adoption of Chinese law inhibited the existing autochthonous Japanese oath-taking for centuries. The cases that Professor Yoshikawa highlights are exceptions, but the import of his contribution is that these oaths are Chinese-style and thus far from being examples of an either-or dichotomy – either customary and oral practices or prescribed by law (a classic opposition between ritual and law). For the debatable idea that law replaces ritual or vice-versa, see Buc, *Dangers of Ritual*, 220-223.

thus borrowed from two prestigious »centers out there«:¹⁶ the Roman past for the Frankish world, and for Japan, China, the neighboring Asian hegemon and transmitter, among other things, of Buddhism and law codes. The one, Rome, was temporally remote, the other, China, geographically separate. Also, looked at comparatively, these political oaths become visible in moments of major restructurings of the political sphere, both in Francia and in Japan.

The other chronological bookends are the Late Middle Ages in Latin Europe (fourteenth and fifteenth centuries) and the closure of the Japanese civil wars with the battle of Sekigahara (1600 CE) and its immediate aftermath. Did the oath, then, experience a crisis, meaning, did people no longer take oaths seriously, either because of their overuse or because of some secularization process? This idea of a »crisis« makes sense only if the oath was a strong bond to start with. And whether or not the oath had initially had substantial binding efficacy (an issue to be discussed later), we observe an upswing in oath-taking in Japan and Europe during these closing periods.¹⁷

Oaths and Hierarchy: Tactical Use of Oaths

In fact, promissory oaths »democratized« themselves over the centuries, in the sense that more people from more social classes and groups were asked to take them (but not in the sense that oath-taking was always fully voluntary – far from it). The needs, however conceived, of communities and institutions led to this. Olivier Richard shows how late medieval southwestern German towns and their Swiss neighbors enlisted for the yearly communal oath-taking even disreputable people (marked by *infamia*), normally excluded from judicial processes, such as prostitutes and Jews. Tom Conlan presents a similar trend in Japan. He explains that retainers (or ordinary members of peasant communities) in an earlier period (the twelfth and thirteenth centuries) had been assumed to be bound by their Japanese lords' sworn promises or signatures; by the sixteenth century, they too had to take oaths or sign.

Despite this democratization of the oath, different status groups swore differently (as Richard explains), and high lords might either refuse the oath or, in contrast, might condescend to swear one even though being exempt or above such an action.

Thus a higher-status person might deign to swear an oath so as to comfort someone in a position of inferiority. It might be out of Christian humility, or a show of it, in a manifestation of spiritual superiority. Or it might be a form of »role distancing« à la Erving Goffman: by making a show of one's magnanimity in doing what is not normally appropriate to one's status and power, one underscores one's socio-political superiority.¹⁸ It can also be – like proposing the ordeal – a chess move, a gamble to change the dynamics of a political process.¹⁹ At the end of a dispute circa 1030 between a vassal, Hugh of Lusignan, and his lord, William Count of Poitiers and Duke of Aquitaine, William offered to send a serf to the ordeal by fire (to carry

16 One of the insights in the splendidly idiosyncratic book by Jussen, *Die Franken*.

17 Esders points us to Behrmann, *Instrument des Vertrauens*, who (in Esders' words) »argues that we should not speak for the later 9th century of a crisis of the oath, but rather of a crisis of trust«. I had no time to read this book.

18 Marcus, Role distance. See Goffman, *Encounters*.

19 White, Proposing the ordeal.

a red-hot iron) so as to prove that he would henceforth be a good lord to Hugh. The narrative recounts that he said: »I shall make you the kind of assurances (*fiducias*) that will ensure that you no longer disbelieve (*discredas*) me (...) I shall demonstrate to you via one serf who will carry the judgment [by red-hot iron], so that you do not disbelieve that the agreement (*finem*) that we shall make between us is good and firm.« Hugh allegedly answered: »You are my lord, I shall not take from you assurances, but merely put myself in the Lord's mercy.«²⁰ A pact was then struck, »without deceit«, looking very much like those analyzed by H el ene D ebax (but with the explicit clause that Hugh, as vassal, would not have to hand over his castle to his lord upon summons). Tom Conlan explains that »some commanders signed oaths to their subordinates to get them to agree to difficult tasks.« In Japan, as with Hugh of Lusignan and Count William, a warrior lord in a position of superiority or having the upper hand in a conflict could sign – in blood if necessary – a *kishōmon* to reassure the other party that he would treat it as agreed, without deceit. Megan Gilbert documents this with an extended discussion of an oath sworn in 1402 by retired Shogun Yoshimitsu (the most powerful man in Japan at the time) to the head of a *daimyō* family that controlled three provinces, in a tense situation (Yoshimitsu was known to systematically scheme in order to weaken powerful lords). Almost two centuries later, in 1571, the warlord hegemon Oda Nobunaga (1534-1582) promised favorable treatment to the powerful temple-shrine compound on Mount Hiei if the monks would remain at least neutral in an ongoing conflict. His companion and biographer Ōta Gyūichi reports that »to reinforce his promise (約束 *yakusoku*)« Nobunaga struck with his sword the sword of the monastic envoy (and the metal rang out). »Moreover, he sent the monks a vermilion-seal document (朱印状) to that effect.«²¹

A person might refuse to swear an oath or might only utter a verbal promise without a written instrument because he or she regarded himself or herself as having superior status. The nationalist humanist Johannes Aventinus (1477-1534) argued that the proof of »German« superiority was that they did not live in a culture of deceit where oaths might be necessary:

With us crude Germans, it is not the custom to take an oath and to seal a deed in order to declare our fidelity to someone; we just believe and trust each other, and everyone treats each other as they like it, believing and trusting is our highest worship, doing good, giving faithful advice and helping each other is our religion, with which we honor God. You clever Greeks, though, are so wary and wise that you do not trust either each other or other humans. You want to have deeds under seal; you have to swear a learned oath to God and all His saints.²²

20 *Conventum Hugonis*, translation mine, from the Latin text edited by Beech, Chauvin, and Pon, *Le Conventum*, 137 (the English translation they propose seems to me deficient here).

21 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, IV.5, for Genki 2 (1571), 164-165. Thus a promise followed what in Europe would be called a charter.

22 Aventinus, *Bayerische Chronik* (ca. 1520x30), ed. Lexer, 359-360: *Bei uns groben Teutschen ist der brauch nit, das wir ein aid schwern, das wir eim holt wellen sein brief darumb nemen und geben : wir halten sunst glauben und trauen eneinander, tuet einer dem andern was im <360> lieb ist; glauben und trauen halten is bei uns der höchst gotsdienst; einander vertrauen, alles guets beweisen, treulich ratten tuen und helfen aneinander ist unser glaub, da er wir got mit. Ir wizigen Kriechen seit so fürsichtig und weis, das ir aneinander selbs nit, auch andern menschen nit vertraut, wölt brief und sigel haben, man mues euch ein gelerten aid schwern bei got und all sein'n heiligen.* Aventinus is embroidering on Quintus Curtius Rufus, *Historia Alexandri Magni Macedonis*; translation from Hirschi, *Origins of Nationalism*, 173-174.

While swearing an oath was – according to Carolingian law – a privilege of the free, the needs of the community or its leaders could entail – as Olivier Richard shows for late medieval cities of the Holy Roman Empire – a transgression of this association between good standing, freedom, and oath-worthiness. This was a dynamic put in motion by the more inclusive – even though hierarchical – politics of political societies that had become more complex. In late medieval Japan, which was characterized by an all-out mobilization for war, the evidence suggests an increase in oath-swearing by commoners: while in former days a collective oath might be signed by a single representative, one sees more people signing their name – or making a mark if they were illiterate. The multiplication of oaths is therefore not in itself some telling symptom of an erosion of trust in their value. Similarly, Horikawa Yasufumi underscores that the ability to cancel *kishōmon* via the rite of *kishō-gaeshi*, administered by Yoshida Shinto masters, indicates a belief in their efficiency rather than disbelief in their value. All the same, in Japan's Sengoku (the era of the warring states), new forms emerged that one may deem dramatic: blood-oaths, that is, oaths written in blood, which are evidenced from the mid-fourteenth century on, explode numerically. However, did written oaths multiply because of increased needs, or because of increased literacy?

The multiplication of Japanese »metapersons« (non-human powers) warranting or judging the oath has also to be explained.²³ In Latin Europe, there is no such sense of an accumulation of saintly relics or a narrative insistence on them – unless a partisan narrative wants to damn an evildoer. One would have expected chroniclers friendly to William the Conqueror to identify the relics on which Harold swore, later to betray his oath, but they did not. However, the late 1150s *Hyde Chronicle* speaks of »an infinite multitude of holy relics« topped by the reliquary of the martyr Pancracius, »knowing that such a great martyr could not be deceived by any temerity [deceitful oath].«²⁴ Wace (ca. 1100- post 1174) has a parallel account. He insists on a great pile of relics that William ordered to be brought (*toz les cosainz fist demander*), likely from the church, and hidden under a cloth; Harold, future perjurer, thus believed he was swearing only on that single reliquary (*filatiere*). »Harold was strongly terrified by the relics« which William then showed to him.²⁵ Helmut Reimitz explores at length in this volume the oaths allegedly sworn by Duke Tassilo of Bavaria. The Royal Frankish Annals mention five saints for the first oath of fidelity that he swore to King Pippin I, which oath, as Matthias Becher underscores, is described at length, in a rare textual hypertrophy – there are more lines devoted to this promise than to Pippin's accession to the throne (751) and

23 For the concept of metapersons, see Sahlins, *Original political society*.

24 *Warrenne (Hyde) Chronicle* 6, ed. van Houts and Love, 14. For the chronicle's insistence on perjury in several other episodes, including divine punishment, much of this to the advantage of the Earls of Warrenne's own interest, see *ibid.*, xxxix.

25 Wace, *Rou*, 5685-5716, ed. Holden, 2.97-98. The *Brevis relatio*, ed. van Houts, 28, does not number the relics, but speaks of »three oaths« sworn by Harold (thus the number of oaths not the number of saints).

confirmation of this usurpation by Pope Zacharias (754)! This is part and parcel of the anonymous author's rewriting of the past in the light of Tassilo's deposition and confinement to monastic prison in 788.²⁶ Five saints is a rare maximum, and this is likely the product of this scribal strategy of hyperbolic *damnatio memoriae*. But we stop here at just five supernatural warrantors. In contrast, the Japanese *kishōmon* mustered a plurality of divine beings, some named, some not, by the dozen.²⁷ This makes sense in a polytheistic cosmos, perhaps, but more importantly this plurality has a spatial structure: Greater cosmic gods initially located in a mythical India, pan-Japanese deities, and more local *kami*. In Ancient Greece, army leaders sacrificed to the god who was locally in charge of the battlefield, as is clear from the battle of Marathon, where Artemis as guardian of boundaries, another god in charge of swamps, and yet other extremely local deities were offered sacrifices.²⁸ In some societies studied by anthropologists, the metapersons were carefully chosen, taking their might into account: they should be neither too powerful, and thus able to tip the scales to suit their favorites, nor too weak, and thus unable to punish or signal deceit.²⁹ For Japan, this seems not to have been a consideration. Furthermore, strikingly, the same metapersons appear over and over again in the Japanese lists (what most varies are local *kami*, a product of Japanese decentralization). The regular presence of the same metapersons is testimony to the imprint of the Kamakura Shogunate's *Goseibai shikimoku* well after its demise in 1333.³⁰ Analogically, the imprint of the late Roman military, then Carolingian, formulary presented by Stefan Esders is striking: oaths of fidelity are predictable variations on this initial blueprint.

As one might expect, the saints involved in European oaths were, when named, men and women whose sacred relics were kept locally. The divine warrantors of a *kishōmon* were, as noted above, much more varied. They included greater gods located in the »center out there«, India, land of the historical Buddha, and insular *kami*, in an implicit translation of divine potency from one land to the other.³¹ The *kishōmon* also named revered Buddhist masters and sacred buildings. Masters were classically reincarnations of greater beings, and destined to be reincarnated as such. As for shrines, they were identical with the indwelling gods.³² This may surprise the specialist with a narrow focus on Latin Europe, but it is unsurprising given the logic of religions with metapersons. Such religions tend to assume permeable boundaries between human and non-human, dead or alive (and some do not know the difference between nature and culture).

26 *Annales regni Francorum* a. 757, ed. Pertz and Kurze, 14-16 (the three patron saints of the royal monastery of Saint-Denis near Paris, and the great Gallic saints Germanus and Martin); Becher, *Eid und Herrschaft*, 36-37; and see below, at notes 40-41.

27 For examples of such lists, see Satō Hiroo, *Wrathful deities*, 98-100.

28 Gartzioi-Tatti, *Gods, heroes*, 95-97.

29 Jacob, *Anthropologie et histoire*, 252-253.

30 Recall that the Ashikaga accepted the *Goseibai Shikimoku*, and expanded on it.

31 As Gilbert (in this volume) underscores, following Satō Hiroo.

32 For one such monastic trajectory, see Wakabayashi Haruko, *From conqueror of evil. The identity of building and deity is evident in the Kasuga tales translated in Miracles*, trans. Tyler.

To demand an oath or to offer to swear one was often tactical. Steve White has shown this for the ordeal in tenth- and eleventh-century Francia. There, to propose to undergo a judgment of God was one card among others to play in a conflict, and by no means the absolute trump card.³³ A stronger party might try to impose an oath, humiliating the weaker party – unless the latter could counter. In a fairly enigmatic passage in an Icelandic saga, a group of Norwegians, condemned to pay compensation for having chopped off a man's hand, ask one of the Icelanders, Haf Brandsson, who had set the amount, to »either reduce the [monetary] award or swear an oath.«³⁴ This is a power-play on the Norwegians' part (but one that would end in their humiliation); they feel that they can force this alternative on Haf. The oath, as is clear, has a monetary value proportional to the honor and status of the oath-taker.³⁵ This potestative value and tactical role of oaths is highlighted for Japan by Megan Gilbert's article, as is the effect of the power differential between the person demanding the oath and the oath-taker(s). What Robert Bartlett says about the European ordeal can also be applied to Japan: it could be »a political gambit, volunteered by those on the defensive or by the weaker party. It could also (...) be insisted upon by the stronger.« Bartlett glosses this further: »the subjection of rivals to the ordeal might be simply another aspect of the exercise of (...) domination.«³⁶ A fine example comes from the pro-Norman dossier concerning Harold: as William had doubts about the *fides* (trustworthiness, fidelity) of the English, Harold was forced to swear stringent oaths (*ad districta sacramenta est coactus*).³⁷

»This is not an oath that I write from my heart,« exclaimed a Japanese oath-taker in a fourteenth-century war-tale (*gunki*).³⁸ This sort of excuse was hardly accepted in the Latin West, with its religious culture of confession and development of an interiority that has to be made authentic to satisfy the Christian God.³⁹ In contrast, in the case contextualized at length by Helmut Reimitz, Carolingian annalists attributed the following tactic to the despicable Tassilo, Duke of Bavaria: »(...) he ordered his men when they swore oaths that they would think otherwise in their mind (*aliter in mente*) and swear with deceit (*sub dolo*).«⁴⁰ This constituted an inversion of the norm, which specifically called for oaths »without deceit« (*absque fraude* or *sine ingenio*, occitan *senes engan*). According to the Royal Frankish Annals (as cited by Stefan Esders), this was painted into a perverse breach of the loyalty that Tassilo,

33 White, *Proposing the ordeal*, 121-122.

34 *Guðmundar saga dýra*, cited in Miller, *Bloodtaking and Peacemaking*, 1.

35 In his later *Eye for and Eye*, 51-52, Miller underlines the monetary value of the hand, and that compensation for it can be imposed by the stronger party at arms, which comes with humiliation, but he does not mention the oath or its value (in either monetary currency or honor currency). My thanks for guidance here to Oren Falk.

36 Bartlett, *Trial by Fire and Water*, 15.

37 *Warrenne (Hyde) Chronicle* 6, ed. van Houts and Love, 14.

38 Both Conlan and Gilbert, in this volume, from the *Genpei jōsuiki*, a source recounting, at temporal distance, the civil war of 1180-1185.

39 See the comments of Esders, in this volume, suggesting the oath-taker's interiorization of the contents of the promise, which becomes a personal obligation and thus self-coercion.

40 See Becher, *Eid und Herrschaft*, 72-75; *Annales regni Francorum* a. 788, ed. Perz and Kurze, 80: (...) *confessus est (...) homines suos, quando iurabant, iubebat, ut aliter in mente retinent et sub dolo iurarent*.

along with his most eminent noblemen, had promised in 757 to King Pippin I to hold *recta mente*, with an non-crooked spirit. The source had likely been reworked well after 757, with a view to Tassilo's condemnation to monastic prison in 788.⁴¹ Mental reservation during oath-taking, in a Christian culture of interiority, was clearly blasphemous. It must have occurred, but it was certainly not acceptable. One should not automatically assume in other religious worlds, including Japan, the same dynamics.

In Latin Europe, the oath was not easily broken (and, as the Aquitanian case shows, its cancellation had to be negotiated). Norman propaganda composed in the decade after the Battle of Hastings (1066) could depict Harold, a rightful pretender to the English throne after Edward, swearing to recognize Duke William of Normandy's claim to the English throne, as mandated by King Edward. This is illustrated in the Bayeux Tapestry. In the words of one source, Harold had been ordered »to swear fidelity« to William concerning Edward's »crown and to confirm this as is the Christian custom through oaths« (*de sua corona fidelitatem faceret ac Christiano more sacramentis firmaret*). And so it was; Harold swore »fidelity concerning the realm through many oaths« (*fidelitate[m] de regno plurimis sacramentis*).⁴² Harold betrayed his oath and seized the English throne; as divine justice willed it (and as William's propagandists had it), he was therefore defeated and killed at Hastings. A major crisis highlights even more Latin Europe's respect for oaths. Pope Gregory VII's assertion in February 1076 that he could free vassals from oaths of fidelity to King Henry IV raised a storm of polemics as massive as had the simultaneous excommunication and deposition of the same ruler.⁴³ For one anonymous participant in this huge row – possibly in a rhetorical flourish, but possibly seriously – Gregory's action was a sign of Antichrist's arrival. By cancelling oaths, what else happens but that »the faith (*fides*) is destroyed, and if it can ever be, that even the elect [of God] are seduced to be oath-breakers (*periuri*)?«⁴⁴ This polemicist called Gregory's episcopal allies, who were absolved of oaths sworn to the king, »pseudo-apostles« (2 Cor. 11.13-15), also an apocalyptic reference.⁴⁵ This contrasts with the Japanese configuration, where one could negotiate oaths with the gods, at least (as Horikawa Yasufumi shows) with the help of masters such as the Yoshida Shinto experts. As noted above, the Japanese oath was much closer to the ordeal than its Latin Europe counterpart, and was often itself an ordeal. The gods, however, could decide to spare an oath-breaker, and, what is more, could be bargained with or countered. As for the Christian God, he might deign to

41 Becher, *Eid und Herrschaft*, 35-38.

42 See Guillaume de Jumièges, *Gesta Normannorum Ducum* 7.31, ed. van Houts, vol. 2, 160 (here cited); Guillaume de Poitiers, *Gesta Guillelmi* 1.43 and 2.12, ed. Davis and Chibnall, 70, 120.

43 Gregory VII, Register 3.10b, ed. Caspar, 1.270, and 4.3, ed. Caspar, 1.298; Struve, *Das Problem der Eideslösung*; Melve, *Inventing the Public Sphere*.

44 Struve, *Das Problem der Eideslösung*, 116 n. 35, citing the anonymous *Liber de unitate ecclesiae conservanda* 2.34, ed. Schwenkenbecher, 261. The nod to Matthew 24.24 (signs of the end) is clear (*ita ut in errorem inducantur si fieri potest etiam electi*).

45 *Liber de unitate ecclesiae conservanda* 2.33, ed. Schwenkenbecher, 259-260, with a nod to John's Revelation (Satan liberated »to seduce the nations and drag them into war«, see Apoc. 20.7).

spare a guilty party, as in the Gottfried von Straßburg version of the Tristan romance, where the adulterous Isolde, tricking her judges and trusting in »God's courtliness,« succeeded at the ordeal. He might judge the whole person as opposed to the fact in debate. But he could hardly be bribed.⁴⁶ The law of the Church, canon law, actually provided little more than penance or excommunication for proven perjury.⁴⁷ As Stefan Esders explains, contracts that had been sworn could be taken to ecclesiastical courts – but they were dealt with as contracts that pertained to the competency of Church tribunals because of the invocation of God, His saints, or sacred objects, and not because oath-breaking was some form of blasphemy that had to be punished. The Lord God was thus not a protagonist here: Catholic theologians rejected the idea that God might intervene visibly and clearly. What He would do to punish (and given His omnipotence He could not be forced to do so) would normally remain hidden from human eyes, and likely take place in the other world. He was the all-knowing supreme witness, but not an enforcer compelled to act by human actions.⁴⁸ Hagiography, however, is rich with saintly or divine punishments in this world, far from theological niceties.

Efficacy

In premodern Japan, sanctions for the oath were both divine and (as one would expect) political. In Horikawa Yasufumi's *Kōga*, perjury would be punished by the gods and by a very human banishment from the local community, the *sō*.⁴⁹ Unsurprisingly, narrative sources dramatize perjury, and dramatize punishments. At the beginning of Oda Nobunaga's military career, one of his uncles, Oda Magosaburō, sent to a castle-lord named Sakai Daizen »an elaborate oath« (literally an »oath consisting of seven pieces [of Go'ō-hōin] talismanic paper«, 七枚起請 *nanamai kishō*, but in common usage this is metaphorical) »that there would be no ›double-dealing‹« (表裏 *hyōri*, literally »inside and outside«). This was part of Magosaburō's assurance that Daizen would receive his help against Magosaburō's own nephew Nobunaga. There was however a secret pact between uncle Magosaburō and nephew Nobunaga.⁵⁰ Daizen could only run away as the planned trap against him unfolded. But (as Japanese conceptions would have it) divine retribution for an oath sworn with inner reservation came swiftly:

On the 26th of the Eleventh Month that same year, Lord Magosaburō died in an unforeseen incident. »This is the immediate punishment for his oath,« people said. »The Way of Heaven is terrible!« To be sure, the end-result was consequent with the maturation of the *karma* (果報, *kahō*) of Lord Kazusa no Suke [Nobunaga].⁵¹ Karma coming to fruition, indeed, with a fine bloody harvest, since it trimmed away one of the claimants to the Oda clan's patrimony, which was at that point dispersed.

46 For a discussion engaging earlier historiography, see Ziegler, *Trial by Fire*, ch. 2. For God judging the whole person and not necessarily the case at hand, see Ho, *Legitimacy of medieval proof*.

47 Gaudemet, *Serment dans le droit canonique*; see also Helmholz, *Canon Law*, 358-368. Full discussion in Leveleux-Teixeira, *Prêter serment*.

48 Courtois, *Mensonge et parjure*, 94-95.

49 Horikawa Yasufumi, in this volume.

50 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, Initial book, 17 (Tenbun 23, 1554), 74-75, here modified with the help of its translator Jeroen Lamers and that of Horikawa Yasufumi plus Tom Conlan, who helped me with the nuances and deeper meaning (including »consisting of seven pieces [of Go'ō-hōin] talismanic paper«).

51 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, Initial book, 75 (also modified). Lamers and Elisonas explain that Magosaburō was assassinated by one of his own retainers on 8 January 1556. The biographer does not mention this.

Thus, sanctions might cause efficacy; another scholarly approach is to grant the oath a power of its own as »performance,« »symbolic communication,« or »speech-act.« While the organizer of the 2021 Vienna workshop voiced strong reservations about the so-called »magic of rituals,«⁵² that is no reason not to explore this avenue, given that some of the authors in this collection (and participants in the workshop) mobilized these models. This willingness comes, however, with a warning. When all is said and done, just as with so-called »rituals« as a general category, scholarship will likely endlessly debate the power of oaths and, when willing to see them as powerful as opposed to being mere signals, debate the reasons for their efficiency.

Hélène Debax underlines that Occitan oaths, unlike the vassalistic homages attested further north, do not refer to an elaborate ceremony (what is elaborate are the words that survive on parchment, see the translated sources appended to her article). She trusts that the short surviving texts correspond very much to the words spoken, and indeed their oral quality is evident.⁵³ Energetic words, uttered in all or in part in the local dialect, a handshake, and contact with saintly relics or sacred Scripture, seem to suffice. This would plead either for the efficacy of oath-taking in structuring political bonds or, if one deems words impotent to effect anything, for their weakness. When considering the power of words, one does well to keep in mind Pierre Bourdieu's critique of the notion of »perlocutionary force.« A so-called »speech-act« has no efficacy if the speaker does not have authority (»represents«) and is not backed by objective power.⁵⁴ The local Occitan practice of oath-cancelling does suggest that the »judges,« also called »honest men,« who backed the dissolution of an oath for a castle (Débax, document 24) had some social and political capital (Bourdieu) locally to support their verdict. A vernacular German tale dated from circa 1260 brings home, despite literary hyperbole and dramatization, both the strength of the oath and how force or superior political pressure might allow its cancellation. Emperor Otto had sworn an oath to the effect

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- 52 Buc, *Dangers of Ritual*; Pössl, Magic of early medieval rituals. The debate lingers, with over-simplifications of positions, such as attributing to me (1) the view that there are only texts and that actual events are beyond any reconstruction, or even (2) the preposterous idea that medieval »rituals« (however defined) were completely unimportant. For the former, see the whole movement of the following sentence: »There can only be anthropological readings of (1) medieval textual practices, or perhaps (2) medieval practices that the historian has reconstructed using texts, *with full and constant* [my italics] sensitivity to their status as texts. The latter is nonetheless much more difficult (especially for data-poor eras), less reliable, and allows only a circumscribed realm of appropriate questions and possible results« (Buc, *Dangers of Ritual*, 4). For the latter, explaining narrative distortions and inventions, see *ibid.*, 249: »one fights [with the quill] over matters of importance«, and *ibid.*, 258-259, »(...) solemnities were all at once (individually) objects of doubt and (as a genre) a central part of the accepted order.«
- 53 With due respect to my mentor Le Goff (Symbolic ritual), it should be underlined that the tripartite sequence (1) kneeling and joining of hands, (2) promise, (3) kiss of peace, is more a scholarly reconstruction than a form widely attested in the sources. The flamboyant Flemish narrative in Galbert of Bruges, *The Murder of Charles the Good*, trans. Ross, is a rarity.
- 54 Bourdieu, *Language & Symbolic Power*, 105-116. See the judicious reference to Bourdieu in Koziol, *Politics of Memory*, 350: »oaths were used to reveal and apply social and political standing.« Leveleux-Teixeira, Prêter serment, alludes to the issue in passing. On the one hand, a promissory oath »as a performative statement works (in theory) owing to the mere virtue of it being uttered« (174-175). On the other hand, the oath's »reach is partially a factor of the identity and thus of the degree of credit of the person« of the oath-taker (*ibid.*, 174 n. 17, my translations from her French).

that Heinrich von Kempten, who had killed Otto's cupbearer in a breach of the peace that had taken place at the imperial table, absolutely had to die. This Heinrich grabbed the king and laid him flat on the table and, threatening him with a knife, demanded that he »turn around the oath that he had just sworn.« Helpless and hapless, Emperor Otto had to swear a counter-oath that Heinrich would be safe and sound. The first oath thus no longer had any force. In the Middle High German lexicon, Otto's first oath had been made »*falsch*« or »*valsch*,« that is, it could no longer »be kept« (*be-wahren*).⁵⁵

An emic, culturalist approach may be taken to explain how the Japanese oaths may have had power. In Vienna, Michael Como noted that the early *kishōmon* oaths written on wooden tablets, the *mokkan* (presented in these pages by Yoshikawa Shinji), were long-lasting and visible. Como went on to reflect on the impact of writing in a Buddhist culture that assumed that sacred scriptures simultaneously sermonized, asserted their own power, and demanded reproduction.⁵⁶ Indeed, one can approach the Japanese discourse emically within the frameworks of the so-called material turn illustrated by thinkers such as Bruno Latour, Arjun Appadurai, and Igor Kopytoff, and of the return to the »fetish« as social agent.⁵⁷

Despite local conflicts, the oath may have been the structuring force in Languedoc, as Hélène Débax proposes. Overall, the great Occitan war of the mid-twelfth century resulted in local adjustments of lordships and fidelities, as was the rule for most high medieval internal conflicts in Latin Europe – a redistribution and reconfiguration of assets but not a revolution. The enforcement mechanisms for the oath were not to be found in divine intervention (as was common or expected in Japan), or in ecclesiastical courts, or in some secular equivalent of these; Débax's collection of written oaths suggests instead negotiations and arbitration. But this flexible political structure came crashing down in the thirteenth century. The crusade preached by Pope Innocent III in 1208 against the Languedocian heretics (the so-called Cathars) and their friends, supporters, and lordly protectors dismantled the pre-existing political culture.⁵⁸ Forced to take sides in a war for survival, since the penalty for affinities with heresy was dispossession of lordship, and also aware of unprecedented opportunities for massive gains, the southern lords could not but break some of their oaths.⁵⁹ Rancor and recrimination were now widespread in the Toulousain and surrounding lands⁶⁰ and a whole new regime, not so structured by oaths for castles, then came into being.

55 For the story and its interpretation, see Hattenhauer, *Der gefälschte Eid*, 662-663.

56 Michael Como, presentation and discussion at the 2021 Vienna Workshop.

57 For a good introduction, see Pels, *Magical things*. For classic reflections on materiality, see also (*inter alia*), Appadurai, *Introduction*; Kopytoff, *Cultural biography of things*; Latour, *Nous n'avons jamais été modernes*. Reckwitz, *Status of the »Material«*, is useful for materiality and objects in the major social scientific theories.

58 A colorful narrative illustrated by striking citation of the primary sources is Pegg, *Most Unholy War*. More sober are Tyerman, *God's War*, 562-605, and, in German, Oberste, *Kreuzzug gegen die Albigenser*. On loyalty during the crusade, see Buc, *Medieval European civil wars*, 133, 136-137.

59 Compare Buc, *Krise des Reiches*, unpublished English original accessed on 15 February 2023 at www.academia.edu/3707060/The_crisis_of_the_Reich_under_Henry_IV_with_and_without_Spielregeln.

60 See Macé, *Comtes de Toulouse*, 268-279.

Short of this level of catastrophe, however, the frequent betrayal of political alliances that are traditionally sealed by the use of a given symbolic form does not necessarily cause that symbolic form's atrophy and disappearance over time. Depending on the political culture and overall power structures, these transgressions may actually lead to an inflation in the use of this selfsame symbolic form.⁶¹ Civil war, with its attendant betrayals and perjuries, along with intensified administrative measures and regulations to ensure both survival in war and mobilization for war, may have countered the impact of these perjuries. Commenting on sixteenth-century Japan's massive usage of oaths for legal and administrative processes, Mary Elizabeth Berry suggests as much. She submits that »(...) to break a law was not simply to disobey the state but to violate, and to dissolve, a personal covenant between men.« The law was bound to the oath. Berry's 1986 article further suggests one reason why late sixteenth-century promissory oaths had meaningfulness and thus efficacy: they had been used to bind men together during a time of murderous wars, involving more troops than ever.⁶² Her reasoning may be applicable to moments in Latin Europe's history: intense internecine warfare led to both intensified individual oath-breaking and intensified and solid oath-taking by battle-comrades. It is a comparative history banality to say that both Latin Europe and late medieval Japan (from the mid-fourteenth century on) were heavily militarized, both as to the frequency of warfare, the amount of men under arms, and the ethos of the governing elites.⁶³ But the commonplace points to a context that allows one to assess and understand the constitutive importance of oaths, both »probatory« (»purgative,« »exculpatory,« »assertive«) and »promissory.« It may even be that the intensified military need for »promissory« oaths in the Late Middle Ages influenced recourse to the »probatory« type. Our categories and typology (here »probatory« and »promissory«) need not in practice mean barriers between what we categorize and typologize. The possible similarities between Europe and Japan should not hide, however, the different valences of divine enforcement of the oath (weak in the Latin West, strong but unreliable and negotiable in Japan).

As for the redescription of the oath as concept,⁶⁴ in Western Europe, an oath almost always accompanied the ordeal and the ordeal could replace a simple oath. For a while, oath and ordeal were, therefore, either usual companions or (as in Japan) functional equivalents. But functional equivalency did not last. Church authorities banned the ordeal in 1215. If Thomas Aquinas is representative, thirteenth-century Catholic theologians wanted strictly to demarcate the oath from the forbidden ordeal, and thus rejected the possibility that the oath might play the same revelatory role as the form that had been banned.⁶⁵ In Japan, the oath was usually tantamount to an ordeal (with, as explained by our authors, limited validity in time). For Japan, one can arguably »redescribe« the concept of the oath, and speak rather of the »oath-ordeal« as one compound form – which cannot be done for the Latin West.

61 For such a case, see Oschema, *Falsches Spiel mit wahren Körpern*.

62 Berry, *Public peace*, 262. Moerman, *Swearing to God(s)*, expands on the late sixteenth-century emic understanding, also perceived by European observers, that the oath was the keystone of law and military loyalty.

63 Buc, *Civil war and religion*, 261-265, with further references, esp. Adolphson, *Social Change*.

64 For the notion of »redescription,« see Freiberger, *Considering Comparison*.

65 Courtois, *Mensonge et parjure*, 90; for the 1215 decree, see Baldwin, *Intellectual Preparation*.

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Abbreviations

MGH Monumenta Germaniae Historica

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Before Written Oaths (*kishōmon*): Oaths (*sensei*) in Ancient Japan

Yoshikawa Shinji, translated by Thomas D. Conlan*

In medieval and early modern Japan, a style of written oath, called *kishōmon*, came into existence. Recent archaeological excavations have made it possible to prove that the *kishōmon* appeared in the twelfth century at the latest. This article recounts the process through which these sources originated and developed into the *kishōmon* format.

Divinatory curses, called *ukei*, existed in Ancient Japan (already in the third to sixth century CE), and they provided the basis for requesting divine judgment or swearing oaths. During the seventh through eleventh centuries, the Japanese state consolidated its authority and a new type of political oath came into being. Initially, these oaths resembled those employed in China, although oaths in this format may also have been used in Japan for diplomacy. Next, oaths influenced by Buddhist prayers came to the fore whereby the oath-taker cursed himself if his statements were untrue. Finally, Buddhist oaths became prominent, in which other persons than the oath-taker were cursed as well. After the ninth century, the Chinese-style political culture withered within Japan, and only Buddhist oaths remained. Although oaths cursing others would remain, the self-curse would become the foundation for standard contracts in later times. As medieval society emerged in Japan, and predicated upon these customs and beliefs, the *kishōmon* came into being.

Keywords: *Kishōmon* (written oaths), *ukei* (divinatory curses), *shinpan* (divine judgments), Chinese style oaths, Buddhist oaths, standard contracts

In premodern Japan, people offered a variety of oaths for different goals. Although there are differences between the practices attested in ancient, medieval, and early modern Japan, one can observe commonalities and continuities.

This article will focus on the process by which the written oath, or *kishōmon*, that was so common in medieval and early modern eras, came into being. It suggests that during the ancient era, which preceded the medieval era, a society which had merely engaged in the simple practice of vocalizing spells adopted the more elaborate culture of oaths drawn from continental Asia. It became popular and widely used, and a distinct culture of oaths arose. Considerable research already exists in the fields of history, legal studies, literature,

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and religion. This article will build on that research to explore oaths in Ancient Japan.

The organization of this article is as follows: first I will explain the original format of the *kishōmon* and its characteristics, and explore the high-water mark of ancient oath culture. Based on that understanding, I will explore ancient Japanese oaths, but most saliently, I will connect this analysis to »*Kishōmon*,« or section two of the paper, highlighting how divinatory curses, or *ukei*, originally had no connection to oaths. In section three, I will discuss how a continental culture of oaths gained influence in Japan during the sixth through eighth centuries. Moreover in the fourth section, I will reveal changes in the culture of oaths, and explain how the basis for medieval *kishōmon* came into being.

First, let me explain the meaning of »Ancient Japan.« During the second century of the Common Era, the Wa or Yamato confederacy was formed, and it expanded its authority throughout most of the archipelago during the third through sixth centuries. Over the course of the seventh century, great changes took place in East Asia, as a series of powerful dynasties arose in China, starting with the Northern Wei (386-534) and continuing with the mighty Sui (581-618) and Tang Dynasties (618-907), leading to a process of secondary state formation in Korea and Japan. In Japan, the state was reorganized along the lines of the administrative practices of the Chinese dynasties. Ancient Japan reached its heyday in the early ninth century, but was buffeted by major changes in Asia. Epidemics caused its administrative system to function less effectively. The Tang dynasty collapsed in 907 as too did Silla, the winner in the struggles for control of Korea control, in 935.

Japan witnessed social and political mutations during the ninth and tenth centuries. The imperial regime survived, but was decentralized, becoming what I would describe as a medieval state. One can divide Ancient Japan into two periods, an Early Ancient Period from the third through the sixth centuries, and a Later Ancient Period from the seventh through the tenth/eleventh centuries, which witnessed the transformation of Japan into a medieval form. Traditionally, the event marking the break between the Early and Later Ancient Periods is the palace coup of 645, which led to the destruction of the ambitious Soga clan and initiated the rise of the Fujiwara family as the dominant force in court politics, a position they maintained into the twelfth century. Soon after the coup, the imperial court initiated the so-called Taika reforms, centralizing Japan via the importation of Chinese administrative models.¹ I also consider the tenth/eleventh century to have been the beginning of Japan's medieval era.

1 For the international context, see Batten, Foreign threat and domestic reform.

The Origins of the Written Oath (kishōmon)

There has been much research regarding the rise of written oaths (*kishōmon*) in Japan's medieval and early modern periods. As the format and function of these documents has been described in Thomas Conlan's article, I shall confine myself to a basic overview².

Written oaths, when they became formalized in the thirteenth century, were written on a type of paper named Ox-head paper (*go-ō shi* 牛玉紙). These oaths have an opening, which is a statement (A), to be followed by an anathema clause, which serves as an appeal to the gods (B). The statement (A) constitutes the content of the oath, while the appeal to the gods (B) lists their names and then states that, if the oath is broken, divine punishment will ensue, a kind of self-cursing. As far as the statement (A) is concerned, two types exist, assertory oaths and promissory oaths:

- (1) Oaths as statements of fact. Oaths given stating that in the past or the present, something did or did not occur (»assertory oaths«).
- (2) Oaths as contracts. Future promises to do something (»promissory oaths«).

Both types aim to prove the veracity of what is stated, and then contain provisions for punishment in case the statement is demonstrated to be false or the promise is broken. The use of Ox-head paper had this same function as well – it served as a potential vehicle for punishment. In addition, oaths were sometimes written by individuals, and at other times by groups of people.

During the twelfth century, the standard written oath format, known as a prayer for heavenly judgment (*tenpan saimon*), developed. It served as the forerunner of the written oath (*kishōmon*) format. This type of document contains a clause that requests heavenly judgment, »heaven« (*ten*) referring to the gods and the buddhas. Let me provide an old example of such a document, with its distinct sections demarcated with [A] and [B]:

Miyoshi Koreyuki respectfully requests heavenly judgment.

[A] The Tōdaiji monk Kakkō complains that that Koreyuki seized one horse. That is absolutely false. He has no documents proving possession, but still asserts rights of ownership [to some undisclosed lands] and so I took the horse [as a form of compensation]. I explicitly told Kakkō this and he did not respond.

[B] If what I state is false, then may the Great Buddha of Tōdaiji, the Yakushi Tathāgata (*nyorai*), the twelve divine generals, the Chinju Hachiman Bodhisattva, and starting with the spirits of the eight areas, may all the gods and buddhas from throughout Japan inflict punishment on me. In this world, may I become poor, and suffer ill fortune, and in my rebirth may I never become a buddha.

Respectfully stated thus.

1148 (Kyūan 3) Fourth Month Fifteenth Day Miyoshi Koreyuki³

2 Satō, *Komonjogaku nyūmon*, 225-241, Chijiwa, Kishōmon.

3 *Heian ibun*, doc. 2644.

Here, A is the statement, and B is the anathema clause. The term *kishō*, or oath, appears nowhere, and no special paper is used, but in terms of content and format, this meets the conditions for a written oath. As this document survives at Tōdaiji, it seems likely that the writer of this document was the defendant, and he used this document, an appeal to heavenly judgment, to prove that he was innocent. Fourteen of these documents are known to exist from the latter half of the twelfth century. Most of them begin with the clause »I seek heavenly judgment,« while others with »I submit this *saimon* (documents to be presented to the gods). Still others say »I submit this *kishō* (a written oath) or refer to themselves as *tenpan kishōmon*. Therefore, it appears that, by the middle of the twelfth century, documents requesting heavenly judgment (*tenpan saimon*) and written oaths (*kishōmon*) became functionally the same.

Nevertheless, as is mentioned in Professor Conlan's article, in 2007 at Shiotsu, a place located on the northern shore of Lake Biwa, some 55 wooden documents were discovered, which have been described as wooden oath documents (*kishōfuda mokkan*).⁴ I would like to emphasize three features of these documents. First their age: the oldest document dates from 1137, but similar wooden documents have been excavated, although they are not legible. Thus, this type of oath might be as old as the late eleventh century. Second, these documents first open with an appeal to the gods, and then set out B, the anathema clause, before ending with A, the statement of fact. This shows that written oaths (*kishō*) arose from distinct appeals to the gods (*saimon*). Some *kishōmon* follow this same B to A format,⁵ which reveals that this old style survived. The third feature is that these wooden oath documents (*kishōfuda mokkan*) were discovered within the remains of a shrine precinct. Thus, these wooden oath documents were presented to the shrines, most likely attached to either the walls of the building itself or its surrounding fence, so that the gods' heavenly judgment could be revealed. It would have been impossible to know that written oaths, regardless of their material, could be displayed publicly if we had only focused on paper oaths.

The Shiotsu wooden documents are faded because of exposure to the elements and so many are difficult to read. Still the anathema clause (B), with the names of many gods, reveals much about the beliefs of the people of Shiotsu, who resided some 40 miles from the capital. As for the statements of fact (A), most concern theft, with the oath-taker swearing that he or she was not a thief. It is hard to know if this is a promise henceforth not to steal, or an attempt to proclaim that theft had not taken place. However, as some oaths are concerned with avoiding punishment, most of the documents should be classified as statements of fact.⁶ It follows that those suspected of theft wrote these oaths to prove their innocence. If a punishment from the gods was to appear in response to this self-cursing, it would become the basis for the secular adjudication of disputes. Some people who wrote anathemas stated that they would suffer punishment on the 84,000 pores of their body within three or seven days were they to have sworn falsely. This phrase would become formulaic in written oaths (*kishōmon*).

4 Azuchiō, *Shiotsukō iseki hakkutsu chōsa seika ten*; Hama, *Shiotsu kishōmon no sekai*.

5 Chijiwa, *Chūsei no seiyaku monjo kishōmon no futatsu no keiretsu*.

6 Chijiwa, *Shiotsu kishōmon mokkan no komonjogaku teki kōsatsu*, 6-8.

The discovery of wooden oath documents reveals that prayers for heavenly judgment were widely used in the twelfth century. These documents represent the true origins of written oaths (*kishōmon*), with the only difference being their name. The name *kishōmon* (»written oath«) derives from a verb, *kishō*, which represents a request from someone of lower status to one of higher status.⁷ This term had come from China and had been used with this meaning in the eighth to ninth centuries. In response to a petition from below, those above would decide, and the specific law or regulation so promulgated in response would also come to be called *kishō*. Building on this, in the tenth and eleventh centuries, those in authority decided to describe their rules as *kishō*. Here, *kishō* meant regulations or prohibitions for groups, and for these rules to be enforced, the group of people impacted by them had to consent. Thus, the meaning of the term changed from meaning »a request to authorities,« to »a rule,« to »a promise« (between rulers and the ruled). The word *kishōmon* came into use because of the final, contractual, meaning but, through the medieval period, the meaning of *kishō* as »a rule« persisted.

Scholars commonly portray *kishōmon* as being drawn from merging of *saimon* (prayer) offered to the gods and buddhas and a verbal contract or *kishō*.⁸ In practice, however, *saimon* prayers requesting judgment by the gods appeared first, and then the contractual *kishō* language was added. To understand the link between *tenpan saimon* and *kishōmon*, the meaning of »heavenly judgment«, or »*tenpan*«, and »prayer«, or »*saimon*« require further analysis.

As we have seen, both assertory oaths and promissory oaths already existed by the twelfth century. As to the latter, a variety of documents discuss issues such as loyalty, or prohibitions on drinking. The former (assertory oaths, oaths as to facts) are by far the more common, as these were needed and required for judicial decisions.

We know of *tenpan saimon* documents that were offered to the Tōdaiji temple and the Usa Hachiman shrine as documents of proof, with the most interesting records coming from an Usa Hachiman priest's archives.⁹ In 1129 two shrine attendants named Sadakata and Tomonari had long been involved in a land dispute, and each submitted a *tenpan saimon*.¹⁰ As Sadakata thereupon suffered a variety of misfortunes, Tomonari stated that this was proof of a heavenly judgment. Officials at Usa investigated and recognized that Tomonari's assertions were correct. Nevertheless, Tomonari had eight months to find proof of divine punishment, and Sadakata disputed this judgment, appealing during the following year. As a result, Sadakata received a partial return of some of his lands. In this case, initially, no proof for either claim had been sufficient and, in the absence of such decisive evidence, one had recourse to »divine judgments« to settle this case. Nevertheless, subsequent, appeals to »divine judgment« alone did not influence the decision. Thus, *tenpan saimon* and *kishōmon* served as only one piece of evidence for judicial decisions. Divine judgments left room for interpretation.¹¹ One should not overestimate the potency of these divine judgments in this period.¹²

7 Hayakawa, *Nihon kodai no monjo to tenseki*, 210-267.

8 Maki, *Kishōmon no kigen to sono honshitsu*; Satō, *Komonjogaku nyūmon*, 225-232.

9 Kobayashi, *Waga chūsei ni okeru shinpan no ichikōsatsu*.

10 *Heian ibun*, doc. 2158.

11 The flexibility in interpreting is key to Peter Brown's explanation of ordeals in early medieval Latin Europe; see Brown, *Society and the supernatural*, 316.

12 Shimizu, *Nihon shinpan shi*.

One further caveat is in order. The decision to curse oneself in an oath in order to prove that one is blameless is not a practice confined to *tenpan saimon* and *kishōmon*. It is also common in petitions, known as either *ge* or *mōshijō*. Some documents submitted to those in authority list the names of the gods and include a curse upon oneself if anything should prove untrue. These clauses strengthened petitions. One can be found in a record dating to 1138 (Hōen 4).¹³ In the twelfth century, in a variety of documents, written requests for »heavenly judgment,« or punishments from the gods and buddhas became common. *Tenpan saimon* arose out of this type of custom because this format was best suited for such requests.

Divinatory Curses (ukei) in Early Ancient Japan and Divine Judgments

In their analysis of the origins of medieval *kishōmon* and of the practice of writing »heavenly judgments«, historians have long recognized that the custom, present in Japan's early Antiquity, of stating *ukei*, or »oaths and vows«, was related to these.¹⁴ Historians considered that, prior to Japan's adoption of Chinese institutions and norms of government, thus in very ancient times, there existed a similar »simple« custom. The Chinese character used for »ukei« can mean either oath/vow, or alliance. Based on this character's polysemy, one may mistakenly infer that ancient oaths existed, but that is not the case. Let me introduce a famous myth about Amaterasu, Goddess of the heavens, whose younger brother Susano-o concomitantly ruled the lands below. He came to her, but Amaterasu, fearing his intentions, greeted him armed with weapons. Susano-o responded. »Sister, we should perform an *ukei* by conceiving children. The birth of girls will prove ill intent, while the birth of boys will prove innocence.«¹⁵

At a spring called Amanomanai, they performed curses of prognostication (*ukei*). Susano-o was a male god, but by using magic, he could give birth to five children, all males, which proved that he harbored no malice. This myth exists in many variations, but for the sake of this argument, there is no point to go into their details here. Suffice to say the key question remains as to the meaning here of *ukei*.

Susano-o spoke. He did not protest his innocence, but rather stated the rules of prognostication. That is the meaning of *ukei*. *Ukei* is, in other words, prognostication serving to determine truth. It is a kind of spoken magic.¹⁶ The words of the gods, spoken in a holy place, such as the bank of a spring, and accompanied with gestures, produce what some scholars have seen as magical powers.¹⁷ This power should not be conceived of as any kind of divine will to change reality, but rather the power to use words to understand the past and or the future. That which is spoken, and becomes true, is »real«. The gods cannot make things happen; they can only speak of things which may or may not become true. That is the meaning of *ukei*.

13 *Heian ibun*, doc. 5005.

14 Miura, *Zoku hōseishi no kenkyū*, 525-529; Maki, *Kishōmon no kigen to sono honshitsu*, 220; Nakada, *Hōseishi ronshū*, 929-932.

15 *Nihon shoki*, Kamiyo, Section 6.

16 Tsuchihashi, *Ukei kō*.

17 Uchida, *Ukei no ronri to sono shūhen*.

Ukei appear in a variety of situations in the eight-century mytho-histories known as the *Kojiki* (Record of ancient matters) and the *Nihon shoki* (Chronicle of Japan). In some cases, these *ukei* clarify doubts, while in others, they serve as a means of prognostication. These statements are not appeals to specific gods. The magical power inherent in people's words served as it were as »a law of nature« that allowed hidden truths to be known.

If truth can be known through *ukei* prognostications, they could be used in courts of law. For example, Japanese chronicles mention the actions of a Yamato general in Southern Korea in 530.¹⁸ The general, tiring of attempts to govern the peninsula, became embroiled in multiple disputes concerning the custody of a children born from relationships between Yamato (Japanese) people and locals. He stated, »The person who states the truth here will not be burned, but the one who lies will suffer«. Then, he had the two parties put their hands in boiling water, causing them to suffer. One can infer that this is (or was) a boiling water *ukei* (*ukei-yu*). His use of ordeals was, however, roundly condemned.

This type of *ukei-yu* was also known as *kukatachi*, or the »boiling water ordeal.« The fifth-century emperor Ingyō tried to adjudicate disputes among competing families regarding their respective ranks and titles,¹⁹ and this episode is often mentioned in Japanese high school history textbooks. He had water boiled on a hill called Amakashi and stated: »Those who tell the truth will not feel pain, but those who lie will«, and the guilty parties would not approach the vat of boiling water.²⁰

The emperor spoke the words mentioned here but the magical power of the rites was enhanced by the ritual purification of the participants, as well as by the fact that these words were spoken at the holy site of Amakashi. This process is described by the phrase using the word for »god« (*kami*), and other references to *kukatachi* describe it as »prayers for the gods of the heavens and earth«. It is important to note that the Chinese characters used to write the word *kukatachi* include that for »god« (*kukatachi* 盟神探湯). Thus, many scholars believe that *kukatachi* were a kind of divine judgment. Nevertheless, if one compares this to the *ukei* of Susano-o, it seems clear that prayers to the gods were a secondary aspect of performing *ukei*. As time passed, belief in the magical properties of the spoken word weakened, and this practice became a way of serving as proof or enhancing written statements.²¹ In other words, the idea that the spoken word provoked »a natural process« that revealed the truth gave way in time to the gods being invited to serve as guarantors or witnesses.

The *ukei* should not be considered as a type of divine judgment. Ancient examples of *ukei* served as demonstrations of the magical power of the spoken word, and even if gods were mentioned, this was not how truth was asserted or demonstrated. There is no satisfactory English phrase to express this, but a »judgment through the magical power of words« may best describe this process. Likewise, even if an *ukei* was performed, it did not mention punishments by the gods, as is common in *tenpan saimon* and *kishōmon*. This is significant: *ukei* are merely a simple type of divination.

18 *Nihon shoki*, Keitai 24 (530).

19 *Nihon shoki*, Ingyō 4 (early fifth century).

20 *Nihongi*, trans. Aston, vol 1, 316-17. Aston romanizes Amakashi as Amagashi.

21 Tsuchihashi, *Ukei kō*, 16-20.

Some scholars of legal history have suggested that the magical power of the *ukei*'s words derived only from the gods in the myths, or special people from the imperial or very powerful families.²² Certainly, the figures who appear in the myths are special gods or people, but that does not at all mean that average individuals could not engage in *ukei* in their daily lives. In one eighth-century poem, a woman lamented: »In spite of the fact that I did an *ukei*, you did not appear in my dreams – you must not be thinking of me.«²³ Thus, *ukei* devolved into sort of folk belief concerning small prayers.²⁴ This may be a trace of the widespread practice of prognostication through *ukei* in Ancient times – closer to the era imagined in the *Kojiki* and *Nihon shoki* myths.

To conclude about the nature of oaths in Ancient Japan, it seems clear that they were used to ascertain truthfulness, or to prove one's innocence. Nevertheless, in political venues, it is striking how often words of praise are directed toward those in authority. The use of these words, spoken to one's betters in a particular way was a ritualized method of expressing political allegiance. It seems to be the case, however, that, save in a few special circumstances, the act of swearing oaths did not commonly exist in early Ancient Japan.

The Dissemination of a Culture of Oath Making from Abroad:

The Sixth through the Eighth Centuries

During the sixth to eighth centuries of the Common Era, Chinese political culture and Buddhism became influential in Japan. Both Confucianism and Buddhism were introduced over the course of the sixth century and, by the seventh century, they had taken root in Japanese society and had become the ideological foundation of the centralized system. It was at this time that the foreign culture of oath taking spread throughout the archipelago.

Let us first look at an oath taken by those »barbarians« known as Emishi to the Yamato court in 581. The Emishi had been defeated by the Yamato state and their leader brought to the Yamato capital as a captive. Threatened with execution, the captured leader, Ayakasu, stated that he humbly accepted [Yamato rule]:

Trembling with fear, he entered the Hatsuse River, faced Mt. Mimoro, sipped water and stated: »We Emishi from now on, and for the generations of our sons and grandsons, will hold a pure heart and abide by the rule of the emperor. If we should break this oath, may the gods of heaven and earth, and the Imperial ancestral gods annihilate our children and grandchildren.«²⁵

Mt. Mimoro was a site where a military protector deity, Ōmonnushi, was thought to reside. As for the Hatsuse River, it flows from that mountain's foothills. Ayakasu selected a holy area close to the palace, where he sipped water, and cursed himself, stating that the gods and ancestors of the emperor would punish him were he to rebel. It was therefore an oath of allegiance to the emperor.

22 Ishii, *Nihonjin no hō seikatsu*, 425-457.

23 *Manyōshū*, maki 11, no. 2589, ed. Gomi, Ōno and Takagi

24 Uchida, *Ukei no ronri to sono shūhen*, 35-37.

25 *Nihon shoki*, Bidatsu 10, 2nd intercalary month.

These rites have been shown to correspond accurately to historical practice.²⁶ In the latter half of the sixth century, just before administrative and penal law (*ritsuryō*) became widely promulgated in Japan, these rites most likely reflect the earlier form of oath-taking on very special occasions. The pattern of cursing oneself could be regarded as an abbreviated type of *ukei*, with the exposition of a statement and its direct consequences omitted. Arguably, this ritual of oath taking is based on a classical Chinese model. It does betray ample signs of such influences.

In ancient China as well, alliances were forged by oaths, which functioned as contracts for future action;²⁷ the participants read them out loud, and enumerated punishments for breaking them. Some physical punishments were stipulated, but often in addition to the threat of punishment by the gods or by one's ancestors. In oath ceremonies, participants in order of rank, from highest to lowest, would swear to gods or their ancestors and sip sacrificial blood. In the time of the Qin (221-206 BCE) and Han dynasties (206 BCE-220 CE), oaths were relied upon to formalize the lord-retainer relationship both within the Chinese Empire, and between Chinese rulers and leaders of tributary states. Emperors would, as persons of authority, issue oaths, state that if they spoke a falsehood they would be punished, and drink blood with other participants. Of course, these were unilateral demands by emperors for loyalty.²⁸ These oaths continued throughout the Tang Dynasty (907) but they now served as a tool of diplomatic protocol.

The *Emishi* oath closely resembles the Chinese style of oath taking. One vows obedience by threatening oneself with punishment by the gods or by one's ancestors. The absence of sacrifice represents a difference vis-à-vis China, but the sipping of liquids (either water or blood) is present in both cultures. Nevertheless, there is one major distinction: in Japan, the emperor does not participate; only the lower ranking person – the *Emishi* – performs this rite. This deeply reflects Yamato political practices. As the Wa/Yamato state had engaged in diplomacy with China for two centuries, its officials must have known of these oath ceremonies. They influenced Ancient Japanese political rituals; prominent locals used them to establish clientage ties with Yamato rulers. Still, in the sixth century, this process was only in its infancy.

26 Kumagai, *Emishi to ōkyū to ōken to*, 2-12.

27 Yoshimoto, *Shunjū saisho kō*.

28 Kurihara, *Fūshaku no sei ni tsuite*.

The palace coup of the year 645 constitutes the traditional dividing point between Japanese Ancient history's Early and Later Periods. The ensuing policies – commonly known as the Taika Reforms – strengthened the state.²⁹ The recently introduced Confucianism and Buddhism became mainstream and, with the establishment of a new political regime, new oath-taking rituals took place. Emperor Kōtoku, who acceded to the throne after the coup of 645, hosted these oath rituals by gathering magnates under a sacred tree in the capital. The words of their oath appear in the *Nihon shoki* chronicle as follows:³⁰

Heaven covers us; Earth upbears us: the Imperial way is but one. But in this last degenerate age, the order of Lord and Vassal was destroyed, until Supreme Heaven by Our hands put to death the traitors. Now, from this time forward, both parties shed their hearts' blood [e.g. show their sincerity] the Lord will eschew double methods of government, and the Vassal will avoid duplicity in the service of the sovereign! On him who breaks this oath, Heaven will send a curse and earth a plague, demons will slay them, and men will smite them. This is as manifest as the sun and moon.

Nothing is known about the participants' gestures involved in this oath, but it is much more Chinese in style than the *Emishi* oath. The emperor is at the center; he swears an oath along with ministers; and, as in China, it is more of an order than a bilateral oath. The appeal to the gods of heaven and earth, and the threat of receiving punishments makes it a personal curse. The reference to blood suggests that the Chinese practice of sipping blood might be involved, or something analogous. This ritual reflects a ritual practice of Chinese oaths.³¹

This imported Chinese oath of alliance appears occasionally in the seventh to ninth centuries of the Common Era. Emperor Tenmu's successor, Jitō, and her allies, wrote an oath promising to cooperate with each other (679,) and Fujiwara Hirotsugu, who was thought to be plotting rebellion, swore allegiance by means of an oath (740), although he did rebel, and was defeated and killed.³² The highly powerful courtier Fujiwara Nakamaro (706-764), great-grandson of a key architect of the 645 coup, swore to uphold the orders of Retired Emperor Shōmu (750).³³ All of these were oaths to the gods of heaven and to earth. They stated that, if the oath-taker were to lie, he would be punished. In normal times, oaths of loyalty or cooperation were not used, as court ritual alone served to confirm the hierarchical relations between lord and retainer. At important political moments, these court rituals or oaths were performed. In 757, the plotters in Tachibana Naramaro's ultimately unsuccessful coup congregated at night in the palace grounds, praying to heaven, earth, and the four cardinal directions, drinking salt water – they were clearly pledging mutual support according to the Chinese model for oaths.³⁴

29 See in English Mitsusada, *Century of reform*, 193-201.

30 *Nihon shoki*, Taika 1 (645).6.9; Mitsusada, *Century of reform*, 194. Translation from *Nihongi*, trans. Aston, vol. 2, 197-198.

31 Kurihara, *Fūshaku no sei ni tsuite*, 31.

32 *Nihon shoki*, Tenmu 8 (679).5.6; *Shoku Nihongi*, Tenpyō 12 (740).10.9, ed. Kuriota.

33 *Nihon ryōiki*, maki 3, 38, ed. Izumoji.

34 *Shoku Nihongi*, Tenpyōhōji 1 (757).7.4, ed. Kuriota. For more on this, see Bender, *Changing the calendar*.

It seems likely that the self-curse »to receive the punishment of the gods of heaven and earth,« was borrowed from ancient Chinese political culture. Thus, during the latter half of Japan's Ancient Period, the Japanese studied the Chinese oath of alliance, and conjoined it to their native *ukei*, developing a new oath rituals.

New types of rites for creating oaths arose. They were from Buddhist oaths (prayers).³⁵ When one, or people close to one, fell into danger, one could promise meritorious Buddhist acts (such as building temples or commissioning Buddhist statues) in order to protect oneself or achieve salvation. The most famous such incident comes from the civil war of 587, when a key issue was whether Buddhism should be officially recognized.³⁶ The chief partisans of Buddhism, Prince Shōtoku (574-622) and Soga no Umako, made a vow to the Four Guardian Kings (*shitennō*), stating that, if they won in battle, they would construct a temple for them.³⁷ These types of Buddhist oaths occurred more often in the seventh and eighth centuries. Countless people prayed to recover from illness, promised to dedicate Buddhist rites to secure Buddhist merit, and had their health restored. Some made vows to build temples to accumulate future merit. Ishii Kōsei, a historian of Buddhism, states that such vows were rare in China. The various Korean peninsula states were more influential in inventing this kind of practice.³⁸

Buddhist oaths request aid and salvation through the power of prayer, by the Buddha, or the Four Guardian Kings. No self-curse was prepared to apply when the vow was broken. However, prayers to the buddhas used common oaths, and in some cases, people added curses against themselves. In 671, when Yamato was under military pressure from the triumphant Tang (who had soundly defeated a Japanese expedition into Korea at the Battle of Hakusukinoe (Kr. Baekgang 663), and now feared a Chinese invasion, Emperor Tenji fell seriously ill. A succession dispute arose between Tenji's son Ōtomo in 671 and his crafty and skilled brother, who ultimately became Emperor Tenmu after defeating and killing Ōtomo in the Jinshin war of 672.

In this succession crisis of 671, it was decided that the power of the crown prince should be rapidly enhanced. The crown prince Ōtomo, and major ministers gathered at a Buddhist site in the palace and made vows, each holding incense burners:³⁹

The crown prince stated »Make my thoughts the same as the emperor's and let me uphold his orders.⁴⁰ If I break this vow, I will inevitably endure the punishment of heaven.« The ministers then said: »We will all follow the crown prince and uphold the emperor's orders. If we break this vow, may we be punished by the Four Guardian Kings and the gods of heaven and earth. Let this vow be known to the Thirty-Third Heavenly Deity of Mt. Sumeru [the center of the Buddhist universe], and our children and grandchildren go extinct, and our houses be destroyed.

35 Ishii, *Jōdai Nihon Bukkyō ni okeru seigan ni tsuite*, 645-648.

36 *Nihon shoki*, Yōmei 2 (587).7th month. See also Inoue, Mitsusada, *Century of reform*, 172-176, for context.

37 Como, *Shōtoku*, 18-20.

38 Ishii, *Seigan no iryoku ka kame no ongaeshi ka*, 276-279.

39 *Nihon shoki*, Tenji 10 (671) 8th month. For an English translation, see *Nihongi*, trans. Aston, 2.298.

40 Meaning, I will rightfully take over the throne.

This may seem to be an oath (alliance) between the crown prince Ōtomo and the ministers, but it served as an oath of loyalty to the beleaguered crown prince. As this oath was taken in front of the Buddha, incense was burned. This is the first case in Yamato (Japan) where Buddhist curses are directed against the oath-taker's self. The punishers are not merely the gods of heaven and earth, but Buddhist spiritual powers including the Four Guardian Kings and the Thirty-Third Heavenly Deity of Mt. Sumeru. This fact deserves attention.

Buddhist oaths which adopted this format do not otherwise appear. During the mid-seventh century, when some Emishi would show subservience to the Yamato state, they would be led to a sculpture of Mt. Sumeru, so that they could experience the majestic power of the Four Guardian Kings⁴⁰. In the latter part of the seventh century, Buddhism became less prominent in political rituals at the court,⁴¹ as a result, Buddhist oaths and examples of self-cursing disappeared. Nevertheless, examples of Buddhist oaths and prayers without punishment frequently continued.

In the mid-eighth century, however, Buddhist oaths came to include references to the punishments of the gods and buddhas. In 741, Emperor Shōmu ordered that Kokubunji temples be built in each province of Japan.⁴² As a result, Buddhist oaths too became more common. For the Emperor, the Kokubunji (literally, »Provincial Temples«) were designed to provide refuge for people suffering from plague and illness (rampant in these decades) and so the construction of these temples may also be linked to a Buddhist vow. At that time, Shōmu prayed for the realm to be at peace and for the welfare of the people. However, clause 5 of the oath states, »In the future if an evil lord or ministers appear, and they break my vows, those people and their descendants will suffer misfortune, and even if they are repeatedly reborn, may they be born in a place where there is no buddha.« Shōmu, in other words, cursed others in his vow, to strengthen the power of his words.

In Shōmu's Buddhist oath from the year 750, Shōmu stated that if anyone should violate the oath, Bonten, Taishaku, the Four Guardian Kings, the Dragons of Heaven and the Deities of the Eight Legions (八部衆 who protect Buddhism), along with the gods of heaven and earth, and the imperial ancestors will punish them, and destroy them.⁴³ Buddhist spiritual authority was combined with the gods of Japan and the ancestral spirits of the imperial family to make a much stronger curse. Emperor Shōmu's oaths cursing others deserve further thought regarding their rationale, but regardless, the oath represents one of the final noteworthy transformations of Buddhist oaths from the sixth through eighth century.

41 Yoshikawa, *Ritsuryō taisei shi kenkyū*, 3-33.

42 *Ruijū sandai kyaku*, maki 3, Tenpyō 13 (741) 2.14 *Daijō kanpu*. See also Piggott, *Emergence of Japanese Kingship*, 256-257; Sonoda, *Early Buddha worship*, at 397-400.

43 *Dainihon komonjo Hennen monjo*, vol. 2, 749. (Tenpyōkanpō 1).5.20 Shōmu *tennō chokusho*, 240.

*Oaths during the Period of Administrative Decentralization of the State:
The Ninth through the Eleventh Centuries*

From the mid-ninth century onward, Japan's administrative state, known as the »*ritsuryō* state« for its penal and administrative law-codes (*ritsu* 律 and *ryō* 令), underwent a process of decentralization.⁴⁴ The state weakened, as did Chinese political culture. Nevertheless, Buddhism spread, incorporating belief in Japan's gods.⁴⁵ These social circumstances impacted both the Chinese style of oaths of the seventh and eighth centuries and Buddhist oaths.

Several factors led to the total disappearance of this Chinese genre of oaths: first, people now ignored Chinese political ideals; second, foreign relations changed with the waning of the Tang threat; third, the bonds between leaders and ministers mutated.

Nevertheless, Buddhist oaths continued to be performed, and so did the process initiated by Shōmu, in which others were cursed in oaths. The early tenth-century »Legends of Prince Shōtoku« contains a reference to such a curse in the tenth-century *Shōtoku taishi denryaku*.⁴⁶ It also appears in the following documents and on temple steles or inscriptions:

1. A Jōsuiji stele (790) states that those who steal from this temple will endure punishment from the »North Star Myōken Bodhisattva and 1700 good gods«.⁴⁷
2. The inscription on a temple bell at Saikōji (839) states that those who steal will be punished by the »18 good gods and the Deep Sand General«.⁴⁸
3. In a document of commendation (958), the final clause states that those who break the vow will suffer the punishment of »the heavenly and earthly gods and the Four Guardian Kings«.⁴⁹
4. Enryakuji regulations (970) state that, if the rules are broken, »the good gods of protection« will punish the oath breaker.⁵⁰
5. Tōdaiji's regulations (1056) state that that, if anyone disobeys, »Hachiman Bodhisattva and other gods« will punish the wrongdoer.⁵¹
6. Zentsūji's regulations (1056) state that, if anyone disobeys, the »Three treasures, the spirits of previous masters, and the Deity who protects the law« will punish that person.⁵²

These steles, commendations and regulations reveal that both groups and individuals could curse others with oaths. Those who oppose the building of temples or their maintenance must be punished by the gods and buddhas. In other words, the practice initiated by Emperor Shōmu continued, and gods and buddhas continued to be perceived as those who could punish others.

44 Yoshikawa, *Ritsuryō taisei shi kenkyū*, 72-88. For a historiographical panorama on the *ritsuryō* state in English, see Sakaue, *Ritsuryō state*.

45 For the combinations between the local *kami* and the buddhas, see the articles in Rambelli and Teeuwen, *Buddhas and Kami*.

46 *Shōtoku taishi denryaku*, Suiko 27 (619) 4th month.

47 *Heian ibun kinsekibun hen*, no. 2.

48 *Heian ibun kinsekibun hen*, no. 17.

49 *Heian ibun*, doc. 271.

50 *Heian ibun*, doc. 303.

51 *Heian ibun*, doc. 801.

52 *Heian ibun*, doc. 824.

I have already argued how, in the year 671, self-cursing oaths of loyalty were offered at a Buddhist institution in the palace. I have also argued that Buddhist oaths ceased to be performed. Does that mean that after ancient Chinese oaths disappeared, self-cursing oaths disappeared in ancient Japanese society? Furthermore, with the formation of a medieval Japanese society, did *tenpan saimon* and *kishōmon*-style oaths arise anew?

Here, I would like to explore an underutilized source – works of literature – to see if any significant changes arose regarding oaths over the course of the tenth and eleventh centuries. They have not been well researched, but they are critical for our understanding the origins of written oaths (*kishōmon*). I have not explored these source genres in detail, but I do want to mention the following passages. In modern Japanese schools, the medieval collections of waka poems, »Hundred Poets' Poems« (or »100 Poems by 100 Poets«) are taught to and known by nearly every pupil. Many people remember all the poems in this popular anthology. One of them reads as follows: »I don't care about myself, forgotten as I am by my lover, but I regret that he had to lose his life for breaking his own oath.« (*Wasuraruru mi o ba omowazu chikai te shi hito no inochi no oshiku mo aru kana*).⁵³

Here, a woman named Ukon resents a lover who had vowed that he would never forget her, but then no longer came to visit. This poem appears in the mid-tenth-century *Yamato monogatari* (»Tale of Yamato«) section 84. In this tale, the lover had vowed to the many gods that, if he failed to abide by the oath, he would be placed in mortal danger. One could evidently take this poem as a reflection on the transience of love, but the vow itself shows that one offered self-curses and the corresponding oaths in daily life.

If one searches further in poems, one finds that many people wrote poems attesting that, if their love were to change, they would die. Many are addressed to the gods of Kasuga and Sumiyoshi. One meets the same pattern in the *Tale of Genji*, in which a man discusses writing an oath in front of the buddhas.⁵⁴ When petitioning the gods and the buddhas, one customarily had to compose a written oath. However, the *Tale of Genji* presents vows of love as promises (*chigiri*), that will continue in the next lives of the lovers. Therefore, in the *Tale of Genji* relations in this world are described as the continuation from the characters' previous lives, based on the idea of *chigiri*.⁵⁵

The expression to »enact an oath« (*seigen o okonau*) occurs six times in the *Konjaku monogatari* (A Collections of Tales of Times Now Past), and not all of these vows concern love. The *Konjaku monogatari* was compiled in the twelfth century, but it contains some much older stories. One, for example, discusses how when a man who wanted to learn mathematical calculation from a Chinese merchant he vowed in an oath to go with him to Song China. The names of the gods and buddhas and the content of the self-curse are not known, but the Japanese partner broke the oath, was cursed, and was struck dumb.⁵⁶ Another tale speaks of a village where a spring of sake flowed like water. A monk was told not to tell anyone about it, and took a variety of oaths, but he let word of this slip, and disappeared.⁵⁷

53 *Shūiwakashū*, maki 14 no. 870, ed. Masuda Shigeo.

54 *Genji monogatari*, Agemaki. For the best translation, see Tyler, *Tale of Genji*.

55 Uesaka, *Genji monogatari no chigiri*.

56 *Konjaku monogatari*, maki 24 no. 22.

57 *Konjaku monogatari*, maki 31 no. 13.

Of course, these are all just anecdotal tales, but there are also some historical examples. In the mid-tenth century, Emperor Murakami (r. 946-967) wrote a Chinese poem, and had a courtier review it. When the noble tried to mask his criticism with flattery, the emperor ordered him to take an oath if what he said was true. The noble was afraid and could not take the oath; instead, he fled.⁵⁸ This incident is also mentioned in the *Godanshō*, which dates from the twelfth century.⁵⁹ These accounts must have been told and retold in court society. Here again, the names of the gods and buddhas invoked are not known, but one should understand it as a sign of the importance attached to the offering of an oath.

In poems, tales, and anecdotal stories from the tenth to eleventh century, these kinds of oaths often appear. The significance of oaths varies depending on the situation, but all express confidence that oaths or vows to the gods are true facts (oaths as statements of fact, »assertory oaths«) and promised future deeds with self-cursing (oaths as contracts, »promissory oaths«). They could be called Buddhist vows, but this assimilation deserves more thought. Buddhist vows of loyalty in the seventh century cannot be directly linked to such oaths or vows found in the literature. But in tenth-century aristocratic society, oaths were certainly taken in a variety of quotidian circumstances. Emperor Shōmu started the practice of using oaths to curse others, and fear of the punishments of the gods and buddhas probably continued to resonate from the eighth and ninth centuries through the tenth century. The people of Ancient Japan seem to have continued to offer oaths for a variety of circumstances in everyday life, mostly cursing themselves to solemnize a promise of better deeds in the future. Admittedly, at this stage of research, this is only a hypothesis and a variety of sources will have to be scrutinized in order to arrive at a better understanding of whatever the actual process was.

Even so, it was from such usages and beliefs that the customs of *tenpan saimon* and *kishōmon* arose. During the eleventh and twelfth centuries, medieval estates appeared, with their own laws and legal precedents, as well as local courts. In that emergent legal and social context, it is easy to imagine that there was a need for the judgment of the gods (*shinpan*) to be invoked in complicated cases. Likewise – and I have not discussed this in detail – medieval oaths differ greatly from the *ukei* of the Ancient period, in that writing them down became an essential element. One should consider this to be a new and different element not appearing in the ancient oaths. In short, it is not that divine judgment or *ukei* from the Early Ancient period were simply revived during the medieval period. Rather, one can conclude that the unique style of oaths and the custom of cursing oneself, both of which were formed in the latter Ancient period, and the dissemination of the culture of writing together allowed for the birth of the medieval type of written oath (*kishōmon*).

58 *Konjaku monogatari*shū, maki 24 no. 27.

59 *Godanshō*, maki 5 no. 57, ed. Gotō, Ikegami and Yamane.

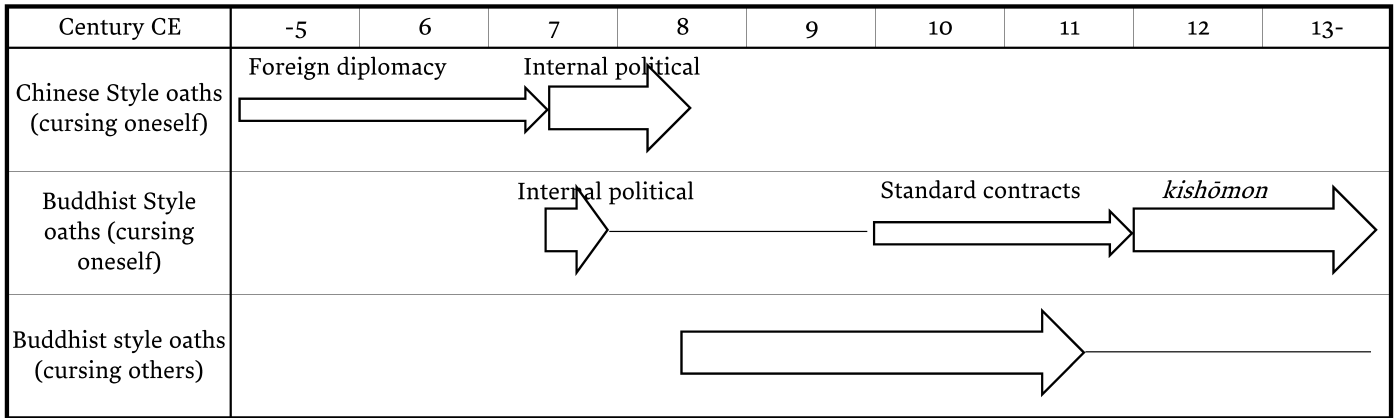


Diagram 1: Changing styles of oaths and proclamations

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List of Figures

Diagram 1: Changing styles of oaths and proclamations

The Gods Are Watching: Talismans, Oaths, and Political Allegiance in Medieval Japan

Thomas D. Conlan*

This contribution explores oaths and talismans in medieval Japan. After recounting the early use of talismans and the practice of pledging to the gods, it explains how oaths underpinned laws and alliances, even though they were only binding for a short period of time. Analysis of oaths reveals much about changing social norms and how people perceived their interactions with the gods and buddhas.

Keywords: Oaths, talismans, alliances, ordeals, adjudication, social hierarchies

Prologue: Ox-head Talismans

People desired to protect themselves from illness. Just as people wore masks during the COVID epidemic, so too all careful and responsible people in ancient and medieval Japan relied on talismans for safety. These talismans, objects real or imagined, were designed to empower, or protect the owner through contact.¹ They were often, in the case of Japan, written with special ink that contained an ointment drawn from ox livers, which was thought to ward off illness. Devotion to the salutary properties of oxen led to the ninth-century initiation of the famous Gion rites at Yasaka shrine in Kyoto. Sometimes pieces of paper had protective phrases written on them which, by a process of synecdoche, became known as Ox-head paper (*go-ō shi* 牛玉紙), although the name for the paper is best translated as »Jewel seal of the ox king.«² This *go-ō shi* was placed in houses to guard against pestilence, not always with success, and can be observed in scenes from the twelfth-century *Kokawadera engi emaki* (粉河寺縁起絵巻).

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- 1 For this definition of talisman, I am indebted to Zhai, Buddhist Talismans. According to Zhai, talismans most closely correspond to split bamboo seals, known as *fu* (符). See also Strickmann, *Chinese Magical Medicine*.
- 2 For this translation, and an informative overview, see Moerman, Shugendō as social practice, 219-221. For pathbreaking studies of oaths and punishments, see Satō Hiroo, Wrathful deities and saving deities. and Fabio Rambelli, Buddha's wrath.

The writing served as a way of materializing spirits in script.³ In the late thirteenth century, pieces of paper with talismans written on them were created at shrines, with the oldest reference to such paper appearing in a 1244 record for Iwashimizu Hachiman. The oldest surviving specimen with an Ox-head talisman dates from 1266 and it has stylized characters written on the obverse that spell out *Nachi taki hōin* (那智瀧宝印), »the treasured seal of Nachi Taki,« one of three major Kumano shrines.⁴ How this document was created is not known, but one dating from 1375 clearly has *Kumanosan hōin* (熊野山宝印), »the treasured seal of Mt. Kumano« (the main Kumano shrine) printed on it. Other examples, dating from 1378, had the name of the god Hachiman printed on the obverse (Figure 1). Other printed oaths can be found in eastern Japan from 1528 onward. For an early 1378 printed version, see Figure 1.⁵

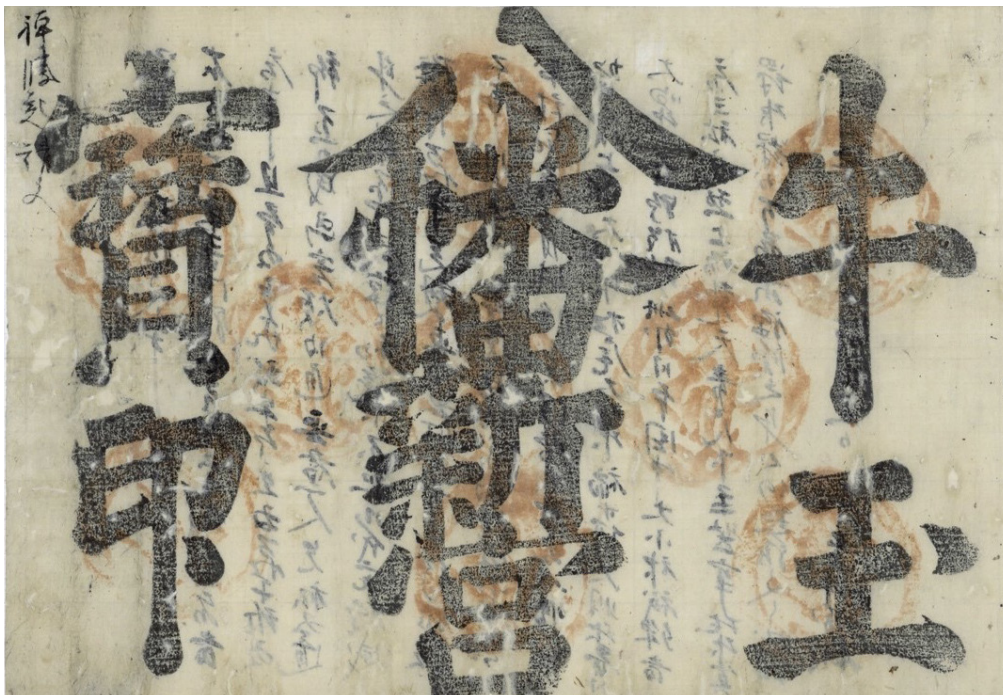


Figure 1: *Tōji monjo* box 8, 12.24.1378 (Eiwa 4) *Wakasa no kuni Tara no shō kumon Benyu daikan Yūen renshō kishōmon*⁶

3 For this insight, see Keane, *On spirit writing*, 6-7.

4 *Dainihon komonjo iewake 4 Iwashimizu monjo*, vol. 1 (Tokyo, 1909), doc. 62, 1244 (Kangen 2) *Gūji narabi ni Gokurakuji kōrei busshinji sōshidai*, 166-167, for reference sheets of paper with this Ox-head talisman (*go-ō* 牛玉). The oldest surviving Ox-head talisman paper can be found in Tōdaiji and dates from 1266. See *Dainihon komonjo iewake* 18, *Tōdaiji monjo*, vol. 8, doc. 564, 12.27.1266 (Bun'ei 3) *Tōdaiji senshikōshū renshō kishōmon* (東大寺世親講衆連署起請文), 84-88. The earliest surviving oath with a talisman from Iwashimizu shrine dates from 1372. *Dainihon komonjo iewake 4 Iwashimizu monjo*, vol. 6: *Kiku Ōji ke monjo* (Tokyo, 1915), doc. 404, 1372 (Ōan 5) *Shinzen hōji Eisei kishōmon*, 507-9.

5 For one of the earliest printed examples from eastern Japan, see 1528 (Daiei 8) Yamakichi Masahisa *kishōmon*, *Uesugi ke monjo*, *Niigata kenshi shiryōhen 3 chūsei 1*, doc. 238, 135.

6 Accessed on 20 August 2021: hyakugo.kyoto.jp/contents/detail.php?id=663.

The name of the temple or shrine was printed in black, while a second impression, in red ink, reproduced a wish fulfilling jewel (*nyoi hōju*, *Skt. cintāmaṇi*). These objects are, as Max Moerman has proven, linked to longstanding practices of Mountain worship (*shugendō*, which was quite intensive in the Kuamano highlands).⁷ Kumano talismans proved to be the most common, because a wide network of Kumano shrines existed, and traveling Kumano priests (*oshi*) and nuns (*bikuni*) also distributed these materials widely.⁸

Although printed talismans became more common over the course of the fourteenth and early fifteenth centuries, they remained rare. On the contrary, unadorned documents continued to be used for oaths, although some would have the names of shrines or temples written on the back of them. Some fourteenth-century examples refer to seven shrines of Hie, a shrine complex located at the base of Mt. Hiei, while others refer to the Miedō sub-temple of Tōji, which is dedicated to the Shingon founder Kūkai. Buddhist institutions and shrines dedicated to the *kami* were used interchangeably in oaths, as these deities were composite, with *kami* thought to be incarnations of various Buddhist deities, in what is known as the doctrine of »original substance and manifest traces« (*honji suijaku* 本地垂迹).⁹

Those that contain the names of temples on the obverse were consecrated while Buddhist rites were being performed, and were later distributed for use as oaths and talismans. Ox-head talismans *go-ō fuda* (牛玉札) came into particular favor in the fifteenth century. These small sheets of paper were printed while Mizutori rites at the Nigatsudō of Tōdaiji were being performed.¹⁰ Not all temples created talismans. Monks from the temple of Tōji stamped stylized characters resembling a generation of snakes on their sheets of oath paper (see Figure 2).

7 For insightful analysis of thirteenth and fourteenth-century practices, see Moerman, *Shugendō as social practice*, 220-221. See also *idem*, *Localizing Paradise*.

8 For this insight, I am indebted to Max Moerman and Horikawa Yasufumi.

9 For an excellent overview of the concept, see Rambelli and Teeuwen, *Buddhas and Kami*.

10 The *mizutori* rites occur during at the opening of two-week long second-month rites (*Shuni-e*) that mark the beginning of spring. Large torches are carried across the balcony of the Nigatsu-dō of Tōdaiji. According to Chijiwa Itaru, these printed small sheets first appeared in the fifteenth century. See Chijiwa, *Tōdaiji monjo ni mieru go-ō hōin*.

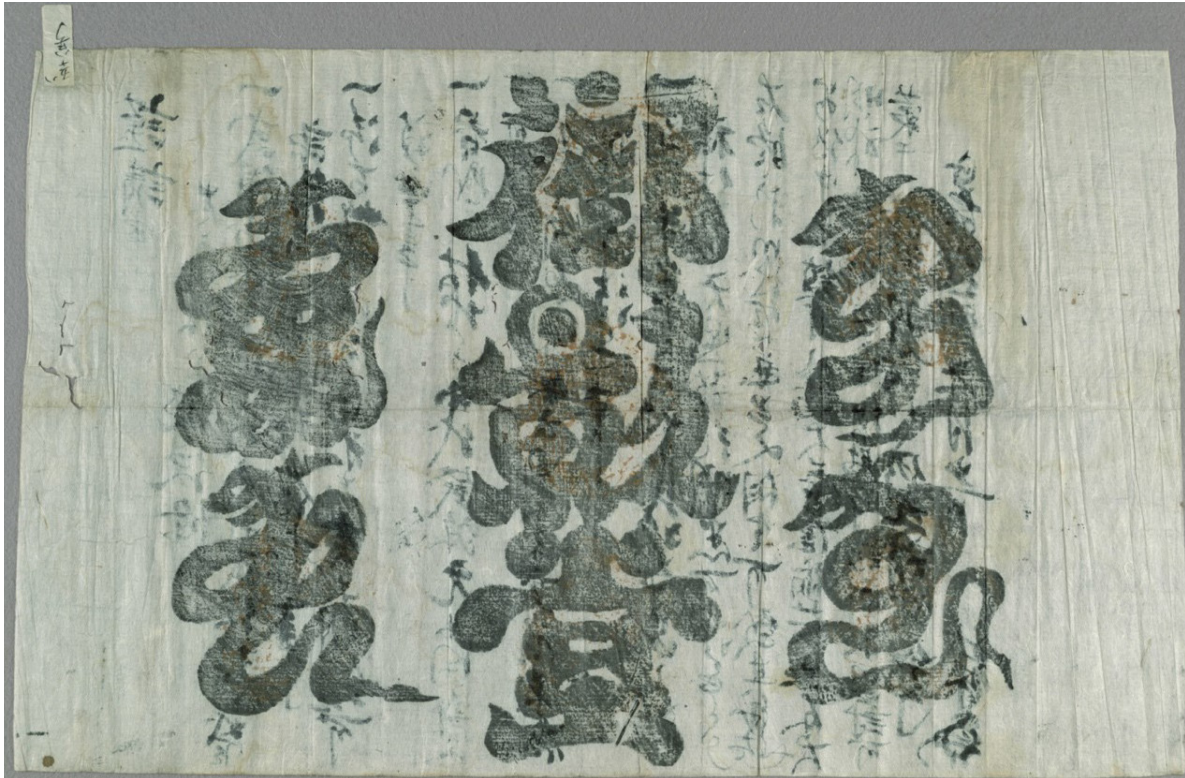


Figure 2: *Tōji monjo*, box 159, 6.11.1429 (Shōchō 2) *Wakasa no kuni Tara no shō jōshi Yūken kishōmon*¹¹

Over the course of the fifteenth century, elaborate representations of the Ox-head talisman appeared, which included snakes, hawks, doves, and above all, crows. Associated most strongly with the three Kumano shrines, these crows were thought to be messengers of the deities whose support was required for rites to be performed.¹² Anywhere from 42 to 72 images of crows were used, for example, to spell out characters for *Kumanosan hōin* (熊野山宝印), with slight variations between the »main« and »new« Kumano shrines, and *Nachi taki hōin* (那智瀧宝印) (see Figure 3).

11 Accessed on 18 August 2021: hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=810 八函/159/文書名若狭国太良庄上使祐賢起請文.

12 Grapard, *Mountain Mandalas*, 178. See also Hurst, *Armed Martial Arts*, 188.

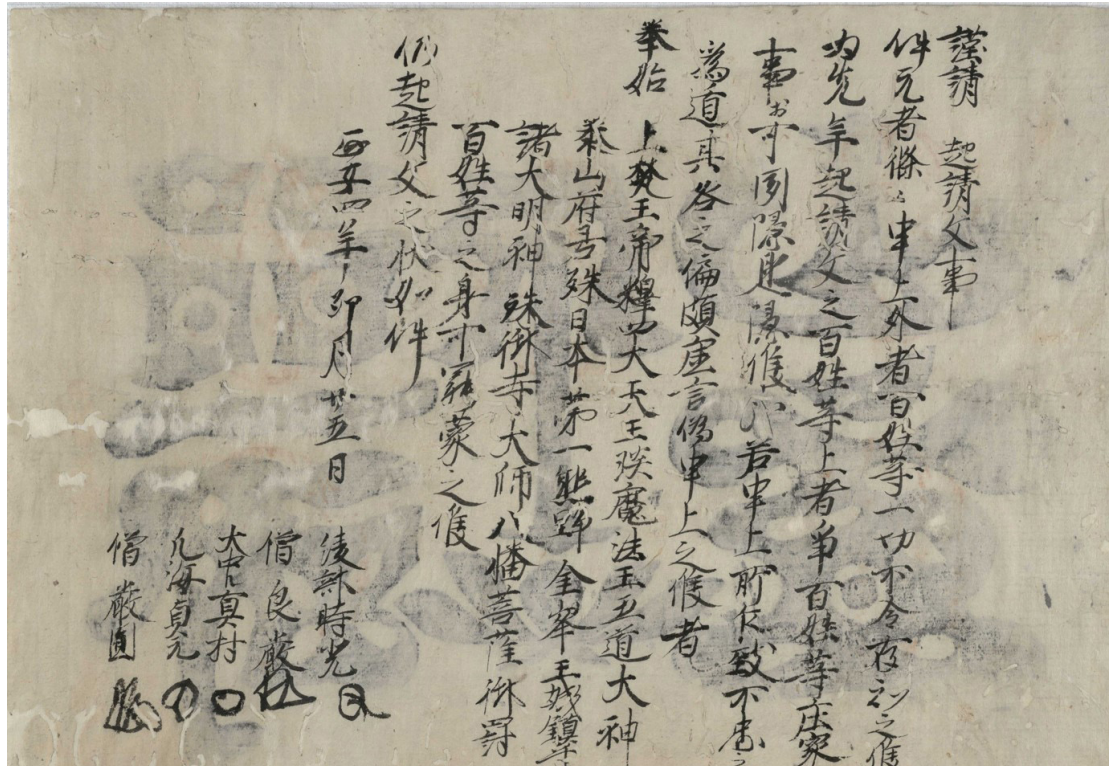


Figure 3: *Kosaji kishōmon* (1556/*Kōji* 2) obverse with *Kumanosan hōin* (熊野山宝印)¹³

Over time, these printed Ox-head talismans became conceived as being an essential element of oaths. This led to some old unadorned documents being retrospectively stamped with an Ox-head seal. For example, in 1302, the commoners of Tōji's Tara estate wrote an oath that has a Kumano Ox-head talisman printed on the obverse (see Figures 4 and 5). The blocks used to print this oath were discovered among the shrine treasures of Sekiganji in Harima province, located near Tara estate. Surprisingly, they had been created in 1538, 236 years after this oath was written. By the first half of the sixteenth century, these seals were thought to be so essential for oaths that some old documents, as seems the case here, were stamped with them centuries after their creation.¹⁴ These seals became so popular that a bewildering variety of them exists today.

13 Accessed on 14 August 2020: pulsesearch.princeton.edu/catalog/10166399 (Princeton purchased these documents in March 2017).

14 One might assume that the 1302 document was forged, but the paper, language, and writing style of the document are indisputably of that time. When confronted with this seeming paradox, one scholar (Chijiwa Itaru) has argued that that Sekiganji started printing these talismans before 1302, but when these printing blocks wore out, nearly identical replacements were later carved in 1538. Nevertheless, the absence of other comparable seals on the many surviving Tara documents casts doubt on this explanation. It seems more likely that this printed talisman was added to the obverse of the 1302 oath approximately two and a half centuries after its creation. For this document, see Figure 4 (若狭国太良庄百姓僧藏門等連署起請文). For more on this oath, see Chijiwa, *Kumanosan hōin sokkuri no »go-ō«*.



Figures 4 and 5: Tōji monjo, box 7, 4.25.1302 (Shōan 4) Wakasa no kuni Tara no shō hyakushō Sō Gon'enra rensho kishōmon reverse (Figure 4) with 1528 stamp on obverse (Figure 5)¹⁵

15 Accessed on 31 August 2020: hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=24482.

Oaths and their Fundamental Characteristics

By the twelfth century, if not before, documents known as »oaths« (*kishō*) came into use quite independently of the Ox-head talismans. People started attest to the truth of a statement, which they would write, or have written down for them, on wood or paper. Evidence of this practice was discovered in Shiotsu, located on the northern reaches of Lake Biwa in 2007. There, some 55 slips (*kishōfuda mokkan*) were discovered in the mud by the remains of an old shrine. The largest of these wooden documents is over six feet in length! Nearly all concern denials of theft in spite of rumors to the contrary. The most illuminating record dates from 1137 (Figure 6) and reads as follows:

In deep worship, on the twenty-ninth day of the seventh month of the third year of Hōen (1137), I request the judgment of Heaven. In the Upper Realm (*jōkai* 上界) may Bonten (Brahma), Taishaku (Sakra Devanam Indra), the Four Guardian Kings, and in the Lower Realm (*gekai* 下界) the great protector of the court (*ōjō* 王城) Hachiman Bodhisattva, the Lower and Upper Kamo [Deities] and all eighteen of the Illuminating Deities (Daimyōjin 大明神), and in particular the protector of this province [Ōmi] the Seven Shrines of the Mountain King (Hie), and especially (*koto ni*) the protectors of this area [Shiotsu], the Daimyōjin of the five areas, Inari Hōriyama, Tsu Myōjin, and the three Wakamiya areas, and in addition, all 13,700 of the great and small gods throughout Japan [judge me]. In front of all I respectfully state the following. If [I], Kusabe no Yukimoto, having undertaken to transport goods, lost any of them, even a single fish, then at the soonest within three days, and at the latest within seven, may Yukimoto, himself, endure the punishment of the gods on all 84,000 hairs, pores and openings of his body.¹⁶

This oath is not a not a promise of future action but rather a statement whereby Kusabe no Yukimoto attested that he had not lost anything in shipping. He was willing to place himself under divine judgment by an astounding array of deities, and stipulated that, if what he stated was untrue, he would be physically punished by them, sometime between three and seven days later (see Figure 6).

16 For the discovery photographs, and transcriptions of these *mokkan*, see the 7 October 2007 »Shiotsukō iseki hak-kutsu chōsa genchi setsumeikai shiryō«, accessed on 14 September 2023: www.shiga-bunkazai.jp/wp-content/uploads/site-archives/download-pdf-071007_s_shiodu.pdf.



Figure 6: Shioda kishōmon (1137)¹⁷

17 Shiga-ken kyōiku iinkai and Kōeki zaidan hōjin Shiga-ken bunkazai hogo kyōkai (eds.), *Ōkawa sōgō ryūiki bōsai jigyō ni tomonau hakkutsu chōsa hōkokusho 1, Shiotsu-kō iseki 1: Nagahama-shi Nishiazai-chō Shiotsuhama, Ibutsu hen 2, Mokkan* (Shiga, 2019), *shashin zuhan* 66.

Thus our Kusabe no Yukimoto wrote this oath on an unadorned piece of wood and offered it to a shrine at Shiotsu where it was buried in front of the buildings. It became waterlogged and so was preserved. The act of writing proved important in ways that merely swearing something orally did not, as it seems that the gods were perceived as being able to read documents, rather than hear them. The 1137 document is the oldest example where the gods were called down to witness a solemn oath.¹⁸

These oaths provide tantalizing clues about changing religious practices in Japan. The number of gods mentioned by Kusabe no Yukimoto is interesting. The *Engi shiki*, a tenth-century compilation of administrative regulations, lists 3,132 gods of heaven and earth (*tenjin chigi* 天神地祇), but by the twelfth century, the number had expanded to 13,700. According to the list of gods mentioned in the Tōdaiji Second Month Rites (*Shuni-e* 修二会 (*Mizutori*), this number consisted of deities »known and unknown« by Japanese court officials (日本州有官知・未官知万三千七百余所大明神等).¹⁹ This number would be widely disseminated in other documents from the twelfth and thirteenth centuries, and the question of whether this higher number of gods had any relationship with the increasing number of oaths deserves further research.²⁰

Oaths would continue to be written in ensuing centuries, but on paper rather than wood. The 1232 promulgation of a code of laws by the Kamakura shogunate (*bakufu*), Japan's first warrior government (1185-1333), led to an upswing in oaths because Kamakura required strict standards of evidence, and relied on oaths to verify »facts« that had no documentary basis, and functionally resembled the situation in Latin Europe.²¹ Tellingly, many examples of oaths were linked to records from the appellate office of the Kamakura regime in the 1240s.²²

Nearly all these thirteenth-century oaths were written on plain paper.

People continued to write oaths whereby they placed themselves in jeopardy of divine punishment, and illness and death were certainly seen as the devastating consequences that might befall oath breakers. For example, after signing an oath, on 11.11.1275, the head of a shrine suffered an illness with a high fever and died. Survivors commented: »This was because he was struck down by an oath« (*kore mo sunawachi kishōmon ni utetaru yue nari*).²³

18 Chijiwa distinguishes between these oaths, which he describes as being »*kanjōgata kishōmon*«, whereby gods were called down to vouch for a pledge, and »standard« pledges, which are of greater antiquity. See Chijiwa, *Chūsei no seiyaku monjo-kishōmon no futatsu no keiretsu*.

19 For this insight, I would like to thank Yoshikawa Shinji. For an accessible version of this text, the Tōdaiji Kaidan'in *kōyō shinmyōchō* (東大寺戒壇院公用神名帳), see *Zoku gunsho ruijū* vol. 3.1 *Jingibu*, 181-184; Makino Eizō, Tōdaiji Nigatsudō *shōmyō jinmyōchō*.

20 *Heian ibun*, vol. 7 (Tokyo, 1956), docs. 3144, 3398, 2526 and 2676. For examples dating from 12.15.1266 (Bun'ei 3) see *Kamakura ibun*, vol. 13 (Tokyo, 1979), doc. 9614, p. 220, and vol. 23 (Tokyo, 1982), doc. 17984, 8.16.1292 (Shō-ō 5), 271.

21 See Barthélemy, *Diversité*, 4; Bartlett, *Trial*, 29-33.

22 See hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=18937 for a 11.25.1243 (Kangen 1) Rokuhara *saihyōjō* (accessed 20 August 2021).

23 *Kasugasha kiroku*, vol. 1, 11.11.1275 (Kenji 1), 315. See also 11.14, 316.

Those that wrote oaths were willing to expose their bodies to potential punishment by the gods and buddhas. To cite another example, sometime before the twenty-third day of the sixth month of 1280, some alcohol (*sake*) was illicitly imbibed while it was being transported to the capital. Eight men in all disavowed that they had partaken in the *sake* and professed no knowledge as to its whereabouts. Two groups of porters signed oaths, with one stating: »If what has been humbly stated is not true, may each suffer the divine and hellish punishments of the Great Buddha, Hachiman, and the Kasuga Avatar (*gongen*).« The other vowed:

If you hear or see who has taken the aforementioned *sake*, and state that it was not actually taken, then you will suffer the divine and hellish punishments of the Great Buddha, Hachiman, and all of the middling, great, and small gods of all of Japan, and receive black and white leprosy in this life, and descend directly into hell forever.²⁴

The porters were able to »prove« their innocence and disavow any knowledge of who had stolen these beverages by not contracting leprosy. Other documents dating from 1283 describe oaths as providing signs of proof (*kenzen no shokō*) regarding tax goods lost in shipment. One manager responsible for shipping taxes even expressed a willingness to undergo water and fire torture to vouch for his truthfulness.²⁵

The signatories of the 1280s oaths regarding *sake* and leprosy do not mention the time frame within which the stipulated punishments would be inflicted. This is because, in 1235, the Kamakura shogunate issued guidelines that clarified which signs constituted »divine punishment« and when these symptoms would appear.²⁶ Kamakura explained that signs of divine punishment were as follows: having one's clothes eaten by mice; being defecated upon by a kite or a crow; bleeding from the torso or lower body (unless this was caused by being hit with a stick); choking (but only if a slap to the back was required); the death of a relative where mourning was required; the death of one's riding horse; or a father or son being charged with a crime. Likewise, Kamakura stated that these unfortunate events would only be classified as signs of oath breaking if they appeared within fourteen days of the signing of the oath. In other words, malignancies spawned by broken oaths had an incubation period of less than two weeks.

24 *Kamakura ibun*, vol. 18, docs. 13999-14000 of 6.23.1280 (Kōan 3), 370. These documents have been translated in the appendix.

25 See »Keep dry!« hyakugo.pref.kyoto.lg.jp/eng/?p=300 (accessed on 20 August 2021) for analysis of one such set of documents concerning problems with the shipping of salt and a promise to provide »obvious evidence« (*kenzen no shokō* 顯然之証拠) if it should be missing. See box 42 *Yo*, 3.1283 (Kōan 6) *Aki no kuni Shinchokushiden azu-karidokoro Bō ukebumi* hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=5258 (accessed on 20 August 2021). For one such oath describing how 12 out of over 100 bags of rice dissolved because of water damage, see the Box *shi* 12, 1.14.1324 (Genkō 4) [?yo shojō hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=15372](http://yo.shojō.hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=15372) (accessed on 20 August 2021).

26 *Chūsei hōsei shiryōshū*, vol. 1, amendment 73 of the sixth intercalary month of 1235 (Bunryaku 2), 94-96. This amendment has been translated in the appendix. Mass, *Development of Kamakura Rule*, 141, describes the regulations as »bizarre«, and has since then been criticized for this characterization. See Fröhlich, *Rulers, Peasants*, 124-125.

Gods and buddhas were thought to be capable of reading written oaths. According to the rhetoric of these documents, the divine entities named would evaluate the veracity of a statement; if true, no actions would be taken, but if not, then the oath taker (and breaker) would be bombarded by the feces of kites or crows; choke; bleed; or suffer misfortune to close relatives or to favored horses. Oaths used to verify facts, or serve as legal evidence, were relatively straightforward, but cases in which they were used to establish alliances proved more fraught.

Oaths and Allegiances

Kishōmon were suited for determining »truth,« but not so for establishing lasting obligations and alliances. An episode from the *Azuma Kagami*, a chronicle compiled in the latter half of the thirteenth century, reveals this process quite well.²⁷ Minamoto no Yoritomo, the first leader of the Kamakura shogunate, was famously suspicious. In 1193, his ire fell on his half-brother Noriyori. Noriyori responded with an oath, which he wrote on 8.2.1193. With it, he sought to assure his brother that he had no rebellious intent. Noriyori wrote:

It is most unseemly that I have given you cause for suspicion. Indeed, from this time and in future times hence, I will countenance no thoughts of disservice (*fuchū*) and will speak of this to my descendants. If I violate this oath, may I, Noriyori, suffer the divine punishment of Bonten (Brahma) from the upper realm and Ise, Kasuga, Kamo, and the Great Bodhisattva Hachiman from the lower realm. Thus, respectfully this oath is such. The Mikawa Governor Minamoto Noriyori.²⁸

Noriyori does not deny that he may have considered rebelling, but he does state that he will not countenance disservice to Yoritomo for now or in the future, nor will he informally convey such sentiments to his sons. In terms of the gods mentioned, the oath is remarkably consistent with the one sworn by Kusabe no Yukimoto in 1137.

The main distinction between the two documents is that Yukimoto submitted his to a religious institution, whose gods would pass judgment, while Noriyori's was sent to Yoritomo, who was in a position to accept or dismiss the oath. In this case, Yoritomo discarded Noriyori's oath. He did not do so because it implied Noriyori's earlier rebellious intent. Rather, Yoritomo complained that Noriyori's oath was invalid because of its improper format. He argued that the oath was void because Noriyori had signed the document with his surname (Minamoto), when the proper epistolary style for oaths among relatives was that surnames should not be written. Instead, Noriyori should only have signed the document with his personal name (Noriyori).

27 *Azuma Kagami* must be used with care as many references to objects or institutions are anachronistic. This includes statements that Ox-head paper was used for oaths in 1185 by Minamoto Yoshitsune, when in fact the oldest examples of such paper being used dates from 1266. See Chijiwa, Chū-kinsei kishōmon no yōshiki ni tsuite no kenkyū. For the *Azuma Kagami* citation, see, *Azuma Kagami* vol. 1, 5.24.1185 (Genryaku 2), ed. Ryō Susumu, 198. For a reference to Minamoto Yoshitsune using documents with »the holy seal of the Sacred Ox«, see Shinoda, *Founding of the Kamakura*, 5.24.1185 (Genreki [sic] 2), 317. For other *Azuma Kagami* anachronisms, see Mass, *Mixing of past and present; idem, Shugo and Jitō* imagined.

28 For a convenient version of this, see *Azuma Kagami* vol. 3, 8.2.1193 (Kenkyū 4), ed. Ryō Susumu, 98-99. For further analysis of this episode, see Moerman, *Shugendō as social practice*, 222.

Yoritomo apparently considered the oath to be deceitful because Noriyori had not adhered to the proper conventions. An invalid oath would presumably not come under the purview of the gods. Yoritomo believed that Noriyori in fact harbored rebellious intentions. After signing his oath, Noriyori was so rattled after a week of Yoritomo's silence that one of his retainers, a warrior named Tōma Tarō, crept in and hid underneath Yoritomo's bed in a desperate attempt to convince him that Noriyori had no rebellious intent. When Tarō was discovered, Yoritomo had him tortured and eventually killed.²⁹ Nevertheless, he did not punish Noriyori until the two-week period of divine evaluation had ended. Once two weeks had passed, and Noriyori had not suffered any repercussions, Yoritomo did not absolve Noriyori, but rather killed him and his men for their invalid oath.³⁰

Here, oaths placed not only the signers but their retainers in legal jeopardy, as the poor Tōma Tarō and Noriyori's other unfortunate retainers would discover to their chagrin. In 1232, Yoritomo's regime, the Kamakura shogunate, stipulated in its laws that oaths would apply to all, not only those of the higher status, but also to their friends, family, and followers (*burui kenzoku* 部類眷属).³¹ These people were bound by oaths that they had not actually endorsed. To cite one example, albeit from centuries later in 1549, a retainer of Asō Shigesato, upon learning that his lord had sealed by oath an alliance that involved treachery, protested violently. He refused to accept the oath, and Shigesato ultimately killed him.³²

After Yoritomo's passing, the Kamakura shogunate relied on oaths to attest to the veracity of actions. On top of merely being used to deny illicit behavior, warriors had recourse to other men's oaths to verify their actions in battle, with the caveat that those offering the oaths had to be unrelated (*hiensha* 非縁者) to the oath maker or to beneficiaries of the oaths' contents. Thus, in this process, such unrelated persons would have to agree to stand witness for other warriors, and write oaths that would be submitted to war leaders so as to verify these other warriors' actions in battle.³³ This prohibition of having recourse to related persons, when coupled with Yoritomo's comment about relatives, suggests that the existence of a notion that kin relations would influence the obligations and responsibilities inherent in oaths. Kinship ties and allegiances were implicitly thought capable of superseding oaths.

Oaths served to convey »facts« that could otherwise not be known. This worked well for battle service, and protestations regarding theft, but less so when it came to alliances. Noriyori's oath merely stated that he did not harbor rebellious intentions. Attempts to confirm allegiance through oaths was fraught with problems of deception.

29 *Azuma Kagami* vol. 3, 8.10.1193 (Kenkyū 4), ed. Ryō Susumu, 99-100.

30 For Noriyori's exile and the death of his retainers, see *Azuma Kagami* vol. 3, 8.17-18.1193 (Kenkyū 4), ed. Ryō Susumu, 101. The *Azuma Kagami* does not record Noriyori's death, but his assassination is mentioned in the *Hōryaku kanki* and the *Hōjō kyūdaiki*. After 8.17.1193 nothing more about Noriyori is known.

31 This phrasing appears in the 1232 Jōei Code of the Kamakura shogunate. See *Kamakura ibun*, vol. 6, doc. 4341, 383. For a later example of 10.3.1286 (Kōan 9), see *Kamakura ibun*, vol. 21, doc. 15998, 142.

32 This narrative was drawn from Sagara Taketō's letter in the Mōri house records, which recounts these events in detail. *Dainihon komonjo iewake 8 Mōri ke monjo*, vol. 4, doc. 1556, 1.5.1551 (Tenbun 20) Sagara Taketō *mōshijō utsushi*, 458-465.

33 See Conlan, *In Little Need*, docs. 20-24, 27-28, 217-224.

Here a fictional episode in the fourteenth-century *Genpei jōsuiki* reveals the mindset of medieval Japanese warriors who were pressured to write oaths of alliance. According to this narrative, a warrior named Nakahara Kanetō was forced by the Taira to sign an oath even though he had already promised to join the forces of Minamoto Yoshinaka. Kanetō reasoned to himself that: »This is not an oath that I write from my heart. The gods will not hold this against me. The gods will forgive what I say under this sort of duress.«³⁴ In analyzing this passage Elizabeth Oyler astutely argues that Kanetō was more concerned about breaking a written oath than about lying orally. That being said, Kanetō still wrote a false oath with the hope that the gods would be able to understand his situation and forgive him for writing falsely.³⁵ This fourteenth-century fiction reveals a tension between social pressure and inner thought. Using oaths to proclaim the veracity of an event (battle service) or non-event (theft) before the gods and buddhas was uncontroversial but attempts by men to use oaths to demand allegiance caused tensions because men (lords) could *de facto* unilaterally determine the validity of an oath of allegiance. The *Genpei jōsuiki* suggests that, when forced into signing such oaths of allegiance, people would console themselves in the knowledge that the gods could distinguish between what was truly believed and written statements that had been agreed to under duress. These fourteenth-century accounts reveal that people of the time assumed that the gods and buddhas would not only read an oath, but analyze its social and political context, and read the mind of the oath taker. Depending on the context, falsehoods could be excused.

Ashikaga Takauji's Rebellion and the Temporal Validity of Oaths

One such false oath led to the collapse of the Kamakura shogunate.³⁶ In 1331, Emperor Go-Daigo had started a revolt against the shogunate.³⁷ Although Go-Daigo was defeated and banished to Oki Island, his partisans continued to fight against Kamakura. On 3.10.1333, they briefly managed to occupy the capital Kyoto. Kamakura officials decided to dispatch a reinforcing army to keep order there, but they lacked good commanders, and had to rely on a young warrior of impeccable lineage who had a grievance against them. They did not fully trust this person, Ashikaga Takauji (1305-1358, shogun 1338-1358), but they needed him to lead their armies, so they had him swear an oath not to rebel against their forces. Takauji duly swore an oath and then departed with his army. The *Masukagami*, a chronicle written in the 1330s by a well-connected courtier who was deeply knowledgeable of the politics of his day, explains what then happened, and the tension between an oath codified in writing and Takauji's inner thoughts:

34 *Genpei jōsuiki*, quoted and translated in Oyler, *Swords, Oaths and Prophetic Visions*, 69-70.

35 Oyler, *Swords, Oaths and Prophetic Visions*, 70.

36 For an overview, see Conlan, *State of War*, 10; for the translated documents, see *idem*, *Samurai and the Warrior Culture*, 109-110, 118-122.

37 For more on Go-Daigo, see Goble, *Kenmu*.

When Takauji had departed from the east, he wrote an oath stating that he had undivided allegiance to Kamakura. But there were doubts about what he really thought. This Takauji was a descendant of Yoriyoshi of old and, although he was a warrior of impeccable lineage, his Genji lineage had not been influential since the time of Jōkyū [1219-22]. Although [the Ashikaga were] obscure, a number of branch families had been established, and their influence extended far and wide. They gained the support of many in the provinces. Some people wondered if, during this time of crisis, Takauji would rise up in the world [through rebellion] and their suspicions proved to be correct. Stating that he had been commanded to depart for the province of Hōki, Takauji stopped at Nishiyama Ōhara for a night, and then on the seventh day of the fifth month, just at the light of dawn, he broke through the barricades at Ōmiya avenue. Dividing his forces into seven units, he then headed east on seven roads from Nijō, in the north, to Shichijō in the south. With their banners, he and his men, thick as fog and clouds, headed toward Rokuhara. They encountered no opposition along the way. Having already received an edict from the previous emperor Go-Daigo, *Jibu no taiyū* Takauji had thus turned to conquer the capital.

Takauji and his men raised thunderous battle cries; the ground shook, and the heavenly king Bonten (Brahma) must have been surprised in his palace. All who heard them were rattled by the clamor. It goes without saying that Emperor Kōgon, the Crown Prince, and the Retired Emperors Hanazono and Go-Fushimi were distraught. Accustomed more to beautiful melodies, they were shocked to hear such strange sounds.

Half of Rokuhara's warriors had been dispatched to Mt. Kongō; those that remained resolved to stay in the capital for as long as they lived. It was a ferocious battle, fought with reckless abandon. Many died in front of their comrades, brought down by arrows that fell like heavy rain. They fought day and night. Both Rokuhara leaders resisted until their forces were no more. But in the end their defenses collapsed, and the end appeared near.

The emperors, nobles, and courtiers could not have fled, even if they believed this day would be their last. Of course, none could have imagined the previous day's betrayal by Takauji, a man honored with a Retired Emperor's edict. All huddled together in fear.³⁸

Here, in spite of writing an oath promising not to rebel against Kamakura, Takauji attacked and destroyed their forces. It would seem that oaths were of not an effective means of securing allegiances.

Ashikaga Takauji's rival, Kitabatake Chikafusa (1293-1354), treated Takauji's actions as treason, writing: »Takauji, before setting out, wrote a pledge to dispel doubts about his own loyalty. But, ignoring the witness of the gods to this pledge, he changed allegiance.«³⁹ The *Taiheiki*, a fictionalized history compiled in the fourteenth century, provides one rebuttal to these charges, with Takauji's brother Tadayoshi purportedly stating that the gods and buddhas would ignore Takauji's false oath because his actions were not for his own sake, but for the realm and, in particular, Emperor Go-Daigo in his struggle against Kamakura. In such cases »the gods and buddhas will recognize and protect loyal intent, even if false words are written in an oath.«⁴⁰

38 *Shūtei Masukagami shōkai*, 738-752. For a different translation, see Perkins, *Clear Mirror*, 215-218.

39 Kitabatake Chikafusa, *Chronicle*, trans. Varley, 246. For an overview of *Taiheiki*, see Piggott, Introduction.

40 *Taiheiki (Seigenin bon)*, vol. 2, maki 9, »Ashikaga dono jōraku no koto«, ed. Hyōdō Hiromi, 38-39.

Takauji, for his purported betrayal, was not widely excoriated for his treachery during his lifetime, or for centuries thereafter. The compiler of the *Clear Mirror* and Kitabatake Chikafusa did accuse Takauji of rebellion, but their charges were rebutted in the *Taiheiki*, although that narrative was critical of Takauji elsewhere.

Imagawa Ryōshun (1326-1420) provided a different view when he recounted the history of the Minamoto lineage of Ashikaga Takauji. He explained that the existence of a prophecy written by Takauji's distant ancestor Minamoto Yoshiie had forced Takauji's hand, as his role in seizing the realm had been prophesied. According to Ryōshun's account:

Yoshiie wrote in his testament (*okibumi*): »I shall be reborn seven generations hence and seize the realm.« That generation was Ietoki's, who, no doubt realizing that the time was not yet ripe, prayed as follows to Hachiman: »Cut my life short, I beg, and have us seize the realm within three generations.« He then slit his belly [in 1285]. The testament written in Ietoki's own hand gives further details. My late father and I read it in the presence of both Takauji and Tadayoshi. They said that they owed their conquest of the realm to this prayer [by Ietoki]. Ambition working over generations had made them masters of the world.⁴¹

Ryōshun's father Norikuni was a close and trusted commander, and relative of Takauji, but his reminiscences were written considerably after the events at hand. Powerful evidence that Ietoki's 1285 testament existed comes from a document dating just a few years after Takauji's victory. It was written by his brother Tadayoshi, who took Ietoki's document »for safe keeping« and left a copy with a retainer, whose ancestors had preserved this record. Tadayoshi wrote, in his own hand, »I viewed the document from the time of Ietoki's passing, which he gave to his retainer Kō no Morouji. Reading it brings tears to my eyes; I will not forget it. I am thus taking this document and will send you [Kō no Moroaki] a copy.«⁴²

Something of Takauji's frame of mind can be ascertained in a prayer that he had written on 4.29.1333, at the time of his rebellion against Kamakura. In it, Takauji described himself as a »lingering trace« of the Hachiman Bodhisattva, who would »follow the imperial command and raise a righteous army« so that, among other things, the fortunes of their house would flourish.⁴³ Takauji's prayer to Shinomura Hachiman, with its emphasis on his Minamoto descent, suggests that he was aware of the testament of his ancestors proclaiming that he would seize the realm. This testament superseded the oath he had offered to Kamakura. When Takauji found himself at the head of an army, the only thing preventing him from commanding it was Kamakura's request that he sign an oath of loyalty to them. He wrote what turned out to be a false oath to ensure that familial prophecies of generations past would be fulfilled.

41 Translation slightly modified from Tyler, *Fourteenth-Century Voices*, 236-238.

42 Dainihon komonjo iewake 19, *Daigoji monjo*, vol. 1, doc. 160, 4.5 Ashikaga Tadayoshi *jihitsu shojō*, 117. This has been translated in Conlan, *Samurai and the Warrior Culture*, 121.

43 *Kamakura ibun*, volume 41, doc. 32120, 4.29.1333 (Genkō 3) Ashikaga Takauji *ganmon*. See also Conlan, *Samurai and the Warrior Culture*, 121-122.

Takauji, steeped in the practices of Kamakura, upheld its legal norms when writing his oath. Kamakura had determined in 1235 that malign signs of a broken oath would appear after an incubation period of two weeks.⁴⁴ According to the *Clear Mirror*, Takauji arrived in the capital with a great number of warriors on 4.10.1333. He rebelled against Kamakura on 4.25.1333, precisely two weeks after he entered the capital.⁴⁵ Thus, by Kamakura's own legal standards, Takauji's oath had been accepted by the gods, for he had suffered no illness or signs of divine disfavor during the two-week testing period. To Takauji and his compatriots, the fact that he had not suffered any consequences from a »false« oath meant that Takauji's grandfather's testament had more power. After having waited two weeks and suffering no adverse effects, Takauji was confident that the gods favored his rebellion against Kamakura. His former Kamakura allies were bitter – and indeed, most died in 1333 – but save for the *Clear Mirror* account and Chikafusa's *Chronicle of Gods and Sovereigns*, most narratives of the time, even those written by Takauji's rivals, do not refer to him as an oath breaker.

Oaths seem to have been widely understood as being valid only for a relatively short duration. Some warriors would, however, maladroitly promise alliances for improbably long periods of time. The *Taiheiki*, the above-mentioned fourteenth-century chronicle, describes the 1359 battle of Chikugogawa. Here, Shōni Yoriyasa of Northern Kyushu had pledged to support Kikuchi Takemitsu »for seven generations« but, only a year later, Yoriyasa took up arms in direct violation of his oath. The forces of Kikuchi Takemitsu then attacked Shōni Yoriyasa's oath to their battle flag and fought him in battle. The *Taiheiki* goes on to explain:

As the two opposing encampments were only separated by a short distance, one where words could be easily seen, the Kikuchi, in order to shame the Shōni, attached a single page oath to a flag with gold and silver symbols of the sun and moon. That is because in the previous year, at Furu-ura castle, when Isshiki *Kunai no taifu* [Norinori] attacked them, Kikuchi Higo *no kami* [Takemitsu] came with a large army to support [Shōni Yoriyasa] from the rear, and Shōni [Yoriyasa], overjoyed, exclaimed: »Henceforth, for seven generations of my descendants, we will never unleash a single arrow against the Kikuchi [in hostility].« He wrote this in blood on Kumano Ox-head paper. [The Kikuchi] did this to broadcast to all his ruthless change of heart, and so as to appeal to the heavens, and to appeal to the wisdom of men.⁴⁶

44 *Chūsei hōsei shiryōshū*, vol. 1, amendment 73 of the sixth intercalary month of 1235 (Bunryaku 2), 96.

45 *Kamakura ibun*, vol. 41, docs. 32103-4.

46 *Taiheiki (Seigenin bon)*, vol. 5 »Kikuchi ikusa no koto«, ed. Hyōdō Hiromi, 248-250.

While the phrase »appeals to the heavens« suggests that the notion remained that the gods would see and evaluate oaths, the social context mattered most, in that men too could evaluate whether oaths were being broken or not. In this case, Shōni Yoriyoshi was shown by all to be an oath breaker because he foolishly bound seven generations of his family to this contract, only to break it the following year. Yoriyoshi's lack of intelligence and reliability would have been evident because he signed an oath valid for centuries that he himself could not uphold for even a year. Yoriyoshi was defeated and the Shōni then earned a reputation for incompetence, duplicity, and untrustworthiness. Perhaps unsurprisingly, sixteen years later, based on similar suspicions, Imagawa Ryōshun would kill Yoriyoshi's son Fuyusuke at a banquet celebrating the defeat of the Kikuchi.⁴⁷ Distrust of the Shōni lasted far longer than their oath.

Oaths and Duress

In contrast to oaths regarding theft, or legal situations, oaths of alliance proved to be of more limited duration and could be recalibrated through a sequence of later oaths (not unlike in twelfth-century Southern France, see H  l  ne D  bax's contribution to this volume). For example, in 1531, M  ri Motonari (1497-1571) signed an oath promising to be like a brother to Amako Yoshihisa.⁴⁸ Later, however, when Motonari's lords, the Ōuchi, and his neighbors, the Amako, became embroiled in a long-standing and debilitating dispute, Motonari had to choose sides.⁴⁹ In response, in 1537, Ōuchi Yoshitaka promised to come to the aid of M  ri Motonari if he were attacked by the Amako.⁵⁰ By 1539, Motonari confirmed his undivided service to Yoshitaka and not the Amako.⁵¹ Yoshitaka had Motonari sign a formal oath confirming his allegiance later that year.⁵² Thereupon Motonari would fight the Amako, until they were ultimately destroyed. The context in which oaths of allegiances were proffered mattered. Those that were imposed under duress were thought to be less binding than freely initiated agreements. Yoshitaka's weaning of the M  ri from the Amako involved repeated oaths and assurances, so as to ensure that Motonari would not feel overly pressured to attack the Amako.

47 For a summary of the events surrounding Fuyutsuke's death, see Hanawa Hokinoichi, *Kaei sandaiki*, 203, and Yamada Sh  ei, *Yamada Sh  ei jiki*, 70, 94-95. For one of the few contemporary documentary references to Fuyutsuke's »chastisement«, see *Nanbokuch   ibun Ky  sh   hen*, vol. 5, doc. 5392, comp. Seno Sei'ichir  . Reference to this episode also appears in Conlan, *State of War*, 141-142.

48 *Dainihon komonjo, iewake 8 M  ri ke monjo* 1, doc. 210, 7.10.1531 (Ky  roku 4) Amako Yoshihisa *keiyakuj   utsushi*, 182.

49 Masuda Saneuji *shoz   shinshutsu ch  sei monjo no sh  kai*, doc. 27, ed. Nakatsukasa, Nishida and Watanabe, 131 and doc. 64, 156 reveals that Yoshitaka was on good terms with the Amako during 1528 through 1530, but once he rebuffed them, they later allied with Yoshitaka's rival, the Takeda, the nominal *shugo* of Aki.

50 See *Sengoku daimy   no komonjo Nishinihon hen*, ed. Yamamoto, Hori and Sone, 242-243. for a 1.27 [1537/Tenbun 6]. Ōuchi Yoshitaka *shoj  *. This document was long mistakenly thought to have been written in 1551, and incorrectly suggests that Yoshitaka was relying on Motonari in 1551, but his monograph dates from 1537 and expresses Yoshitaka's concern for the M  ri. See also *Yamaguchi kenshi ts  shihen ch  sei*, 505.

51 *Sengoku ibun Ōuchi shi hen*, vol. 3, doc. 3120, 7.7 [1539/Tenbun 8] Ōuchi Yoshitaka *shoj  *, 354. The letter was addressed to another Aki warrior, Kumagai Nobutada.

52 *Sengoku ibun Ōuchi shi hen*, vol. 3, doc. 3129, 9.13.1539 (Tenbun 8) Ōuchi Yoshitaka *shoj   an*, 357 and doc. 3131, 9.28.1539 (Tenbun 8) M  ri Motonari *ukebumi an*, 357.

Oaths and Hierarchies

Some commanders signed oaths to their subordinates to get them to agree to difficult orders. For example, Ōuchi Yoshihiro wrote an oath shortly after he became protector (*shugo*) of Kii province. Yoshihiro forced Mōri Hirouchi to remain with him, far from his homelands, and again vouched for the urgency of his need, stating that should he lie, may he be punished by Myōken the North Star god, as well as the Tenjin, the Kumano deities, and all of the great, lesser, and middling gods of Japan. He wrote this oath on Kumano paper, in the style for Nachi Kiyotaki shrine, which also demonstrated his control over the province where Kumano was located.⁵³

Importantly, these fourteenth-century oaths, written by commanders, did not forge alliances. Instead, they attested that their motives were pure in forcing reluctant warriors to remain in the field. The format of an oath served as a concession of sorts because commanders rarely wrote orders to their subordinates. After he became shogun, Ashikaga Takauji's only written oaths were for cases where he prohibited warriors from leaving his army to return to their homelands. He wrote one such oath in 1346 to Shimazu Saburō to show that there was no duplicity in his request. Takauji duly stated that, if he were lying, the gods of the Ise shrines, Hachiman, and Kitano (Tenjin) should punish him.⁵⁴

After Takauji's 1346 promise to Shimazu Saburō, oaths by Ashikaga shoguns become extremely rare. The Ashikaga no longer signed oaths but forced others to sign them. For example, the fifth Ashikaga shogun Yoshikazu, aged 15, had a drinking problem and, in 1421, his father Yoshimochi (1386-1428, shogun 1394-1423) made Yoshikazu's followers sign an oath »not to let Yoshikazu drink *sake* without Yoshimochi's permission.«⁵⁵ Yoshimochi relied on an oath to compensate for his inability to control his wayward son, but he did not sign one himself, or require one from his son. The Ashikaga refused to sign oaths or put themselves under divine judgment.

The Gods Are Watching: Oaths and Organization

Over the course of the fifteenth and sixteenth centuries, the principle that the gods viewed, and indeed read, these documents remained unchanged, but the idea that they would, with a fine sense for complexity and with nuance, analyze the political situation seemed to wither. Rather than referring to the judgment of gods and men, or the fraught political context in which these oaths were pledged, the texts of oaths indicated that the deities were dispassionately and uncritically »seeing« and judging the documents and every cosigner.

53 *Dainihon komonjo iewake 8 Mōri ke monjo*, vol. 4, doc. 1334, 8.5.1392 (Meitoku 3) Ōuchi Yoshihiro *kishōmon*, 250-251.

54 *Dainihon komonjo iewake 16 Shimazu ke monjo*, vol. 1, intercalary (*urū*) 9.14 [1346 Jōwa 2] Ashikaga Takauji *kishōmon*, 598-599. Shimazu Saburō kept his oath but sent a copy to his family.

55 *Kaei sandaiki, Gunsho ruijū*, vol. 26: *Zatsubu*, 66-142, 6.25.1421 (Ōei 28), 118 and 6.29, 118-119. See also Itō Kiyoshi, *Ashikaga Yoshimochi*, 156-158.

For example, at the turn of the sixteenth century, Ōuchi Yoshioki (1477-1528) relied on oaths to the clan's protector deity Myōken to bolster important alliances with families such as the Masuda.⁵⁶ These oaths describe the majesty of Hikamisan Myōken, and the Great Bodhisattva (Daibosatsu) Hachiman, and explain how both watched over the signatories.⁵⁷ There is no suggestion that the gods would interpret the nuances of the oath's creation, or for that matter, understand the state of mind of those signing the oath. Likewise, the above-mentioned 1549 case in which a retainer of Asō Shigesato refused to sign an oath on pain of death reveals a stark change in attitudes from the time of Takauji. Shigesato's retainer did not think that the gods could evaluate his true intentions. Instead, he simply refused to sign this oath, and his lord killed him for his intransigence. Sixteenth-century mores differed from those of the fourteenth.

Attitudes regarding oaths became more fundamentalist, focusing solely on the written words of the document without any means of escape such as by considering the mindset of its author. Following this change in perceptions regarding oaths, and in contrast to earlier practice, all parties bound by an oath were required to sign it. While it had previously been understood that allies and dependents were implicitly bound by their lord's pledge, this was no longer the case, and greater numbers of people affixed their signatures to oaths. To cite one example, in 1557, Mōri Motonari, the successor to the Ōuchi, required over 240 people to sign an oath. In doing so, the signatories bound themselves to follow the orders of their lord. One clause of their oath reads: »Orders are most important. Hence, from now all shall sign their names and take this oath. Hachiman Daibosatsu and the Itsukushima Daimyōjin shall view these words.«⁵⁸

All who signed such an oath displayed their words and their names to the gods. This was socially levelling, in that all who signed were equally under divine purview. Likewise, the oaths of the sixteenth century would include larger groups of followers, with each signing personally. Highlighting the move toward greater equality – sometime under a powerful leader like Motonari – some of these oaths would have the participants write their names in a circle so as to obscure differences in social hierarchy (*karakasa renbanjō*). This contrasted with the previous way of signing of the document linearly, which revealed the relative status of the signatories.

56 *Sengoku ibun Ōuchi shi hen*, vol. 1, doc. 938, 10.27.1496 (Meiō 5) Ōuchi Yoshioki *shojō*, 304. For a similar scenario with the Akamatsu, see Hall, *Government and Local Power*, 251-257.

57 *Sengoku ibun Ōuchi shi hen*, vol. 1, doc. 775, 10.16 [1494 (Meiō 3)] Sugi Takeaki *shojō an*, 253.

58 *Dainihon komonjo iewake 8 Mōri ke monjo* vol. 2, doc. 402, 12.2.1557 (Kōji 3) Fukuhara Sadatoshi *ika kashin rensho kishōmon*, 43-62. For a translation, see Conlan, *Samurai and the Warrior Culture*, 222, also 216-221.

Conclusion

Oaths served as a means of appealing to the judgment of humans and of gods. They arose as a means of attesting to the veracity of otherwise unverifiable statements. Over the course of the thirteenth through sixteenth centuries, they became linked to the practice of distributing Ox-head talismans to ward off illness, and these seals became incorporated into the oath format.

Oaths proved effective in transforming otherwise unknowable statements as legally binding facts but, because of the limited duration of their efficacy, they proved to be less suitable as a means of establishing alliances. In the fourteenth century, oaths taken under duress were thought to be invalid, and men believed that gods, and men, would evaluate the social and political context of their creation.

A skilled commander could keep people in the fold, but a single oath did not constitute an ongoing and indefinite sign of service, or its »breaking« an invariable example of treachery. It still remained as a vehicle for communication with otherworldly luminaries. Nevertheless, some, such as the Ashikaga, eschewed writing oaths once they achieved a position of political hegemony. On the contrary, they forced their subordinates to write oaths in response to their requests.

Some hegemons relied on oaths to create a lasting political organization by forcing all to pledge to obey orders. These oaths served to enhance their command authority. They also became more inclusive as hundreds, rather than dozens, signed oaths individually and did not rely on someone else to sign on behalf of their kith and kin. Accompanying this greater participation was a return to the notion that gods and buddhas could only read and act upon that which had been explicitly pledged but could not know the thoughts of those who had sworn to them.

*Appendix: Selected Translations***1**

(73) *Kamakura bakufu amendment concerning oaths.*⁵⁹

Regulations (*sadame*) concerning the invalidity of oaths (*kishōmon*)

Item. A nosebleed

Item. Becoming ill after writing an oath (*kishōmon*). This does not apply, however, in cases of previous illnesses

Item. Being defecated upon by a kite or crow.

Item. Having one's clothes eaten by mice.

Item. Bleeding from the torso or lower body. This does not apply when hit by a stick, or for women, their menstrual cycles, or in cases of hemorrhoids.

Item. Having to wear clothes of mourning (e.g. the death of a relative).

Item. Having a father or son charged with a crime.

Item. Choking while eating or drinking (but only if a slap on the back was required shall it be decided that the oath is invalid).

Item. The death of one's riding horse.

Concerning the aforementioned, if these signs do not appear within seven days of writing an oath, then for another seven days, the person shall be observed within shrine precincts. If none of these signs appear during these two seven-day periods, then the person shall be judged to be in the right. These regulations are ordered thus.

The Twenty-Eighth Day of the Sixth Intercalary Month of the Second Year of Bunryaku (1235)

Uemon no daisakan (右衛門大志) Kiyowara Sueuji

Saemon no shōjō (左衛門少尉) Fujiwara Yukiyasu

Zusho no shōjō (図書少允) Fujiwara Kiyotoki

59 *Chūsei hōsei shiryōshū*, vol. 1, amendment 73, *urū* 6.1235 (Bunryaku 2), 94-96.

2

Two oaths concerning the theft of sake.

A

Wakajirō *rensho kishōmon*⁶⁰

Respectfully: A request (*kishō*) of Heaven's Judgment (*tenpan*)

The aforementioned stems from a report that one of us (*tomogara*) illicitly stole and imbibed *sake* while going up to the capital. Such a rumor is most unseemly. Nevertheless, when asked who in fact took the *sake*, we admit that we have not done so, nor have we heard, or seen, or were in any way aware of how it had been consumed. If what has been humbly stated is not true, may each of us suffer the divine and hellish punishments of the Great Buddha, Hachiman, and Kasuga Avatar (*gongen*) throughout their bodies. Thus.

Twenty-Third Day of the Sixth Month of the Third Year of Kōan (1280)

Respectfully

Wakajirō (monogram)

Tone (monogram)

Ichirō Suemori (abbrev.monogram)

Gorō *gon no kami* Narichika (monogram)

B

Daijō *nyūdōra rensho kishōmon*⁶¹

Respectfully: A request (*kishō*) of Heaven's Judgment (*tenpan*)

The aforementioned stems from a report that *sake* intended for the capital has been stolen. If we have heard or seen who has taken the aforementioned *sake*, but do not name the culprit, then we will suffer the divine and hellish punishments of the Great Buddha, Hachiman, and all of the middling, great, and small gods of all of Japan, and receive black and white leprosy in this life, and descend directly into hell in the afterlife and never escape from these sufferings (*shutsugo*). Thus.

Twenty-Third Day of the Sixth Month of the Third Year of Kōan (1280)

Daijō *nyūdō* (ink seal)

Seibutsu (abbrev.monogram)

Kunimitsu (abbrev.monogram)

Otojirō (abbrev.monogram)

60 *Kamakura ibun*, vol. 18, doc. 14000, 6.23.1280 (Kōan 3) *Wakajirō rensho kishōmon*, 370.

61 *Kamakura ibun*, vol. 18, doc. 13999, 6.23.1280 (Kōan 3) *Wakajirō rensho kishōmon*, 370.

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List of Figures

- Figure 1: Tōji monjo box 8, 12.24.1378 (Eiwa 4) *Wakasa no kuni Tara no shō kumon Benyu daikan Yūen renshō kishōmon*, accessed on 20 August 2021: hyakugo.kyoto.jp/contents/detail.php?id=663, 若狭国太良庄公文弁祐代官有円連署起請文八函/81/永和4年12月24日西曆1378年
- Figure 2: Tōji monjo, box 159, 6.11.1429 (Shōchō 2) *Wakasa no kuni Tara no shō jōshi Yūken kishōmon*, accessed on 18 August 2021: hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=810, 八函/159/文書名若狭国太良庄上使祐賢起請文.
- Figure 3: *Kosaji kishōmon* (1556/Kōji 2) obverse with *Kumanosan hōin* (熊野山宝印), accessed on 14 August 2020: pulsesearch.princeton.edu/catalog/10166399.
- Figures 4-5: Tōji monjo, box 7, 4.25.1302 (Shōan 4) *Wakasa no kuni Tara no shō hyakushō Sō Gon'enra renshō kishōmon* reverse (Figure 4) with 1528 stamp on obverse (Figure 5), accessed on 31 August 2020: hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=24482, 函/番号お函/7/文書名若狭国太良庄百姓僧巖円等連署起請文年月日正安4年4月25日西曆1302年寸法 (mm) 縦296 x 横430, See Tōji monjo, box 7, for the 4.25 1302 (Shōan 4) *Wakasa no kuni Tara no shō hyakushō sō Gon'enra renshō kishōmon* 若狭国太良庄百姓僧巖円等連署起請文.
- Figure 6: *Shioda kishōmon* (1137), Shiga-ken kyōiku iinkai and Kōeki zaidan hōjin Shiga-ken bunkazai hogo kyōkai (eds.), *Ōkawa sōgō ryūiki bōsai jigyo ni tomonau hakkutsu chōsa hōkokusho 1, Shiotsu-kō iseki 1: Nagahama-shi Nishiazai-chō Shiotsuhama, Ibutsu hen 2, Mokkan* (Shiga, 2019), *shashin zuhan* 66.

Writing Oaths: Embodied Evidence in Fifteenth-Century Japan

Megan Gilbert*

This article examines the role of written oaths in preventing and resolving disputes in central Japan during the fifteenth century. It examines the circumstances in which probatory oaths were used and the characteristics that made them effective. Probatory written oaths, which established facts of past and present rather than making promises for the future, both depended upon and were constitutive of community cohesion. They were public performances that could accommodate a broad array of distinctions in social status, from imperial prince to temple servant. Written oaths were united by one shared danger – increased vulnerability to the sanction of deities. Conversely, different status groups had access to different methods, such as the prince writing on a talisman or the servant pulling a stone from boiling water, to lend weight to their oaths, which both humans and gods could then use equivalently. The disparities in effort helped to compensate for status differentials among disputants and witnesses.

After establishing the functioning of probatory written oaths in Japan – a function treated more sparsely than promissory oaths in the existing literature – this article analyzes the use of such oaths in resolving one type of dispute – accusations of adultery. Adultery was treated with increased severity as the century progressed. This example demonstrates how written oaths were used to investigate, proclaim innocence, and navigate status in public. Written oaths created factual consensus in disputes but left room to negotiate outcomes. Fifteenth-century Japan produced a rich array of records that reveal the negotiations that took place behind official action, particularly diary-chronicles – individuals' daily records (diary) that were intended to guide posterity in official actions (chronicles) – as well as meeting notes from the governing council of a major temple. Such records make it possible to capture some of the experience of using written oaths.

Keywords: Oaths, ordeals, kishōmon, medieval Japan, Muromachi era, ritual and writing, construction of community, juridical proof

One winter day near the end of the year Eikyō 10 (1438), someone broke into a storehouse of Tōji, a great temple in the south of the capital city of Kyoto, and stole a small fortune in goods, as well as a sword from the private possession of one of the temple's administrators. Within days, the temple's ruling council ordered lower-level monks and staff to gather before the bathhouse for a hot water oath, in which an oath-taker signed an oath and reached into boiling water to lift out a rock using the hand with which he had signed. Oath-takers who did

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so without injury had written truly, while those whose hands festered had lied. The temple's denizens gathered together, and it was determined that three men seemed suspicious: two serving attendants and one gate guard. The council invited a shrine priestess to preside, and with ceremony the men took their oaths. All passed the test, without burns or other mark of failure, and all three went free as the investigation continued.¹

Handwritten oaths, one form of which was the hot water oath, were important tools for establishing the facts upon which to base decisions in the fluid circumstances of fifteenth-century Japan. These oaths (*kishōmon*) boasted a place within most of the legal regimes that held sway during the Muromachi era (1336-1573). They appeared among estate documents certified by the imperial court and its bureaucracy, in the warrior law code that the Muromachi shogunate had inherited from the Kamakura shogunate, and among the practices of shrines and temples. The testimony established through a successful oath was accepted as valid by ruling shoguns, temples' governing councils, and village leaders alike, which made oaths invaluable for agreeing upon what circumstances existed. Oaths could establish a person's guilt or innocence of a specific crime, who had visited a particular temple during a particular span of time, or how devastating a localized disaster had been to crops. They could not alone determine what disputants should do about these realities.

Oaths invoked divine and community sanction, as well as the power of the written word to fix a statement in time and imbue it with a person's character, a potent combination. The deities who judged oaths included both grand, distant figures and the specific gods and buddhas of individual communities. The powerful – with access to knowledge, money, or weapons – were in a stronger position to buttress their oaths by writing in their own fine handwriting on paper consecrated in shrines, or to force others to swear difficult oaths and risk the wrath of deities and pain of physical injury. Yet both powerful and weak were bound by the outcome of an oath that was successfully sworn. Occasionally, powerful people avoided allowing their victims to swear oaths that might establish unpalatable truths.

Though the exact ceremony was rarely recorded directly, written oaths were not solely documents preserved for archives. They also lived in the public gatherings where people saw their neighbors write oaths and could watch for signs of deception; in the gossip that spread beyond the document when an important person wrote an oath; in the destruction or consumption of the paper upon which some oaths were written, to strengthen the connection between the words and the bodies that wrote them. Adaptable to the resources and exigencies of those who produced them, written oaths were experiences as much as they were documents; the experience of *writing* the oath was central, even when the ceremony producing and using it dictated that the *document* would not be preserved. While some oaths were preserved as original documents, many more are attested in diary-chronicles (*kiroku*), which recorded ceremonies and negotiations, or in other records of discussions, such as the minutes of a temple's ruling council. Few of these include the oaths' exact wording, but they fill in the circumstances under which people reached for oaths, particularly in denying accusations.

1 *Tōji nijūikkū kusōkata hyōjō hikitsuke*, Eikyō 10.12.26, ed. Itō *et al.*, vol. 3, 238-239. At least one unnamed person was tortured as part of the investigation, a reminder that a hot water oath was not the most dangerous threat a suspect faced. Ordeals by fire or water were practiced in western and central Europe until circa 1200, often in cases where oral oaths did not suffice. See Bartlett, *Trial by Fire and Water*. In medieval Japan, however, hot water oaths were not sharply distinguished from oaths written on a particular shrine's paper: they were different types of the same fundamental thing. I use the term »oath« throughout, even for actions that resemble European ordeals.

Written Oaths and Community

While traces of oaths date back to the seventh century and the document format remained in use through the early modern period, written oaths had their heyday during the medieval era. The earliest surviving proto-written oath dates to the twelfth century, and the format was codified in thirteenth-century Kamakura law and used ever more widely through the sixteenth century.² Written oaths in their mature form were composed of a content clause and an invocation clause: the first laid out what the writer was affirming and the second called down the wrath of the gods if the writer lied.³ Some or all of the oath was often written on a talisman or sacred paper from a shrine, to strengthen the presence of deities as witnesses.⁴

The medieval era saw the height of the administrative and conceptual combination of Buddhism and worship of local gods (*kami*) in Japan. Most major Japanese shrines and temples were in fact shrine-temple complexes, large administrative systems that encompassed both Buddhist temples and shrines to *kami*. One fractious institution, led by a Buddhist head monk and with a network of dozens of shrines and temples in the mountains north-east of Kyoto, was often-interchangeably called Mount Hiei (underlining the mountain), Sannō (the shrine), and Enryakuji (the temple).⁵ Smaller sites also blurred the institutional edges; Buddhist monks served in or led pilgrimages through mountain shrines, and most temples contained shrines to *kami*. The invocation clause at the end of one oath from Gen'ō 2 [1320] shows this multiplicity of deities in action, invoking the power of:

Bonten, Taishaku, the four Deva Kings and the various Great Deities who protect the capital, and especially of Tenshō Daijin (Amaterasu) in Ise, the three Gongen of Kumano, the Princes [along the route to Kumano] and their retainers, the two shrines of Mishima that protect the East (i.e. the Kantō), and particularly the Great Deity of the storehouse of this shrine estate, the Yakushi Nyorai of this temple.⁶

Bonten, Taishaku, and the Deva Kings were all Buddhist transformations of Hindu deities, imported into Japan by way of Chinese texts and rituals. Amaterasu was the sun goddess of Ise, whose priests were among the few who deliberately enforced a separation between their worship and Buddhist practices. Gongen were manifestations of buddhas as local *kami*, a practice common in East Asian Buddhism.⁷ The Princes and their retainers were the tutelary deities along the route of the Kumano pilgrimage (over 150 kilometers south of Kyoto),

2 Chijiwa, *Chūsei no seiyaku monjo*, 1-3. The Kamakura law code was the *Goseibai shikimoku*, also called the Jōei Formulary. The core code was issued in 1232, and is available in English in Conlan, *Samurai and the Warrior Culture*, 42-60, or transcribed and annotated in *Chūsei hōsei shiryōshū*, ed. Satō Shin'ichi and Ikeuchi, vol. 1, 3-55. The addenda specific to the use of oaths were issued later, and the most important can be found in *ibid.*, Addenda 73, 157, 294, 350, 635, vol. 1, 94-95, 127, 175, 199, 288.

3 Satō Hiroo, *Kishōmon no seishinshi*, 17-20.

4 For a vivid explanation of the most common talisman used, see Moerman, *Shugendō as social practice*, 219-230. He also traces oaths written on talismans into the early modern period.

5 Allan Grapard pioneered the use of the term »shrine-temple complex« to describe the Kasuga-Kōfukuji complex in the former capital of Nara (Grapard, *Protocol of the Gods*).

6 Satō Hiroo, *Wrathful deities*, 100. Parentheses in cited translation. For the original oath, see *Kamakura ibun: Komonjo hen*, Document 27394, ed. Takeuchi, vol 35, 328.

7 See Tyler, *Miracles of the Kasuga Deity*, for an assessment of how one Gongen cult (that of Kasuga Gongen) functioned, with a translation of a fourteenth-century account of the activities of the deity.

whose small shrines were generally staffed by hereditary shrine priests, priestesses, and Buddhist monks who specialized in serving *kami*.⁸ Finally, Yakushi Nyorai was the Medicine Buddha (Sanskrit Bhaiṣajyaguru), popular throughout East Asia, here conceptualized as both the central buddha image in the temple (which had multiple statues and painted images of buddhas and bodhisattvas) and the primary divinity of the estate on which this oath was being sworn. The oath incorporated deities from many backgrounds.

Satō Hiroo, examining deities in invocation clauses from across the archipelago, argues that only localized deities – gods connected to the land of Japan and specific buddhas housed in individual temples – could enforce oaths.⁹ Christopher Mayo uses the idea to show that sixteenth-century oath writers modified their invocation clauses to include gods and buddhas connected to their native lands and families, which implicitly transformed oaths into statements of the oath-takers' relationships to local deities and institutions.¹⁰ Thomas Keirstead emphasizes that, in fourteenth-century peasant protests, the same language was used and the same gods invoked in the oaths that proprietors used to control peasants and those that peasants used in their oath-sworn protests.¹¹ In all of these analyses, as in many of the other articles in this volume, oaths and the deities called to witness them were fundamentally connected to community, its creation, and the position of the speaker within it.

Maintaining communities often involved coercion, both forcing people to make oaths and using oaths to control behavior. Philip Garrett shows that the powerful temple of Mount Kōya (between Kyoto and Kumano) required lay administrators of its estates to write oaths that they would not intrude upon monks' residences or harass villagers, reducing the power of administrators vis-à-vis the temple. These oaths were retained as leverage, to make the temple the highest court to which locals had access and to protect its monks from intrusion for tax collection, investigation of theft, or anything else.¹² Elizabeth Oyler, in her book on fourteenth- and fifteenth-century tales about the late twelfth century, notes that being compelled to sign an oath was apparently common enough that rationalizations had developed: »This is not an oath that I write from my heart,« one warrior justified himself. He hoped that the deities invoked would forgive him but still sent his liege – a child living in his house – to another's home to insulate him from potential divine retribution.¹³ Like Garrett's estate administrators, Oyler's character had to choose between writing the oath and losing everything. The compulsion affected the perceived binding power of the oath but did not invalidate it entirely.

8 Moerman, *Localizing Paradise*, 16.

9 Satō Hiroo, Wrathful deities, 96-105; a longer treatment appears in Satō Hiroo, *Kishōmon no seishinshi*.

10 Mayo, *Mobilizing Deities*, 204-206.

11 Keirstead, Theater of protest, 370-379.

12 Garrett, Crime on the estates, 79-112.

13 Oyler, *Swords, Oaths, and Prophetic Visions*, 69-70. The quote is from the *Genpei jōsuiki*, a set of tales compiled in the fourteenth-fifteenth centuries, covering the same war (late twelfth century) as the more famous *Tale of the Heike*. Harm coming upon one's family and household was an important sign of a failed oath.

Much of this scholarship focuses on promises of future behavior: Mayo's warriors vowed obedience, Garrett's administrators not to interfere with the temple's monks, and Oyler's character to turn over his lord. However, to thus emphasize the oath as a constraint upon *future* behavior – a »promissory oath« – distorts its form and function in medieval Japan. Most oaths operated in the present, based upon the oath-taker's current knowledge. They were »probatory oaths« that were more effective in establishing facts on the ground than binding action far into the future. Garret's administrators were, from a different perspective, affirming their knowledge and acceptance of the rules of the temple's estates, rather than binding themselves forever. Most of their oaths did not invoke the gods' punishment if the oath-taker violated these rules; punishment descended »if I speak falsely« at the moment of swearing.¹⁴ While some of Keirstead's peasants swore to abscond in the future if their demands were not met, most instead laid the groundwork for the future by attesting to their prior experiences and current situation. They reinforced the weight of their petitions to their monastic overlords by invoking the wrath of the temple's buddha and other local deities if they had lied about their grievances.¹⁵

In other words, the deities judging the oath did not need to be prescient or to watch for eternity: they judged based upon the oath-taker's honesty at the moment of writing and for the short span thereafter as all interested parties watched for signs of failure. The most dramatic oaths promising unambiguous future action appear in tale literature, such as the fourteenth-century *Taiheiki* account of one general reneging on his vow to support another »for seven generations,« whereupon the betrayed general used the broken oath as a battle flag and the oath-breaker suffered defeat.¹⁶ Promissory oaths binding future behavior appeared more often in fiction than quotidian reality.

14 Garrett cites many oaths swearing to what he calls a »code of conduct,« including Documents 1546 (Shōkei 1 [1332].07.12), 1590 (Shōō 4 [1291].09.18), 1593 and 1594 (Shōō 4 [1291].09.19), 1599 (Kengen 1 [1302].12.15), 1600 (Kengen 1 [1302].12.14), and 1614 (Shōō 4 [1291].09.18) in *Kōyasan monjo*, ed. Tōkyō Teikoku Daigaku Shiryō Hensangakari, vol. 7, 131-136, 192-197, 200-210, 216-223, 241-246. Each ends, before its invocation clause, with a slight variant on the same phrase: »此條構申虚言者,« essentially »If I falsely speak a lie ...«

15 Keirstead, Theater of protest, 359, 375. For one petition from Yano Estate in Harima Province to Tōji, see »96. Harima Yano-shō bandō-ra rensho kishōmon«, in: *Tōji monjo*, ed. Tōkyō Daigaku Shiryō Hensanjo, Meitoku 4.09. xx, v. 11, 217-218. Editor hereafter abbreviated TDSH.

16 Kikuchi ikusa no koto, in: *Taiheiki*, ed. Hyōdō, vol. 5, 248-250, discussed in this volume by Conlan.

Most written oaths preserved as originals documented multiple parties mutually swearing to something in the present but relevant in the future, such as the location of a property's boundary, or membership in an organization. Oaths in diary-chronicles were more often one-sided and ephemeral, such as when a suspect swore innocence of a crime.¹⁷ Some were part of an official inquiry, while others were made to avoid a formal accusation. In both cases, those demanding and volunteering written oaths were trying to determine the truth, or at least *a* truth acceptable to all stakeholders. Rather than mandating future behavior, probatory oaths helped patch over breaches created by violations or confrontations.

The Public Experience of the Oath

Many oaths were as public and visible as the oath before the bathhouse of Tōji that opened this article. Most lacked the immediate temporal violence of injury by boiling water.¹⁸ Instead, the worldly cost might be confinement, waiting for the gods' verdict within a shrine or building. It might be the literal expense of obtaining sanctified paper on which to write. It might, at the most advantageous end of the scale, simply be the reputational cost of having put a statement in writing. All cases, however, entailed a special vulnerability to the divine for some span of time.

A ruler reassuring an underling of his sincerity could simply add an invocation to a letter: the significance of his position ensured that word would spread. When Ashikaga Yoshimitsu wrote to Shiba Yoshiyuki in Ōei 9 (1402) to assure him that Yoshimitsu did not intend to attack the Shiba, despite rumors to the contrary, a ritual expert visited to congratulate Shiba

17 Shimizu, *Nihon shinpanshi*, 236-247. Shimizu compiles a list of 87 incidents in which one type of oath (the *yugishō*, or hot water oath) was used during mid-Muromachi (1400-1570). He distinguishes between 1) inquiries wherein an investigator had suspects and/or witnesses write the oath (54 examples), and 2) two-party dispute resolutions, wherein both sides wrote oaths (33 examples). Of the criminal investigations, well over half of the 54 incidents are attested only in diary-chronicles (*kiroku*); almost all of the rest were copied by unusually rigorous record keepers at Tōji. By contrast, two-thirds of the two-party oaths survive as originals or officially authenticated copies. While hot water oaths are an unusual type of written oath, the disproportionate appearance of two-party dispute resolution in preserved originals versus criminal inquiries in diary-chronicles suggests the two types of sources capture different uses of oaths. Though I have not collected surviving *kishōmon* exhaustively for contrast, I have found a similar preponderance of investigative goals in the use of *all* types of written oaths mentioned in fifteenth-century diary-chronicles.

18 In Peter Brown's classic, *Society and the supernatural*, 307-317, he emphasizes the function of the ordeal in ending a dispute and healing the community. By contrast, oaths were used with less fanfare in investigations. As examined later in this article, written oaths in the Muromachi era (1336-1573) had the probatory finality of Brown's ordeals – establishing unquestionable facts – but what the parties chose to do with those facts remained up for discussion. They did not have the same finality of outcome as ordeals.

Yoshiyuki on this indication of safety. The expert noted that not only had Yoshimitsu sworn he had no lethal plans against the Shiba, but he had more importantly written the oath in his own hand.¹⁹ Yoshimitsu followed up this oath with an ostentatious visit to Shiba Yoshiyuki – for which Yoshimitsu provided the money for refreshments – to further highlight his generosity and goodwill.²⁰

Yoshimitsu had transferred the office of shogun to his son nine years earlier, but he retained both control of the government and the ability to give orders to the warrior governors (*shugo*) and their armies.²¹ Shiba Yoshiyuki, too, had retired from his post as shogunal chancellor (*kanrei*) and taken vows as a Buddhist lay monk, but he retained authority over his family. His son in turn held the office of shugo in three provinces. A few years earlier, in 1399, Shiba armies had been crucial to Yoshimitsu's victory against another powerful *shugo* family, the Ōuchi. This victory was a mere one year after Yoshimitsu had visited the head of the Ōuchi in a display of amity to quell rumors that Yoshimitsu planned to dispose of his *shugo* ally. Thus, while Yoshimitsu unquestionably had greater status and power than Shiba Yoshiyuki, Yoshimitsu did need to convince him not to (justifiably) panic and attempt rebellion.²²

The combination of divine invocation, writing, and public gesture was persuasive, with elements of both reassurance and coercion in each component.²³ The visit highlighted both Yoshimitsu's gift-giving and his inexorable physical access to Shiba Yoshiyuki, since they both lived in the capital. The writing bound Yoshimitsu to his word and reinforced the value of his handwriting. Finally, the invocation opened Yoshimitsu to the gods' wrath and increased the pressure – helpfully spelled out by the ritual expert in his visit – upon Shiba Yoshiyuki to believe him. The social, material, procedural, and sacral elements were entangled and mutually reinforcing.

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- 19 *Yoshida-ke hinami-ki*, Ōei 9.12.02 (更不被知食之旨及御誓言、剩被染御筆、仍無為之珍重也), suggested and transcribed by Horikawa Yasufumi, *pers. comm.*, 12 January 2020. Ashikaga Yoshimitsu did not swear never to move against the Shiba; he swore that he had no intent or was making no moves to do so: a promise in the form of a probatory oath. It should also be noted that the ritual specialist and author of this diary-chronicle entry, Yoshida Kaneatsu, enjoyed significant patronage from Yoshimitsu. Documentary note: this letter probably should not qualify as a *kishōmon* by the standards of modern diplomatics; Yoshimitsu is unlikely to have adhered to a format, and the diary-chronicle describes it as a spoken oath (*seigen*) written in his hand (*hitsu*), rather than a strict »written oath.« It was, however, an oath that was written and thus falls within the scope of this paper.
- 20 *Yoshida-ke hinami-ki*, Ōei 9.12.20 (今日御所入御右衛門督入道、是去七日被送遣一獻料足、万疋、彼身上事有荒説等之間、可有渡御之由被仰了).
- 21 For a brief political overview of events under Ashikaga Yoshimitsu, Yoshimochi, and Yoshinori, see Souyri, *The World Turned Upside Down*, 143-148. For a more detailed account of how Yoshimitsu wielded power, see Conlan, *From Sovereign to Symbol*, 171-186. For more detail on Yoshimochi's power, see Ishihara, Ashikaga Yoshimochi.
- 22 For the Ōuchi uprising (Ōei no Ran, in Ōei 6 [1399]), see »Ōeiki« in Tyler, *Iwashimizu Hachiman in War and Cult*, 107-130. Ashikaga Yoshimitsu's gestures toward Ōuchi Yoshihiro appear in *Yoshida-ke hinami-ki*, Ōei 5.07.23 and 07.26, transcribed by Horikawa Yasufumi, who generously shared his transcription and some of his analysis in *pers. comm.* 12 January 2020. The original is held in the central library of Tenri University.
- 23 Examples – like this – of people of high social status and significant power writing oaths to those with less are rare and generally carried a similar blend of concession and coercion. For an example by Ashikaga Takauji, Yoshimitsu's grandfather, in which he required a warrior to remain part of his army, see »#572: Ashikaga Takauji kishōmon-an«, in *Shimazu-ke monjo*, Jōwa 2 [1346]. Intercalary 9.14, ed. TDSH, vol. 1, 598-599, discussed in this volume by Conlan. For an earlier, translated example of an imperial lady disturbed by receiving a letter vowing love from her probably-highborn former lover, see Nakanoin Masatada no Musume, *Confessions of Lady Nijō*, trans. Brazell, 89-91, with thanks to Brian Steininger for suggesting it.

Just as a ruler could use a written oath to persuade his underling, so too could villagers use a written oath to persuade their overlords. When the people of Yano Estate faced bad harvests, they appealed to their landlord, Tōji, for a reduction in taxes. Representatives from the estate journeyed to Tōji in the capital, bearing a written oath attesting to their circumstances. There, they appealed to the governing council of Tōji for a greater reduction than the monks were initially inclined to give them: two times Tōji's original suggestion. The representatives argued that, having gone so far as to submit a written oath, they would find it difficult to accept a smaller reduction.²⁴ The temple's records do not specify exactly why the petitioners and the council considered the written oath such exceptional effort. The fact that the villagers were in the capital, standing before the Tōji council and refusing to leave empty-handed, surely had an impact, but Tōji records make no reference to travel, or to the number of representatives who had come, only to the presentation of the written oath. Most likely, the act of the oath itself was a risky one: every person who signed it and potentially all of their dependents had put themselves squarely within the sight of divine powers, vulnerable to divine punishment. By swearing successfully, they had enlisted on their side the very deities that the monks of Tōji honored.²⁵ The council delegated one of their number to negotiate with the representatives, accepting the Yano representatives' basic assertions but arguing about the significance of the fact that only part of the estate was directly impacted by flooding and bad harvests. They eventually split the difference in taxes.

Villagers who affirmatively chose to swear a collective oath about their own circumstances were in perhaps their strongest position. When a theft wracked an estate, the local notable could demand that everyone concerned gather at the local shrine to write out oaths, and absence might carry a strong whiff of guilt.²⁶ In many cases, there was some fact-finding beforehand, perhaps in the form of interviews, or gossip, or anonymous written accusations, to narrow down the pool of suspects and witnesses. In other cases, the net was wider, encompassing everyone in the area of a certain rank or age. Even the priests of the shrine where the oaths would be sworn were not immune to this pressure, though they might be in a stronger position to refuse and survive the consequent presumption of guilt. With everyone on shrine grounds and under the eye of investigators and deities, people wrote their oaths. Usually a hereditary shrine priest or priestess supervised, though they did not have to be directly tied to the location where the oaths were held. The oaths were marked by ceremony and often observed by interested members of the local community. If there were few enough oath-takers,

24 *Tōji nijūikkū kusōkata hyōjō hikitsuke*, Eikyō 7.09.28, 11.21, 11.24, ed. Itō *et al.*, vol. 3, 117, 120-121.

25 This commonality between Tōji landlords and Yano peasants is Keirstead's argument in *Theater of protest*, 370-379, though he puts less emphasis on the inherent metaphysical danger of the oath.

26 The following description is a composite, drawn primarily from incidents in *Kanmon nikki* and *Tōji nijūikkū kusōkata hyōjō hikitsuke*, as well as codification in Kamakura and Muromachi law. For examples, see Gosukō-in, *Kanmon nikki*, Eikyō 3.06.04-05 and Eikyō 8.05.19, ed. Kunaichō, vol. 3, 291; vol. 5, 268-269; *Tōji nijūikkū kusōkata hyōjō hikitsuke*, Eikyō 7.02.07 and Eikyō 10.12.26, ed. Itō, *et al.*, vol. 3, 100-101, 238-239; 73. Kishōmon shitsu jōjō, in: *Chūsei hōsei shiryōshū*, ed. Satō and Ikeuchi, vol. 1 (*Kamakura bakufu hō*), 94-95; 319: Sakai sōron yugishō no koto, in: *ibid.*, vol. 2 (*Muromachi bakufu hō*), 276.

they could be confined on the grounds of the shrine for three or seven days, or a maximum of two weeks. Larger groups might return home, but they would remain vulnerable and visible to each other for up to two weeks as everyone awaited the outcome of the oaths. Observers awaited signs of failure (*shitsu*), which were primarily negative bodily changes after swearing an oath and could include falling ill, bleeding, or choking.²⁷ These are a reminder that swearing an oath was a dangerous thing, even without direct involvement of physical pain in the process. The gods could kill, and if they did not, developing a fever at an inopportune moment could condemn a suspect.

The greater the power of those making accusations, the higher the status of those they could force to swear an oath. An imperial prince of a disinherited branch, Sadafusa (1372-1456), lived on his Fushimi Estate just outside the capital, where he recorded the details of many oaths, both those in which he was embroiled and those that he observed. A prince and estate proprietor with strong social ties to the capital, he was also an active observer of life in the villages of Fushimi. He lacked significant wealth and authority outside the estate, however, and thus failed to force an antagonistic local warrior family on his estate but backed by powerful allies in the capital, to swear the oaths he demanded. By contrast, the shogun Ashikaga Yoshinori, in his fourth year as ruler and grown into his power, forced aristocrats of the third and fifth ranks to swear oaths and remain confined under monitoring for first three, then another seven days.

Hot water oaths (*yugishō*) like the one that began this article were not significantly different in circumstances from other oaths. Like other probatory oaths, they often happened in reaction to thefts or other crimes that angered an authority. Investigation or community consensus determined who would have to swear the hot water oath, though authorities seem to have been more particular about narrowing down the pool. All surviving records of hot water oaths document small numbers of oath-takers: usually one or two, and no more than six, in contrast to the population-wide sweep of some less painful probatory oaths.²⁸ When two villages feuded, an irritated arbiter could suggest that they each select a representative to swear a hot water oath, a threat that often drove the villages to greater compromise. Both circumstances – the limited use in criminal investigation and its role as a goad to compromise in negotiations – suggest that hot water oaths were uniquely frightening, above and beyond the fear of making oneself vulnerable to the gods. The tangible threat of scalding water had its impact, even when the form and purpose were otherwise the same as other oaths.

Like other oaths, hot water oaths were marked by ceremony and supervised by priests or priestesses. The signs of failure for a hot water oath were rapid and straightforward: burns or scalds, especially infected ones. These could take a few days to appear, but seldom more than three, and the verdict was often clear the same day. Calculating from surviving references, about half of those subject to hot water oaths went free, even when authorities emphatically suspected them and wanted someone to blame. In a world in which torture was a valid tool of investigation, hot water oaths were a mixed blessing: a painful and terrifying experience on both a sacred and worldly level, but also a shield against the anger of the powerful.

27 73. Kishōmon *shitsu jōjō*, in: *Chūsei hōsei shiryōshū*, ed. Satō and Ikeuchi, vol. 1, 94-95. See also Shimizu, *Nihon shinpanshi*, 17-20. The character for *shitsu* (失) is a flexible one meaning mistake, loss, or failure. It is clearly negative, but lacks a sense of intentional error.

28 Shimizu, *Nihon shinpanshi*, 236-246.

Written Oaths and Status Distinctions

Diary-chroniclers were exquisitely aware of status distinctions, and their descriptions of the circumstances surrounding different types of written oaths highlight the flexibility that oaths had to accommodate disparate statuses, as in the late medieval towns discussed by Olivier Richard in this volume. A ruler addressing a subordinate could append an invocation to an otherwise normal letter, while a noble could obtain sacred paper from a powerful shrine and write the oath upon that for added force. Commoners faced with the wrath of a shogun or landlord could ingest their oaths or perform a more painful hot water oath, putting not only their handwriting but their bodies visibly in jeopardy to prove their truthfulness.

The fifteenth century saw a sharp spike in hot water oaths.²⁹ Most of those permitted or compelled to take such oaths were of lower status: no courtier highly ranked enough to meet the emperor, for example, took a hot water oath. These oath-takers were not without status, however: very low-ranked courtiers, monks who headed small temples, village representatives, capital merchants, and retainers of powerful *shugo* were all subject to such oaths if the case was serious enough.³⁰ Courtly writers referred to villagers (*hyakushō*) or those below courtiers (*jigenin*) writing hot water oaths, but even the most observant among them seldom noted status distinctions within villages, so it is difficult to be certain whether »writing« a hot water oath required more than just inking one's assent. Unfortunately, hot water oaths were often destroyed in the process of using them.³¹ Very few originals survive: most are attested only in reference or copy, making it impossible to evaluate the original handwriting.

A body of oaths written by rural commoners do survive as original documents, however: collective oaths swearing to join a village, estate, or family coalition, or confirming agreement to a multi-party settlement. A number of these multi-party originals have signatures in different hands from that of the main text of the oath, suggesting that oath-takers perhaps needed only to sign for the oath to be valid and the power of writing to take hold.³² Some

29 Shimizu, *Nihon shinpanshi*, 2-6, 48-49.

30 For a list of *yugishō* between 1400-1600, see Shimizu, *Nihon shinpanshi*, 236-247. See also Chijiwa, Daishi kanjō kishōmon, 170-174 for an example of sharp status distinction between members of the Yotsutsuji family (third and fifth rank courtiers) and their retainers and intimates (*aosamurai* and *nakama*): the former swore *daishi kanjō kishōmon* (without immediate physical pain) and the latter swore *yugishō*. This incident is discussed in greater detail later in this article.

31 Gosukō-in, *Kanmon nikki*, Eikyō 3.06.07 and Eikyō 8.05.19 (includes significant detail about the process), ed. Kunaichō, vol. 3, 292; vol. 5, 268-269.

32 For an example of multiple signatures (on the left), see the Eiroku 6 Kishōmon translated and further discussed in this volume by Horikawa. It was signed not only by a disputing family, but also possibly by those mediating the conflict. Available at Kishōmon 2. Eiroku 6 (1563), arks.princeton.edu/ark:/88435/n009w555s, retrieved from Princeton University East Asian Library Rare Books on 31 October 2020.

villager coalition oaths were even signed with simple x's and circles, suggesting that several participants might not even have been literate enough to write their own names.³³ Thus, while one might assume that only the literate could swear written oaths, people who were, if not illiterate, certainly not fully literate did sign oaths that have been preserved in their original form. It is thus reasonable to assume that such people may have signed probatory oaths that were disposed of in the process of investigation. Most likely, hot water oaths applied to those below the level of high court nobility (aristocrats of the fifth rank or above, *shugo* warrior lords, or comparable religious officials) but with some status within their community: such oaths were painful but useful leverage.³⁴

At the other end of the scale of pain and effort, when a powerful person transformed an otherwise ordinary letter into an oath by adding an invocation clause, the value of their writing in itself was great enough to give force to the oath. Yet both an imperial prince and a villager accused of theft »wrote« their oaths, in the words of contemporary observers, which emphasizes the continuity that lay between them. Written oaths in medieval Japan thus existed on a spectrum of severity that relied simultaneously on social and divine sanction. The heightened value placed upon writing in one's own hand as an act of truth gave well-educated – usually higher-status – individuals preferential access to proof without pain.³⁵ Less extreme rituals, such as the burning and consumption of an oath or the use of consecrated paper to increase the presence of deities, were options midway between the ease of a letter and the pain of hot water. The expectation that a false oath would result in damage to the body, such as illness or nosebleeds, also extended physical risk to those of the highest status in the case of falsehood.

Relative status was not static and sometimes depended on the seriousness of the charge. In Ōei 25 [1418], rumors began to circulate that a palace lady (*naishi*) had become pregnant at a drinking party in Fushimi, the home estate of Prince Sadafusa and a popular spot for short trips away from the capital. The matter escalated over the course of weeks: while at first only the emperor was upset, the shogun eventually became involved in trying to discover the truth. Not only Sadafusa himself, but also several of his closest retainers – including a former high minister and the head of the Fushimi temple where the lady was supposed to have gone for retreat – sent blunt oaths to the shogun attesting that they had not attended a party with the lady, nor even interacted with her.³⁶

33 Several examples are available from the Kyōto furitsu Kyōtogaku [Kyoto Prefectural Library]'s online Tōji Hyakugo Archives. See »Hōshōgon'in terabe satanin hyakushō-ra rensho kishōmon,« box *ke*, item 45 (Bunna 4 [1355].10.19), hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=10908; »Wakasa-kuni Tara-shō daikan kenka-ra rensho kishōmon,« box *shi*, item 90 (Ōei 22 [1415].11.21), hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=27208; »Yamashiro-kuni Kamkikuze-shō Inoue Ujijoshi-ra rensho kishōmon,« box *wo*, item 163 (Kakitsu 2 [1442].07.08), hyakugo.pref.kyoto.lg.jp/contents/detail.php?id=20612, retrieved from The Hyakugo Archives WEB on 31 October 2020. The monogram signatures in the last example range from simple bisected circles to sophisticated characters.

34 Shimizu, *Nihon shinpanshi*, 110-141.

35 Creamer, *Imperial Scribal Network*, 153-174. Creamer emphasizes the social value of Prince Sadafusa's handwriting throughout, but in this section (»Truth is in the Hand«), he extends the idea, showing how writing added probative value to the statements of others faced with accusations as well; Shimizu, *Nihon shinpanshi*, 101-103.

36 For the events, see Gosukō-in, *Kanmon nikki*, Ōei 25.07.02, 25.07.11, 25.07.14-22, ed. Kunaichō, vol. 1, 214-222. For a summary in English, see Creamer, *Imperial Scribal Network*, 158-162. Note that Creamer used the *Gunsho ruijū* version of the *Kanmon nikki*, while I use the more recent Kunaichō version cited above. There are occasional differences.

Prince Sadafusa wrote his initial denial as a letter with an invocation clause, enclosed with the sworn statements of his retainers. The shogun – not the emperor – was handling the investigation, and Sadafusa was communicating directly with Jōsō, the shogun’s trusted intermediary, who had retired from his court rank and his office as the shogun’s tutor but held greater influence than when he had been tutor. Sadafusa’s letter might reach the shogun, but it was not addressed directly to him. Later, in response to Jōsō’s advice and on the understanding that the shogun wished it, Sadafusa obtained an ox-king talisman (*goō hōin*) from Kitano Shrine in Kyoto to write a new, more formal oath denying the accusation. The new oath was not addressed directly to anyone, though Sadafusa expected the shogun to see it. This oath satisfied the shogun.³⁷ The exact choice of oath level thus becomes a complex negotiation of factors: the status of writer and recipient, the severity of the accusation, and ultimately the likelihood of recipient disbelieving oath-writer and the dangers that could follow such disbelief.

Subject of Investigation: Adultery

Adultery – or unspecified misbehavior with women – was not an unusual reason to demand oaths. Policy regarding rape and adultery changed over the course of the Muromachi era, until in the end a man was permitted to kill anyone for sleeping with or raping his wife as long as they were inside his house.³⁸ While this had deadly implications for women, it also weaponized sex against other men. In the above incident concerning Prince Sadafusa in 1418, the accusation of adultery roused the emperor’s fury and gained force in rumor because the emperor had no heir and was periodically ill. Sadafusa, by contrast, was healthy and married to a woman who had already given him a daughter and would bear a son the next year. He was also descended from a deposed emperor. Sadafusa was quiet but persistent in his view that the throne should revert to Sadafusa’s line if his cousin Emperor Shōkō (r. 1412-1428) died without issue.³⁹ He finally succeeded in having his son placed on the imperial throne a decade later. The subject of Sadafusa’s relationship with one of the palace ladies, who could bear heirs to the emperor, thus became a flash-point, and adroit use of written oaths proved necessary to quiet suspicions.

In Prince Sadafusa’s case, the shogun wanted to minimize the disruption caused by the accusation of adultery, but in other cases disruption proved a potent weapon for the powerful to wield against men whom they could not otherwise target. The years 1428-1429 saw the elevation of both a new shogun and a new emperor, neither of whom were their predecessor’s sons or obvious heirs. The new shogun’s predecessor (and elder brother) did not name an heir, instead leaving the selection between his four surviving brothers to a sacred lottery drawn at a powerful shrine-temple in the capital. Ashikaga Yoshinori took pride in

37 Gosukō-in, *Kanmon nikki*, Ōei 25.07.14-17, 07.22, ed. Kunaichō, vol. 1, 219-222.

38 Tonomura, Sexual violence against women, 135-152.

39 Creamer, *Imperial Scribal Network*, 22-24.

ascending due to divine choice, but he had spent most of his life as the head of a Buddhist temple, and ambitious figures – including warrior governors (*shugo*), imperial aristocrats, major religious institutions, and even wealthy merchants – jockeyed for power during the rocky transition. That same year, the retired emperor⁴⁰ adopted Prince Sadafusa's son as his heir after the death of his own son, who was the emperor. He probably did so under pressure from the newly-empowered Yoshinori, with whom Sadafusa had a cordial, if distant, relationship. Yoshinori had, for example, visited Sadafusa's Fushimi estate several times to enjoy theatrical performances with him long before anyone realized he might become shogun.⁴¹

Retired Emperor Go-Komatsu's⁴² relationships with both Sadafusa and Yoshinori were, by contrast, distinctly frosty. When one of Yoshinori's close friends and aristocratic allies, Sanjō Sanemasa, allegedly impregnated one of Go-Komatsu's ladies – specifically a lady of the Hino family, which had supplied wives as well as ladies-in-waiting for both emperors and shoguns – Go-Komatsu seized the opportunity. He sent a trusted messenger to the new shogun to demand severe consequences.⁴³ The shogun refused to do anything beyond removing Sanjō from guard duty at the palace, citing the recent pardon of another courtier for the same offense.⁴⁴

Go-Komatsu therefore drafted an oath that he wanted everyone – from imperial princes through any courtier of rank down to the doctors and prognosticators – to write. The oath specified that any incidents of crimes with women (*nyoban*) in the palace or retired emperor's residence should be strictly punished with banishment and/or seizure of property and privileges, regardless of the social status of the accused. Sadafusa was uneasy about the demand, particularly since some of his own retainers who had been caught up in the 1418 incident still had occasional guard duty at the palace and might get entangled in future incidents.⁴⁵ The entire project seems to have been an ostentatious exercise of Go-Komatsu's power as retired emperor and senior living member of the imperial family, while Sanjō suffered no significant penalty and eventually reached high ministerial rank.

40 The classic treatment of retired emperors as the dominant figures in the Japanese imperial court is Hurst, *Insei*. For later developments in the role of retired emperors, see Conlan, *From Sovereign to Symbol*, 32-35. Even after the Heian era, while the imperial court increasingly shared power with the Kamakura and Muromachi shogunates, the retired emperor remained the dominant figure within the imperial family, more influential than the emperor himself.

41 See Gosukō-in, *Kanmon nikki*, Ōei 27.03.09, ed. Kunaichō, vol. 2, 25 for one example.

42 Go-Komatsu (1377-1433) reigned as emperor around the turn of the fifteenth century (1382-1412), but he dominated the imperial court until his death. After resigning the throne in favor of his son, who became Emperor Shōkō, Go-Komatsu exerted authority as an *in*, or retired emperor. Though vulnerable to the monetary and martial power of the Ashikaga shoguns, Go-Komatsu's moral and social power waned only at the end of his life, after his son died without an heir and Go-Komatsu had no choice but to adopt a member from another line of the imperial family as his successor.

43 Gosukō-in, *Kanmon nikki*, Eikyō 2.05.11, ed. Kunaichō, vol. 3, 197-198.

44 Madenokōji, *Kennaiki*, Eikyō 1.03.29, ed. TDSH, vol. 2, 27; Nakayama, *Sakkaiki*, Eikyō 2.04.23, ed. TDSH, vol. 4, 256. The pardoned courtier was Tōin Sanehiro, who had been censured and dismissed from office in Eikyō 1 [1429] for an affair with one of the retired emperor's ladies (of the Wake family). He was restored to court rank and guard service within the imperial palace sometime before Eikyō 2 [1430].04.22, when he appeared on a duty roster. How this happened is unclear.

45 Yokoi, *Kanmon gyōki*, 254-256.

The shogun held a grudge, however. Rumors arose in 1432 that Go-Komatsu's messenger, Yotsutsuji Sueyasu, who had delivered that accusation two years before, had committed adultery (*mittsū*) with one of the retired emperor's ladies.⁴⁶ Perhaps Yoshinori felt strongly about the lady's honor: she was likely the blood sister of one of his own messengers, and Yoshinori learned of the matter through one of his ladies. More likely, however, he saw a chance to punish Go-Komatsu for having used the accusations of adultery two years earlier.⁴⁷ As was Yoshinori's custom, he exploited a crack in the Yotsutsuji family and used Sueyasu's nephew to make the accusation that several of Sueyasu's attendants and intimates had told him that Sueyasu had committed the crime. When the retired emperor tried to brush the matter aside, Yoshinori pointedly noted that such acts were »great crimes,« in Go-Komatsu's words, and insisted on elaborate written oaths. He sent two of his official messengers to supervise and would have sent a third, but the man objected that he was too senior for criminal fact-finding; Yoshinori substituted another high-ranked courtier with strong shogunal ties.⁴⁸

Initially, Yotsutsuji Sueyasu, a third-rank aristocrat, and his nephew, a fifth-rank one, wrote ordinary oaths, while Sueyasu's attendants wrote hot water oaths: a direct demonstration of the importance of status. The results were inconclusive; no one suffered any signs of failure, but the shogun refused to leave the matter. Two months later, he demanded that the Yotsutsuji men swear »Daishi Kanjō« oaths, a form particularly associated with Mount Hiei, where Ashikaga Yoshinori had served as head monk before returning to lay life and taking the shogun's office.⁴⁹ They were confined for three days to a single temple building, monitored for signs of failure, and guarded by an official court-shogunate messenger, who was too highly ranked for such menial duty. The Yotsutsuji uncle and nephew again came out clean, but Sueyasu's attendants had fled, so the shogun ordered the Yotsutsuji to confine themselves for a further seven days in the messenger's home.⁵⁰ Three days was normally the maximum time to confine a courtier for monitoring, so adding seven more was more punitive than investigative; as courtiers, uncle and nephew at least escaped the pain of the hot water oath. Their attendants might have feared another hot water oath or seen no good outcome for themselves in this battle of he-said, he-said. Finally, in the last days of Sueyasu's confinement, Go-Komatsu sought and received permission from the shogun to pardon both Sueyasu and his nephew. The record is smudged, so it is difficult to be certain, but Go-Komatsu seems to have acknowledged that some inauspicious sign for Sueyasu had appeared, giving Yoshinori the appearance of rectitude.

46 Gosukō-in, *Kanmon nikki*, Eikyō 4.08.06, ed. Kunaichō, vol. 4, 81-82.

47 Chijiwa, Daishi kanjō kishōmon, 170-174.

48 Gosukō-in, *Kanmon nikki*, Eikyō 4.08.15, ed. Kunaichō, vol. 4, 84-85.

49 Chijiwa, Daishi kanjō kishōmon, 175-177.

50 Gosukō-in, *Kanmon nikki*, Eikyō 4.10.11, 10.14, ed. Kunaichō, vol. 4, 102-104.

The incident shows the tensions involved in trying to wield the power of written oaths, especially as it interacted with the more blunt power of physical force. A successful oath meant that even the shogun could not demand someone be punished for a crime. It did not, however, necessarily save oath writers from being required to swear again, if an authority was willing to expend enough effort, and this shogun was. The demand for oaths became a genteel imprisonment, as the capital waited for one of the Yotsutsuji men to slip. Such action was deeply irregular, however. Sadafusa described Ashikaga Yoshinori's abrupt demand for a second, harsher oath, guarded for days by the official court-shogunate messenger, as »unheard of,« though exactly which element he objected to is ambiguous.⁵¹ Perhaps this defiance of custom – not only forcing Sueyasu to swear again, but keeping him imprisoned by his fellow courtiers while doing so – helped to protect Yotsutsuji Sueyasu when the retired emperor sought a compromise. Misuse of written oaths had not given the shogun leverage to banish or kill.

Yoshinori was not the only shogun to use accusations of misconduct with women as a political weapon, though he was the first to do it so obviously and unilaterally. Ashikaga Yoshimochi was more circumspect than his younger brother (and successor), so when he faced a politically-motivated accusation in Ōei 34 [1427] that his friend and close retainer had committed some heinous misdeed with a woman, Yoshimochi did not defend him. He refused even to allow his friend to write an oath declaring his innocence. The friend had become a political liability, and his death would solve a number of problems; the alleged act itself, though never recorded, also seems to have been infuriating. Had the accused successfully sworn a denial, Yoshimochi would have had to accept it. Instead, he *himself* swore an oath that he would never speak to his friend again, to forestall reconsideration. He claimed that the accuser, the respected Lady Takahashi, dowager concubine of his father Yoshimitsu, had already done all necessary investigation and that his one-time friend would only incur the deities' wrath if he tried to write a false oath of denial. Yoshimochi demanded the accused commit immediate suicide.⁵² The sacred power of oaths was respected, and the inconvenient friend who was not permitted to use that power died.

51 *Gosukō-in, Kanmon nikki*, Eikyō 4.10.11, ed. Kunaichō, vol. 4, 102-103.

52 *Manzei, Mansai jugō nikki*, Ōei 34.11.11-13, ed. Hanawa, vol. 1, 459-461.

The Finality of Oaths

Oaths, when no powerful and mercurial figure was doing something outrageous, had a sense of finality. Yoshimochi used an oath to bolster his resolve in 1427, but it also provided final answers in more mundane, less politically-charged cases within Kyoto and on estates. Theft was a problem that diarist-chroniclers faced regularly, as some of the wealthier members of their society, and Sadafusa in particular, watched the handling of such cases with interest.

One theft accusation recorded by Sadafusa in the sixth month of Eikyō 3 [1431] involved multiple hot water oaths written two days in a row. Both the main suspect, Uchimoto Hyōgo, and his three brothers were required to give testimony, due to some local animosity that Sadafusa as an outsider did not know in detail. The first day resulted in no signs of failure. On the second day, however, all four were forced to take another hot water oath, and this time one came away with burns on his hand and was arrested. Another fled, and the final two, including Hyōgo, took successful oaths without any sign of failure and were returned to their village.⁵³ Ironically, Hyōgo was forced to leave his home and killed a month later in another village for stealing a sword, an outcome Sadafusa regarded as vindication: he had not believed in Hyōgo's innocence, though he accepted the outcome of the oaths.⁵⁴

Sadafusa himself was an observer here, not an investigator, for all his strong opinions, and his observations suggest a few notes about the judicial use of oaths. First, being forced to repeat an oath immediately, as Hyōgo and his brothers were, was not unprecedented, though it was rare. Part of the shock of Yoshinori's behavior toward Sueyasu may have been the long gap in time between the initial, successful oath and Yoshinori's subsequent, more extreme demand. Nonetheless, repetitions were not unlimited: Hyōgo went free after his second successful oath, though Sadafusa was not the only one skeptical of his innocence. This was partly because Hyōgo's brother had failed his oath and thereby provided a culprit, but there were implicit limits on how many times suspicious investigators could demand a hot water oath from the same man. Second, a successful written oath spared Hyōgo direct punishment, but it did not clear his name entirely: he left his village and died some distance away. He might have been more vulnerable there to the charge of theft either because he was a stranger or because word had reached them of the earlier accusation. Finally, even those of relatively high local status were subject to hot water oaths. Sadafusa noted the suspects' names and professions in his record: Hyōgo's brothers Zen'yū and Sukeroku both served within his Fushimi mansion, and the final brother was a monk of Kōdaiji, named Toshii.⁵⁵ All three were more deeply embedded in the Fushimi Estate than their brother but were still subject to the same hot water oath, which could condemn or exonerate.

53 Gosukō-in, *Kanmon nikki*, Eikyō 3.06.04-05, ed. Kunaichō, vol. 3, 291.

54 Gosukō-in, *Kanmon nikki*, Eikyō 3.07.14, ed. Kunaichō, vol. 3, 301; for a summary of the entire affair, see Yokoi, *Kanmon gyoki*, 286-287.

55 Gosukō-in, *Kanmon nikki*, Eikyō 3.06.04, ed. Kunaichō, vol. 3, 291. For other examples of seeking thieves via hot water oaths on Fushimi Estate, see also *ibid.*, Eikyō 8 [1436].11.02, 11.23, in vol. 5, 327-328, 333, when they attempted unsuccessfully to find a statue of Fudō stolen from a local temple, and *ibid.*, Eikyō 9 [1437].06.05, 07.22, vol. 5, 51-52, 62, when witnesses swore hot water oaths, after which a man accused of theft and his servant fled, leaving behind his wife and a home that was seized by the authorities.

Hot water oaths were only one kind of oath used in theft investigations. At the end of Ōei 25 [1418], for example, thieves invaded a storehouse at Sadafusa's father's mortuary temple. Luckily or perhaps prudently, they did not penetrate the treasure house. An irritated Sadafusa grumbled that not a single thief was caught and the temple's residents did not even seem to notice. Two days after the attack, the people of the estate gathered at the central shrine of Fushimi to write out sworn statements (*kōmon*) regarding the theft. None of their oaths resulted in signs of failure. Though Sadafusa was frustrated, he accepted the verdict of the oaths.⁵⁶

Oaths justified action as well as inaction. At the end of the fifth month of Ōei 24 [1417], Prince Sadafusa learned that a group of thieves had broken into one of his favorite small temples, Sokujōin, and made off with the prince's fine clothing. The theft seemed to have involved inside help, so members of the community were brought to the main Fushimi shrine and required to write out oaths attesting to their ignorance of the affair. Investigators moved quickly: many unnamed, lower-ranking individuals, including aristocratic attendants, monks, and local residents wrote their oaths mere days after the theft. Eleven days later, they determined that the culprit was one Sōgi Saburō, a younger son of a minor family living on Fushimi Estate, in service to the powerful Hatakeyama warrior clan. Sadafusa demanded that Saburō's elder brother have Saburō detained, to which the brother responded that Saburō's location was unknown. The search for Saburō's accomplices continued, and Sadafusa repeatedly requested the shogunate help him settle the matter, but nothing came of it. Finally, Sadafusa sent his people to burn down the Sōgi family home.⁵⁷

Sadafusa faced demands from the Hatakeyama and their allies that his retainers be punished for destroying the Sōgi home. The head of the Hatakeyama family was not then the shogunal chancellor, second-ranking official of the shogunate, but he had held the post five years earlier and would resume it less than five years later. The Hatakeyama were influential, but their demands that Sadafusa be punished ultimately came to nothing. The crime was resolved with the burning of the Sōgi house, which the shogunate accepted in lieu of imposing its own punishment upon the criminal. Though the Sōgi family were hereditary heads of the very shrine where witnesses wrote oaths accusing Sōgi Saburō, they did not or could not derail the process or write their own oaths claiming innocence. The oaths became part of the evidentiary record with which Sadafusa first appealed and then justified his actions to the shogunate, as well as the wider community. While Sadafusa's relations with the Sōgi and Hatakeyama thereafter remained cool, they never spiraled to destruction. Over a year later, when the Sōgi attempted to demand that Sadafusa rebuild their house for them, they found no traction, though neither did Sadafusa succeed in demanding the personal subordination of the head of the Sōgi family to his authority.⁵⁸ The Sōgi continued to participate in important ceremonies on the estate in later years, and the Hatakeyama never used their greater access to fighting men to attack Sadafusa directly. While relations between the Sōgi and Sadafusa in the future remained up for discussion, the oaths had established the fact of Sōgi culpability in the theft as a factor to be taken into consideration.

56 Gosukō-in, *Kanmon nikki*, Ōei 25.12.04-06, ed. Kunaichō, vol. 1, 246-247. For another set of regular oaths at the shrine regarding an administrative dispute, see *ibid.*, Eikyō 5 [1433].10.13, vol. 4, 231-232.

57 Gosukō-in, *Kanmon nikki*, Ōei 24.05.27, 06.02, 06.13-18, ed. Kunaichō, vol. 1, 129-134; for a summary in English, see Creamer, *Imperial Scribal Network*, 162-163. The Hatakeyama family was one of only three families that could provide candidates for the second-highest position in the Ashikaga shogunate. The others were the Shiba (who received the reassuring oath from Ashikaga Yoshimitsu earlier in this article) and the Hosokawa.

58 Gosukō-in, *Kanmon nikki*, Ōei 25.09.08-15, ed. Kunaichō, vol. 1, 233-236.

Conclusion

Written oaths provided a concrete way of attesting to someone's sincerity, or of putting a decisive stamp upon a decision. They worked in high-profile cases – courtiers defending themselves against a shogun's accusations – because common villagers could also use them to defend against courtiers' accusations: i.e., written oaths were widely acknowledged as useful to anyone trying to resolve a dispute. Written oaths were valuable enough that even someone who privately doubted oaths in a few contexts would easily rely upon their fact-finding power in others: isolated failures could not overcome all the other reasons to believe in them.

Oaths reached out across status distinctions, simultaneously reinforcing separation by providing different forms determined by the status of the oath-taker and smoothing the disjuncture by providing an overarching act in which those of many statuses could participate. Satō Shin'ichi, discussing written oaths as a documentary form, argues that swearing out a statement enhanced the credibility and persuasive power of the words, and every speaker-writer willing to put themselves at the mercy of gods and buddhas had access to that power.⁵⁹ Like other tools of persuasion, oaths did not redound unambiguously to the benefit of anyone. They could be a goad to collective action; they could also permit individuals to challenge a collective decision. They could protect the weak against wild accusations; they could also allow the strong to torment their victims with the pretext of a fact-finding process. Everyone might have potential access to the power of a written oath, but those with education and money could exercise that power far more easily. Written oaths, supervised and interpreted by those who served deities, gave gods and buddhas space to act in the world; they also gave laypeople access to deities that could be used against those who served them. In their use of both writing and divine invocation, the sacred and pragmatic were intimately entwined in Muromachi written oaths. Oaths guaranteed truth not only because deities were present at their writing, but also because they strengthened the connection between words and physical reality: a statement inked onto paper, drunk into the body, or scalded onto the skin. Written oaths seldom promised a specific outcome, but they established a basis upon which everyone could move forward.

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59 Satō Shin'ichi, *Komonjogaku nyūmon*, 230-232.

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Oaths and Divine Punishments in Warring States Japan from the Princeton University Collection

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This article introduces five oaths (*kishōmon*) from sixteenth-century Japan, currently held by the East Asian Library, Princeton University, United States. Each of these documents can be identified as one half of an oath passed down to the Saji family, a local warrior (*samurai*) family based in Kōga district, Ōmi province, central Japan (the other half was separated). Local warriors of Kōga are well known for their multi-layered networks and organizations called collectives (*sō*), which served as mediators in local disputes. Combining these Princeton oaths (we shall keep to this English term for the Japanese *kishōmon*) with other documents that survived in the Saji's hereditary archive, this article discusses their function. We have here a case study of Kōga that reconstructs local disputes and mediation by local warriors and sheds light on their collective organizations. This article also explores how medieval people envisioned divine punishments for breaking promises to deities. The diary of Yoshida Kanemi, a *Shintō* priest in Kyoto, contains valuable information: people of Kōga and its surrounding areas often visited Kanemi and asked him for prayers to cancel the oaths they had written. Kanemi's diary shows that the people of Kōga on the one hand did indeed fear divine punishments but, on the other, tried to avoid them by drawing on new practices offered by Yoshida *Shintō*. After the destruction of the Kōga *gunchū sō*, a district-wide collective of local warriors of Kōga, in 1585, the Saji and other local warriors were banished from Kōga. They later returned to their homeland but lost their warrior privileges in the region. In this process, the Saji lost some of their inherited documents, including those currently held by Princeton University. Thus, the Princeton oaths not only tell us how medieval oaths functioned in Warring States Japan but also describe the hardship one local warrior family experienced in the socio-political transition from the medieval to the early modern (Tokugawa) period.

Keywords: Medieval Japan, Warring States period, oath, kishōmon, Kōga district collective (Kōga gunchū sō), Yoshida Shintō

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Background

Sixteenth-Century Japan as »The Warring States Period«

The sixteenth century in Japan is known as the Warring States period (*sengoku jidai*), during which the country experienced continuous civil war for over a hundred years. The Ōnin war of 1467-1477 and subsequent political turmoil led to the decline and ultimate collapse of the Muromachi *bakufu* (1338-1573), and, in this political vacuum, new regional hegemony called *sengoku* warlords (*daimyō*) emerged throughout Japan. From the middle of the sixteenth century, powerful *sengoku* warlords attempted to establish their local authority on a larger scale.

In conflicts between *sengoku* warlords, Oda Nobunaga (1534-1582) rose to power and, in 1573, banished the fifteenth shogun Ashikaga Yoshiaki (1537-1597), following which the Muromachi *bakufu* was never restored. After the assassination of Nobunaga by one of his generals in 1582, his *de facto* successor Toyotomi Hideyoshi (1537-1598) subjugated other *sengoku* warlords and reunified Japan in 1590. After the death of Hideyoshi, Tokugawa Ieyasu (1542-1616) seized power and established a new regime called the Tokugawa *bakufu* (or the Edo *bakufu*) in 1603. This marks the end of the medieval period in traditional standard narratives.

Sixteenth-Century Japan as »The Age of Secularization«

Starting from before World War II, Japanese historiography viewed the medieval period (the late eleventh to late sixteenth centuries) as »the age of religion,« with the following Tokugawa period (1603-1867) being seen as »secular.«¹ This led a number of scholars to wonder about process and transitions, with many proposing the Warring States period as »the age of secularization.«²

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- 1 In the first volume of »Medieval Japan« series published in 2002, Ishii Susumu enumerated »the age of religion« as one of the five elements that characterized medieval Japan. Ishii, *Chūsei no katachi*, 4-6. As for the Tokugawa period, in a recent (2023) study, Kobayashi Junji addresses »the secularization of the [Japanese] society« and argues for the supremacy of »secular lords.« Kobayashi, *Tasai na bunka*, 2-3.
 - 2 For the historiography of »the age of religion/secularization« debate, see Klauta, *Kindai nihon shisō*; Yoshizawa, *Nihon chūsei shakai*, 7-14; Wasada, *Chūsei no jisha yakiuchi*, 16-21. See in English, McMullin, *Buddhism and the State*, 264-283.

Institutional history provided some backing for this position. In medieval Japan, influential traditional temples and shrines exercised political, economic, and even military powers, in close connection with the imperial court and the *bakufu*.³ However, as warfare became endemic and *sengoku* warlords consolidated their power, most temples and shrines lost their autonomy.⁴ The 1571 destruction of the Enryakuji temple epitomizes this trend. As the headquarters of the Tendai school, the Enryakuji temple complex was one of the few monastic institutions that maintained their autonomy well into the Warring States period. However, in 1571, Oda Nobunaga, who, according to one Jesuit missionary's account, despised deities and superstitions,⁵ destroyed all the buildings and killed all the monks and many of their dependents to retaliate against the Enryakuji temple because it had allied with Nobunaga's enemies.⁶

The Warring States period saw the rise of new Buddhist schools. The Honganji temple, the headquarters of the Ikkō school, even became a regional hegemon and engaged in conflicts against other *sengoku* warlords, including Oda Nobunaga.⁷ After the ten-year long Ishiyama Honganji war (1570-1580), the Honganji temple and its followers surrendered to Nobunaga. Previous research has assumed that, along with the destruction of the Enryakuji temple, Nobunaga's victory against the Honganji temple symbolized the end of »the age of religion«. After the Shimabara Amakusa rebellion in 1636, an unsuccessful uprising against the persecution of Christianity, the Tokugawa *bakufu* established a supervision system aimed at suppressing Christianity called the *terauke* or *jidān* system. In this system, temples served as monitors for the regime. Thus, in this narrative, temples and shrines lost their autonomy and became subordinated to »secular« authorities through the Tokugawa period.⁸

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- 3 See in English Adolphson, *Gates of Power*, building on Kuroda Toshio's model of *kenmon* (Kuroda, *Kenmon taisei ron*).
 - 4 See in English McMullin, *Buddhism and the State*.
 - 5 Luís Fróis, *Historia de Japam*, trans. and ed. Matsuda and Kawasaki, vol. 4, 103-121. For a convenient English translation of Fróis's evaluation of Nobunaga, see Cooper, *They Came to Japan*, 93.
 - 6 An English-language biography is Lamers, *Japonius Tyrannus*. See also Ōta, *Chronicle* (trans. of the seventeenth-century *Shinchō-kō ki*), where the destruction of the temples and shrines is recounted in book 4 chapter 5, 164-166. Lamers, *Japonius Tyrannus*, 75-76, also translates the report, very close to the event, by the Jesuit Luis Fróis.
 - 7 For the Honganji temple, see in English Tsang, *War and Faith*.
 - 8 Kobayashi, Tasai na bunka; Hayashi, Kinsei teki na seikyō kankei. For Christianity's fate, see Elisonas, Christianity and the Daimyo, 368-372. The complicated disciplining of schools, sects, and denominations under the Tokugawa *bakufu* has been recently explored in a volume of essays, Köck, Pickl-Kolaczka, and Scheid, *Religion, Power, and the Rise of Shinto*.

Oaths in »The Age of Secularization«

This secularization narrative has greatly influenced the study of Japanese oaths (*kishōmon*).⁹ Although many oaths were written for various purposes in the Warring States period, previous research has suggested that people's attitudes toward deities and the use of oaths were shifting. For example, Chijiwa Itaru, one of the leading specialists of medieval oaths, discusses »the death of the oath« during the Warring States period. Chijiwa points out that the Warring States period witnessed (1) the widespread use of talismans issued by the three Kumano shrines as the paper for oaths; (2) the appearance of the *Reisha jōgan* oath, which had an extremely well-organized format with a redundant list of deities; and (3) the invention of the ritual for the cancellation of oaths called *kishō gaeshi* (»the reversal of an oath«). According to Chijiwa, these three changes represent the over-formalization of the oaths, the inflation of deities, and the decline of sincere relationships between people and deities.¹⁰

This view of the Warring States period as an »age of secularization« which witnessed »the death of the oath« is generally accepted.¹¹ However, recent scholarship has challenged this orthodoxy. For example, Kanda Chisato emphasizes the importance of the religion for both *sengoku* warlords and commoners and characterizes the Warring States period as »the age of religion.«¹² Wasada Makoto also argues that the »secularization« took place after the establishment of peace by the Tokugawa, and not in the Warring States period when warfare was so ubiquitous that people fervently prayed for salvation.¹³ This article cannot go into a full discussion of »the age of religion/secularization« debate, but it adheres to this recent trend and aims to engage critically the older position through a case study using the five medieval oaths held by Princeton University.

9 For the development of oaths in medieval Japan, see in English Conlan's and Gilbert's contributions in this volume. For analysis of oaths and daimyo, see also Hall, *Government and Local Power*, 251-255.

10 Chijiwa, *Chūsei minshū*, 33-40. Ogino Minahiko also posits that the increasing use of signatures written with human blood in the Warring States period indicates the decreasing trust in oaths. See Ogino, *Nihon komonjogaku*, 84-118.

11 Sakurai, *Muromachi bito no seishin*, 332-354; Shimizu, *Nihon shinpanshi*, 151-156; Inoue, *Yoshida Shintō*, 38-64. For recent scholarship on medieval oaths, see Satō, *Kishōmon to seiyaku*; Takatani, *Keiyaku, seiyaku, meiyaku*.

12 Kanda, *Shūkyō de yomu*; *idem*, *Sengoku to shūkyō*.

13 Wasada, *Chūsei no jisha yakiuchi*. Ōkouchi Chie also criticizes the conventional narrative, including Chijiwa's »death of the oath,« for lacking serious research on oaths written in the Tokugawa period. See Ōkouchi, *Kinsei kishōmon*.

Material

The Princeton Oaths

The East Asian Library, Princeton University, holds five medieval oaths (hereafter, referred to »Princeton oath« with its number).¹⁴ The first four oaths belong to the medieval period, while the fifth and last belongs to the early Tokugawa period.

(1) Kōji 2 (1556) 6.20: *Daishi kanjō* oath of the Isano family collective (To Saji Tarōsaemon no jō)

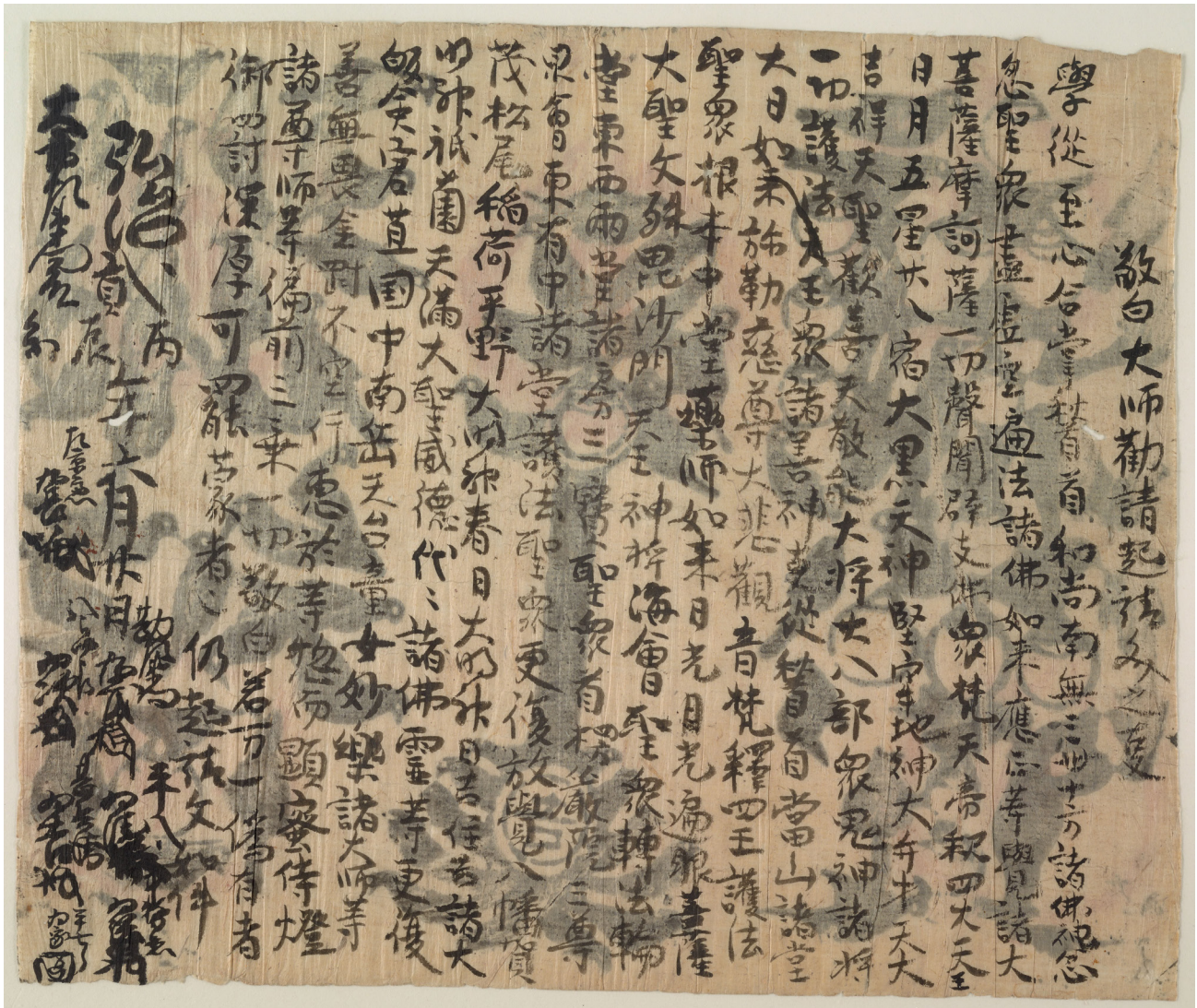


Figure 1: Princeton oath (1) Reverse, courtesy of Princeton University Library¹⁵

14 For the transcriptions and translations of these documents by Horikawa Yasufumi and Thomas D. Conlan, see »Kishōmon: Four Oaths and Five Invocations,« komonjo.princeton.edu/kishomon/ (accessed on 19 November 2023). The Princeton University employs a different numbering: (1) in this article corresponds to (1) in Princeton University Library. Likewise, (2) corresponds to (2), (3) to (3-A), (4) to (3-B), and (5) to (4).

15 The following images of Princeton oaths (1)-(5) were downloaded from the website of Princeton University Library (accessed on 19 November 2023): catalog.princeton.edu/catalog/99101663993506421.

(2) Eiroku 6 (1563) 6.25: Oath of local warriors (To Saji [Tarōsaemon no jō])

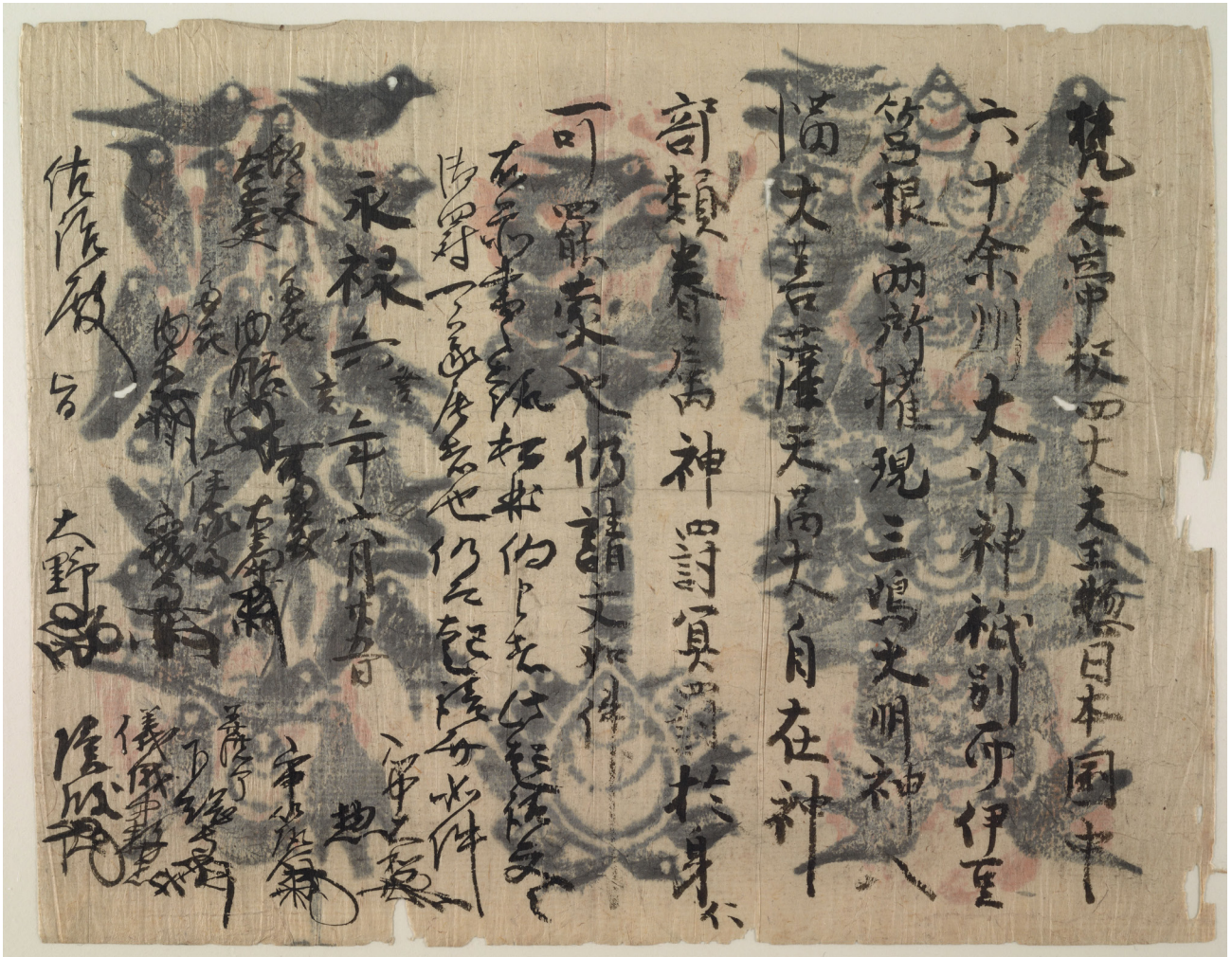


Figure 2: Princeton oath (2) Reverse

(3) Eiroku 12 (1569) 6.3: Reisha jōgan oath of local warriors (To Saji Tarōsaemon no jō, Saji Mimasaka no kami, and Kosaji village)

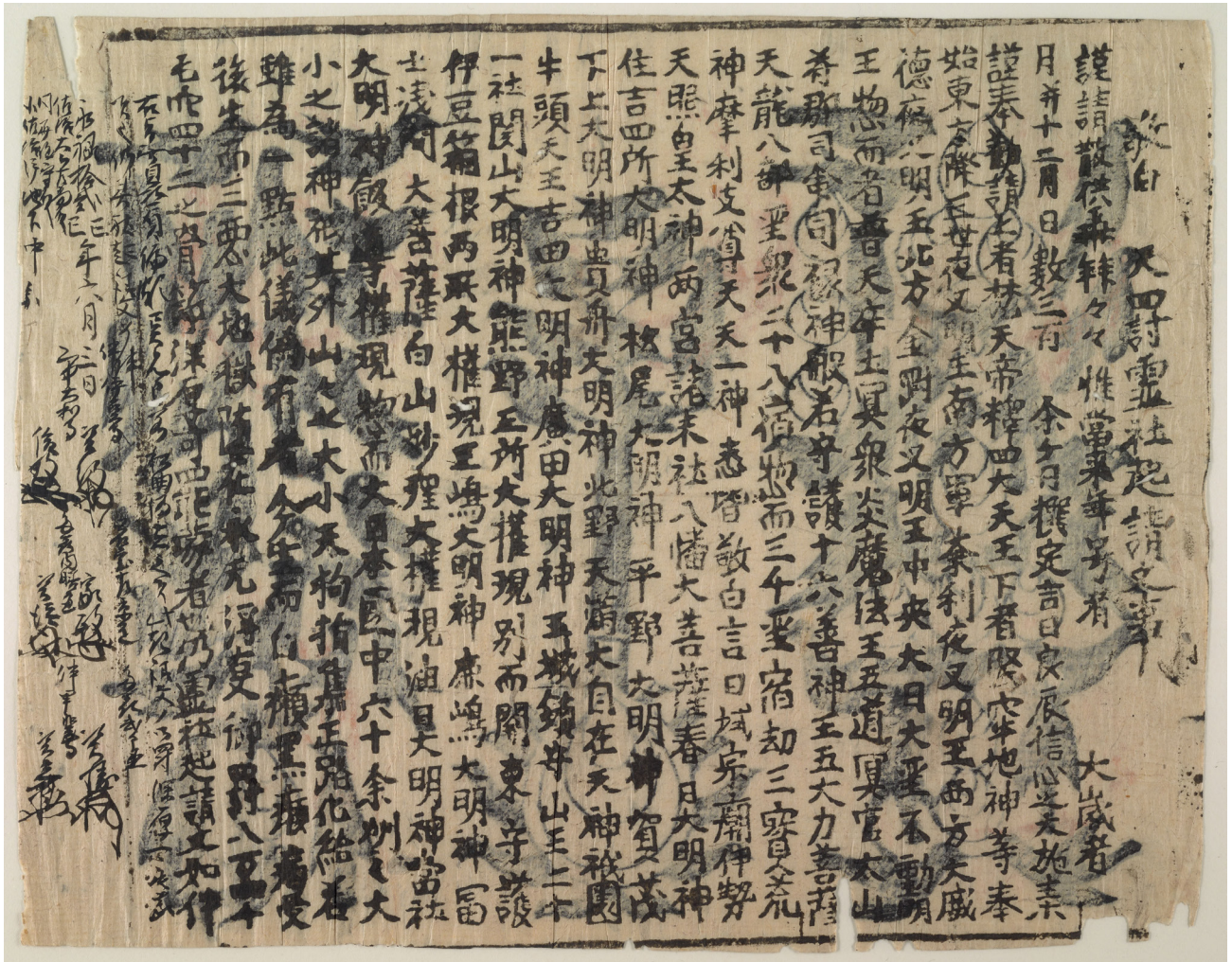


Figure 3: Princeton oath (3) Reverse

(4) Eiroku 12 (1569) 6.3: *Daishi kanjō* oath of local warriors (To Saji Tarōsaemon no jō, Saji Mimasaka no kami, and Kosaji village)



Figure 4: Princeton oath (4) Reverse

(5) Keichō 20 (1615) 7.7: Oath of the Kosaji village collective



Figure 5: Princeton oath (5) Obverse

Oaths from the Warring States period often consist of two parts. The first part, called the content clause (*maegaki*), contains the specific contents of the promise. The second part, called the invocation clause (*shinmon*), contains the names of deities, temples, shrines, and authorities to whom one makes an oath, followed by the potential divine punishment these metapersons might mete out. Some oaths contain both content and invocation clauses on a single piece of paper, but, depending on the sophistication of the oath's format and the number of deities that are included, content and invocation clauses increasingly came to be written on separate pieces of paper: plain paper for content clauses and talismanic paper for invocation clauses.¹⁶ The Princeton oaths only have invocation clauses, while their content clauses are missing.

16 Satō, *Shinban komonjogaku nyūmon*, 230-231.

The Kosaji Documents: The Origin of the Princeton Oaths

When Princeton University purchased these oaths from a Japanese antique bookseller in 2017, little was known about their origin except that the bookseller had obtained them from Takita Eiji (1904-1998), an entrepreneur and local historian from Aichi prefecture, who had studied Zen Buddhism and Japanese history at Tokyo Imperial University (present-day University of Tokyo).

However, judging from the names and places that appeared in the oaths, these documents can be identified as part of the medieval documents handed down to the Saji, a local warrior family based in Kōga district, in Ōmi province (present-day Kōka city, Shiga prefecture; see Figures 6 and 7). This origin explains why Takita Eiji had owned these oaths. Takita had studied the Saji of the Chita Peninsula in Owari province (present-day Chita city, Aichi prefecture), a warrior family that had branched out from the Saji of Kōga.¹⁷ Although Takita did not mention these oaths in his monograph, he likely had obtained them for his research. These oaths would have been sold when his collection was released after his death in 1998.¹⁸

The Saji held the status of vassals of the Muromachi *bakufu*, and they also served the Rokkaku family, the provincial constable (*shugo*) and *sengoku* warlord of Ōmi province.¹⁹ Their descendants still possess the Saji's inherited documents, called the Kosaji documents (Kosaji being the name of the village where they lived). Surprisingly, the content clauses of the three oaths in the Kosaji documents can be connected to the invocation clauses of Princeton oaths (1) to (4).

17 Takita, *Tokoname shiwa sakuin*, 3-103.

18 Takita's collection of Zen Buddhist texts was donated to the Department of Indian Philosophy and Buddhist Studies, the University of Tokyo. For the Takita Eiji collection, see Sueki and Takita, *Takita bunko mokuroku*.

19 The Rokkaku played a crucial role in *bakufu* politics in the Warring States period but lost power after their defeat by Nobunaga in 1568. For the Rokkaku in the Warring States period, see Murai, *Rokkaku Sadayori*. See in English, Tonomura, *Community and Commerce*, 17-36; Eason, *Culture of Disputes*, 20-75.



Figure 6: The Japanese archipelago



Figure 7: Ōmi province and surrounding areas

Kōga and Local Warriors in the Warring States Period

Ōmi province, where the Saji lived, is a province neighboring Kyoto, the capital of Japan from 794 to 1869. Kōga is in the southwest of Ōmi province, on the Tōkaidō route that connected Kyoto with eastern Japan (see Figures 6 and 7). In the medieval period, Kōga was a strategic area because of its links to important transportation routes and mountainous terrain. The surviving documents show that the Kamakura and Muromachi *bakufu* often assigned the duty of securing this route and surrounding areas to local warriors of Kōga.²⁰ After the Ōnin war and the subsequent political turmoil, politically important figures, including the shogun of the Muromachi *bakufu*, sometimes fled to Kōga to avoid upheavals in Kyoto.²¹

During the Warring States period, local warriors of Kōga formed familial and territorial organizations, called *sō* (collective²²), for mutual benefits such as agricultural management and judicial arbitration. This has made Kōga unique and famous to modern historians. The smallest unit of such organizations was the *dōmyō sō*, a familial organization where the collective possessed the same surname. Such family collectives then allied with the collective of other surnames to form larger organizations based on territorial connections. In the middle of the sixteenth century, corresponding to the increasing military tension around the district, local Kōga warriors formed a district-wide organization called Kōga *gunchū sō* (the Kōga district collective). These collectives had egalitarian organization structures and developed a council system to deal with local disputes and military affairs.²³ It is for such local disputes that the Princeton oaths were issued. In the next section, we shall explore how these oaths functioned.²⁴

The Princeton Oaths and Local Disputes

Paper

The Princeton oaths are written on the reverse side of the talismanic paper called *go-ō hōin* (Ox-head paper), following the custom of the medieval period. While there were various types of *go-ō hōin* issued by different temples and shrines, the *go-ō hōin* for the Princeton oaths is the one called *Nachinotaki-hōin* (talismans of the Nachi Falls) issued by the Kumano Nachi shrine in Kii province (present-day Wakayama prefecture) (see Figure 3 in Conlan's article in this volume, depicting the reverse of Princeton oath [1]). Many small symbols of sacred crows²⁵ and jewels spell out *Nachinotaki-hōin* (那智瀧宝印) on each of which there is a red stamp that symbolizes in Sanskrit the names for the Buddhist deities of the Kumano Nachi shrine.

20 For further discussion, see Aida, *Chūsei no sekisho*, 168-185.

21 For an overview of the history of Kōga, see Kōkashishi hensan iinkai (ed.), *Kōkashishi*, vols. 2-3. See in English, Souyri, *Autonomy and war*; Turnbull, *Ninja*, Chapter 4.

22 The word *sō* is also translated as »league« or »confederacy.«

23 A considerable amount of research already exists for the Kōga district collective. For the historiography, see Ishida, *Chūsei Yamanakashi*. See in English Souyri, *Autonomy and war*, 116-118. For collectives formed at the village level, see Hitomi Tonomura's analysis on the Imabori village collective in the same Ōmi province. Tonomura, *Community and Commerce*.

24 For the use of oaths in the same Ōmi province, see also Fukaya Kōji's analysis of a series of oaths submitted from villages of southern Ōmi to Oda Nobunaga in 1572 that swore not to support the Honganji temple. Fukaya, *Oda Nobunaga*, 118-168.

25 In Japanese mythology, sacred crows guided Emperor Jinmu, the legendary first emperor of Japan, from Kumano to Nara, and supported his conquest.

Invocation Clauses

Medieval oaths can be classified according to invocation clauses that list the deities. Deities in invocation clauses quite often vary to reflect places and periods, and the writer's religious beliefs. The Princeton oaths can be classified into three types:

First, the invocation clause of Princeton oath (2) belongs to the Jōei Code type. This means that it lists the deities of the Izu, Hakone, and Mishima shrines in eastern Japan, which were the same deities as those included in the oath placed at the end of the Jōei Code (*Jōei shikimoku* 貞永式目), a law code promulgated by the Kamakura *bakufu* in 1232. As the first systematic law for warriors, the Jōei Code was canonized in the medieval period.²⁶ Princeton oath (2) must have been written under the influence of the Jōei Code. Later, the invocation clause of the Jōei Code served as a standard in the Tokugawa period.

Second, the invocation clauses of Princeton oaths (1) and (4) belong to the *Daishi kanjō* oath (大師勸請起請文) type,²⁷ which means »an oath to invoke Buddhist master Saichō (the founder of the Tendai school in Japan).« Kenkō, the author of *Tsurezuregusa* (*Essays in Idleness*), wrote that Jie (912-985), a chief abbot of the Enryakuji temple, invented the *Daishi kanjō* oath.²⁸ One of the characteristics of the *Daishi kanjō* oath is that its invocation clause includes the deities, masters, and buildings associated with the Enryakuji temple and the Tendai school. For example, Princeton oath (1) lists buildings of the Enryakuji temple such as the Central Hall (*konpon chūdō*) and the East and West Pagodas (*tōzai ryōdō*), as well as Buddhist masters such as Nangaku (Nanyue in Chinese) and Tendai (Zhiyi), the founders of the Tendai school in China, along with many Buddhist and *Shintō* deities.

Finally, the invocation clause of Princeton oath (3) belongs to the *Reisha jōgan* oath (靈社上卷起請文) type,²⁹ which means »an oath sworn to the Reisha shrine.« The *Reisha jōgan* oath appeared in Ōmi province in the middle of the sixteenth century, and it became so popular that the rules of the Ōhara family collective (Table 1/15) in Eiroku 13 (1570) stipulated that the *Reisha jōgan* oath should be used in criminal cases. Later, Oda Nobunaga and Toyotomi Hideyoshi, who had at one point set their headquarters in Ōmi province, adopted the *Reisha jōgan* oath to serve as the standard oath template for their regimes. However, it fell out of favor in the subsequent Tokugawa regime, which preferred the invocation clause from the Jōei Code.

A characteristic of the *Reisha jōgan* oath is its overwhelming array of deities, which, according to Chijiwa Itaru, is a symptom of a general inflation of warranting powers.³⁰ Princeton oath (3) is filled with the names of deities written in small letters (see Figure 3). While Princeton oath (3) is written on one piece of paper, the *Reisha jōgan* oath is often written on multiple pieces due to their length (since they name many, many deities). The invocation clause of one oath written by the two collectives of Kōga district and Iga province in Tenshō 1 (1573) (Table 1/18) is, for example, written on three pieces of *go-ō hōin* paper.

26 The *Jinkaishū*, a law code written by Date Tanemune (1488-1565), a *sengoku* daimyo of Mutsu province in northern Japan, in Tenbun 6 (1536), ended with almost the same oath as the Jōei Code. See Conlan, *Samurai and the Warrior Culture*, 206, 214-15. A recent translation of the Jōei Code appears *ibid.*, 42-62. For an overview of the Jōei Code, see Adolphson, *Weighing in on Evidence*, 309-312.

27 For the *Daishi kanjō* oath, see Chijiwa, *Daishi kanjō kishōmon*.

28 Kenkō, *Tsurezuregusa*, section 205.

29 For the *Reisha jōgan* oath, see Chijiwa, *Reisha jōgan kishōmon*.

30 Chijiwa, *Chūsei minshū*, 33-37.

Satō Hiroo classifies the deities listed in the *Daishi kanjō* and the *Reisha jōgan* oath types into four categories: (1) Buddhist deities from India who live in the heavenly realm and protect the law of the Buddha; (2) Daoist deities from China such as Yanluo Wang, one of the judges in the underworld; (3) Japanese deities, local temples, and shrines; (4) Buddhist masters.³¹

For the deities of local Kōga temples and shrines, Princeton oaths (3) and (4) list the deities of the Aburahi shrine and the Handōji temple. The Aburahi shrine is one of the central shrines of Kōga; there, local warriors conducted various ceremonies to worship the shrine's deity and confirm their privileged status as local elites.³²

The Handōji temple, on the other hand, is a temple of the Shugendō, a belief system that worships sacred mountains and centers on ascetic practice in mountains.³³ The Handōji temple is one of the influential Shugendō temples, closely connected with some of the headquarters of the Shugendō, such as the Yoshino and Kumano mountains.³⁴

Other oaths from Kōga often include the deities of their familial temples and shrines. One oath of the Ōhara, for instance, includes »our familial shrine,« which refers to the Ōtori shrine.³⁵ In his 1976 article, Ishida Yoshihito reported that the Ōhara still had a collective with the same surname (*dōmyō sō*) and gathered at the Ōtori shrine once a year.³⁶

Local Disputes and the Function of Oaths

As mentioned above, local Kōga warriors developed a council system to adjudicate local disputes. For example, in Tenbun 2 (1533), seven local warriors, including the Saji, mediated in a dispute over mountain resources between Ushikai village and the four villages of Shiono, Yamagami, Ichihara, and Somanaka.³⁷ Such local disputes concerned boundaries, irrigation water, and common areas such as mountains and fields. As villagers of the medieval period were armed, disputes often quickly escalated into significant and bloody disputes.³⁸ This section discusses the use of oaths in these disputes.³⁹

31 Satō, *Kishōmon no seishinshi*, 22-62. For deities invoked in oaths, see also Chijiwa, Chūsei no kishōmon. Surprising for a western audience perhaps, but normal in Japan and in many societies observed by anthropologists, sacred buildings are symbiotic with and identified with the deities they house, and deceased Buddhist masters are divine »metapersons« thanks to their reincarnation trajectories (see Buc's general introduction to this volume).

32 For the ceremonies conducted at the Aburahi shrine, see Miyajima, *Sengokuki Ōmi*; Fujita, *Kyōdo to sairei*. The Saji and other local warriors also supported the building of the main hall of the Aburahi shrine in Meiō 4 (1495). *Kōkashishi hensan iinkai, Kōkashishi*, vol. 2, 345-346.

33 For an introduction, see Castiglioni, Rambelli, and Roth, *Defining Shugendō*.

34 *Kōkashishi hensan iinkai, Kōkashishi*, vol. 2, 364-388.

35 Hasegawa, *Sengokuki no chiiki kenryoku*, 85-94.

36 Ishida, *Kōga gunchū sō to Ōhara*, 144.

37 Ushikai *kyōyū monjo*.

38 One violent conflict in the same Ōmi province is analyzed in Satō, »Peace« or not?.

39 For the local disputes described in the Kosaji documents, see Yuzawa (Kurushima), *Chūsei kōki zaichi ryōshu*, 42-45; Hasegawa, *Sengokuki no chiiki kenryoku*, 233-271.

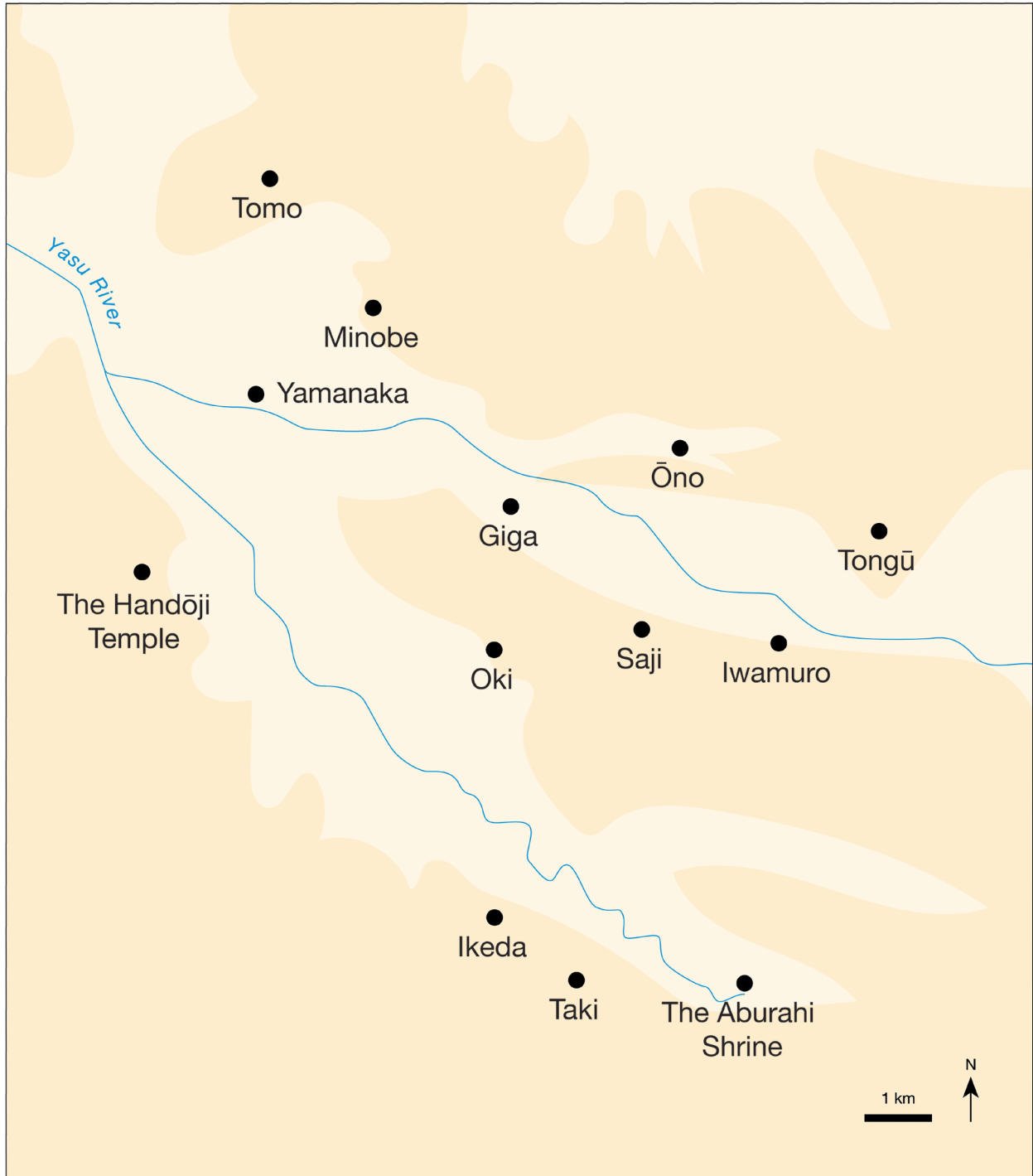


Figure 8: Kōga and local warriors in the Princeton oaths

Princeton oath (1) from Kōji 2 (1556), submitted by the Isano family collective⁴⁰ to Saji Tarōsaemon *no jō*, deals with a dispute between Isano and Imajuku villages over wild grass in the riverside area called Kawaraomote. Its content clause reads:

[Item] The current dispute with Imajuku village is over the pasture grass in Kawaraomote in your landholdings. We will never assert any rights over Kawaraomote.

[Item] We will never make unprecedented claims to your landholdings.

[Item] We will never plot with the residents of Imajuku village or make unreasonable claims.

If we were to tell a lie, we would receive harsh punishment from this oath (*kishōmon*). The content clause (*maegaki*) is thus.

Kōji 2 (1556) 6.20

[From:] The Isano family collective (*sō*)

[To:] Hon. (Saji) Tarōsaemon *no jō*

During their dispute with Imajuku village over the pasture grass of Kawaraomote, the Isano family collective raised the suspicion that it might claim ownership of Kawaraomote, which belonged to the Saji. In order to clear this suspicion, it submitted this oath and promised not to claim any rights to Saji's landholdings in the future.⁴¹ The content clause in the Kosaji documents did not state the individual names of the Isano family collective, but Princeton oath (1) has the signatures of seven members. Of those members, Isano Tamenaga, Tameshige, Tametsuna, and Tameyoshi appeared in a document written in Tenbun 16 (1547).⁴² The Princeton oath is valuable in that it reveals the organizational structure of the Isano family collective, the smallest collective unit in Kōga.

Tension apparently existed between the Saji and the Isano before the writing of Princeton oath (1). In Tenbun 16 (1547), they disagreed over the common lands: three members from the Saji family collective handled this dispute, and it was settled that the Isano offered service labor to the Saji in exchange for using common lands.⁴³ However, their dispute recurred in Eiroku 6 (1563), and Princeton oath (2) recounts as follows:

Concerning the current dispute between the Saji and the Isano over reclaimed rice paddies in Hachimen, we are told to handle it based on the merits of the claims as intermediaries. However, it is settled that the Saji shall continue to possess those rice paddies. There are no other settlements between us concerning your dispute. The Saji should agree to this settlement, and there should be no objection. If we were to tell a lie, we would receive harsh punishment from this oath (*kishōmon*). The content clause (*maegaki*) is thus.

Eiroku 6 (1563) 6.25

[From:] The collective (*sō*)

[To:] Hon. Saji

40 The Isano is a branch family of the Saji in the north of the Kosaji village.

41 The Imajuku village collective also submitted an oath to the Saji in the following year. Kosaji monjo.

42 Kosaji monjo.

43 Kosaji monjo.

Previous scholars did not know who had mediated this dispute and issued this oath as it does not write the specific name and members of the collective. However, Princeton oath (2) has signatures of eleven local warriors from the Yamanaka, Tongū, Taki, Ikeda, Minobe, Taki, Ōno, Giga, and Oki families and thus reveals that local warriors mediated in the dispute and urged the Saji to agree to their settlement. The dispute between the Saji and the Isano was mediated by the villages and families involved in 1556, but this failed, and thus mediation by more important people, that is local warriors, was required in 1563.⁴⁴

However, the tension between the Saji and the Isano was not defused. Princeton oaths (3) and (4) are paired with the following document concerning the recurring dispute in Eiroku 12 (1569):

We convey our opinion concerning the current dispute between the Saji and the Isano families.

[Item] From now on, when cutting grass on ridges [of rice fields] in Isano village, both the Kosaji and the Isano should be present.

We believe our opinion to be fair and free from favoritism and prejudice. Therefore, we issue this document with our signatures. If we were to tell a lie, we would receive harsh punishment from two oaths (*kishōmon*) of *Reisha jōgan* and *Daishi kanjō*. The signed letter is thus.

Eiroku 12 (1569) 6.3 [From:]

Tomo Izu *no kami* Sukeyuki (monogram)
 Iwamuro *Sakyō no suke* Sukekatsu (monogram)
 Taki *Shikibu no jō* Iemasa (monogram)
 Yamanaka Yamato *no kami* Toshiyoshi (monogram)
 Taki *Naizen no suke* Suketoshi (monogram)
 Tomo Kai *no kami* Sukesada (monogram)

[To:] Hon. Saji Tarōsaemon *no jō*
 Hon. Saji Mimasaka *no kami*
 Kosaji village

The local warriors again mediated in the dispute and conveyed their judgment with an oath containing two invocation clauses: *Reisha jōgan* and *Daishi kanjō*. It is notable that, while one invocation clause would normally be enough to formalize an oath, this 1569 oath was supplemented by another invocation clause. Since the reference to the *Daishi kanjō* invocation was inserted in the text later, these local warriors likely thought the *Reisha jōgan* oath was insufficient to settle the recurring disputes between the Saji and the Isano and so added the *Daishi kanjō* oath.

44 Hasegawa Yasuko discusses the fact that local warriors did not mediate in local disputes until mediation by the involved families and villages was no longer possible or until local disputes escalated into violent conflicts. Hasegawa, *Sengokuki no chiiki kenryoku*, 243-250.

Thus, local Kōga warriors used oaths in mediation and adjudication of disputes. Table 1 shows the existing oaths that were issued for such purposes. The fact that a template of the *Reisha jōgan* oath can be found in the Yamanaka documents (the Yamanaka was one of the leading members of the Kōga district collective) indicates how frequently they wrote oaths.⁴⁵ Oaths conferred legitimacy on mediation and adjudication by local warriors and systematically functioned as a part of the legal process.⁴⁶ The next question, then, is how and to what extent did local warriors fear the punishment provided for in oaths. The last section explores these questions.

Social and Divine Sanctions

There were two possible sanctions for breaking an oath: divine and social. For social sanctions, some oaths refer to banishment from the collective and ostracism. For example, an oath of the Tomo, Yamanaka, and Minobe families' collective from Eiroku 9 (1566) (Table 1/12) states the following:

(Item 8) If one breaks this agreement even for one thing, he shall be banished from the same surname, and three families shall never support him.⁴⁷

In this case, these persons were responsible to their collective for breaking an oath. This makes more sense when one considers the actual scene of oath taking. The rules of the Ōhara family collective from Eiroku 13 (1570) (Table 1/15) illustrate how they wrote an oath:

(Item 14) In our landholdings, regardless of their status, the possession of poison should be banned. If one knows of the possession of poison, without doubt, he/she should inform the master of that person, whether he/she is on bad terms with or unfamiliar with that master. Then, the master should inform the [accused] person [about the accusation]. If that [accused] person claims to be innocent, he/she should write a [Reisha] *jōgan* oath and put his/her signature with blood in front of the members of the family collective (*dōmyō chū*) to clear the doubt. In cases where the accused person belongs to the *bonge* status [the status lower than warrior status], he/she should write an appropriate oath [other than a *Reisha jōgan* oath].⁴⁸

This rule provides that the accused person should write an oath in front of the members of the family collective.⁴⁹ It also indicates he or she bore responsibilities to collective members. In the medieval period, most people relied on familial and regional bonds. Therefore, the banishment from collective is likely to have been a severe and effective sanction.

45 Yamanaka monjo, doc. 437

46 Miyajima, *Sengoku ki ni okeru*, 28-29.

47 Yamanaka monjo, doc. 235.

48 Hasegawa, *Sengokuki no chiiki kenryoku*, 86.

49 This item also shows that different types of oaths were selected, depending on the social status of oath takers.

For divine sanctions, most invocation clauses in these oaths refer to leprosy as punishment from deities. In pre-modern Japan, leprosy was believed to be a divine punishment resulting from bad behavior in a previous life.⁵⁰ Princeton oath (3) reads as follows:

If we were to tell a lie, even for one thing, we would receive white and black leprosy in the current life, descend into unremitting hell in the afterlife, never to return, and receive harsh punishment into 84,000 pores and 42 joints.

However, as most medieval oaths mention leprosy, one might argue that these references may have been formulaic rather than the evidence that medieval people were afraid of divine punishment. The lack of historical sources means that it is obviously challenging to know the thoughts of those who wrote oaths. However, Yoshida Kanemi (1535-1610), a *Shintō* priest of the Yoshida shrine in Kyoto, left valuable information that enables us to answer this question.

The Yoshida lineage consisted of courtiers who specialized in *Shintō* rituals. They developed their teachings and practices throughout the medieval period. A major moment in this process was when Yoshida Kanetomo (1435-1511) organized them into a distinct structured doctrine (today known as Yoshida *Shintō*) and established himself and his descendants as the dominant *Shintō* leaders. The Yoshida also fostered ties with local shrines and communities by granting ranks and titles to these shrines, performing prayer rites, and adjudicating shrine affairs.⁵¹ An early example of Yoshida's connection with Kōga can be found in Tenbun 3 (1534), when at the request of Mikumo Suketane, one of the leading warriors of Kōga, Yoshida Kanemigi (Kanemi's father, 1516-1573) offered a schedule for building the entrance gate of the Suwa shrine in Kōga.⁵²

Table 2 tallies those entries from Kanemi's diary (*Kanemi-kyō ki*)⁵³ featuring people of Kōga. They reveal that these men and women believed in curses and spirits and conducted various religious practices. The entry for the 24th day of the 9th month of Genki 3 (1572) (Table 2/5), translated below, demonstrates how one medieval person feared the punishment involved in an oath:

The 24th date. Mochizuki Bingo *no kami* Shigekiyo of Kōga, Ōmi province, sent Hachishirō of the same surname [as his messenger] and told me that he wrote an oath for a certain reason. Since then, he has not been feeling well. He cannot move his body as he wants. I asked for more details and accepted his request for a prayer.⁵⁴

50 Kuroda, *Kyōkai no chūsei*, 233-258.

51 For an overview of the Yoshida and their teachings, see Inoue, *Yoshida Shintō*. See in English, Grapard, *Shintō of Yoshida Kanetomo*; Hardacre, *Shintō*, 207-234; Horikawa, *Diary of a Shintō Priest*.

52 Yoshida Kanemigi, *Kanemigi-kyō ki*, Tenbun 3 (1534). 7.7, ed. Kishimoto and Sawai, Part 5, 19.

53 For transcription, see Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō. Between parentheses, explanations, between brackets, what I had to add to the original entry to make sense of it.

54 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 1, 48.

The Mochizuki were one of the leading families of the Kōga district collective. In Tenshō 12 (1584), the Mochizuki family collective put their signature to the oath of the Kōga district collective.⁵⁵ The Mochizuki also appeared in the entries for the 16th day of the 2nd month of Genki 2 (1571) (Table 2/2) and the 29th day of the 3rd month of Tenshō 13 (1585) (Table 2/20). In the former, Mochizuki Shimotsuke *no kami* asked Kanemi for a talisman to appease the deity Inari, the deity of foxes, which was haunting a woman and demanded that the Mochizuki build a shrine.⁵⁶ In the latter, Mochizuki Tobimatsu asked Kanemi for a prayer for his wife, who had been sick since she had given birth.⁵⁷ In the medieval period, childbirth was believed to be a defiling moment where evil spirits could inflict harm. It is safe to assume that the Mochizuki did indeed fear divine punishment. As noted in the introduction to this article, previous research characterized the Warring States period as »the age of secularization.« However, the analysis of Table 2 casts doubts on seeing the punishment mentioned in an oath as being merely a formulaic phrase.

The fact that people asked Kanemi for prayers means that they were trying to avoid divine punishments. Previous research has focused on the ritual called *kishō-gaeshi* or *kishō-yaburi*, which means the cancellation of an oath.⁵⁸ The journal entry for the 11th day of the 9th month of Tenshō 11 (1583) reads as follows:

People from the southern capital [Nara] reported that an uncle and a nephew argued at the residence, and they swore to sever their ties. They have kept this oath and have never seen each other since then. Their relatives persuaded them to reconcile, but because of his oath, the uncle, Oki *no kami*, never agreed. For this reason, the relatives eagerly asked for an approval [that cancels their oath and allows them to reconcile]. I offered a prayer and sent a document [of approval].⁵⁹

55 Yamanaka monjo, doc. 記 30.

56 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 1, 22.

57 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 3, 41.

58 For the cancellation of an oath (*kishō-gaeshi*), see Saiki, *Saiki Kazuma chosakushū*, 158-163; Chijiwa, *Chūsei minshū*, 37-40. An early example of cancellation can be found in Yoshida Kanemigi, *Kanemigi-kyō ki*, Tenbun 3 (1534).11.13, ed. Kishimoto and Sawai, Part 5, 52.

59 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 2, 137.

Likewise, on the 21st day of the 11th month of the same year, a man from Takashima in Ōmi province asked Yoshida Kanemi for the cancellation of an oath, although Kanemi did not record its content.⁶⁰ On the 26th day of the 6th month of the following year, the people from Yawata in Kyoto told Kanemi that four men had written an oath not to drink alcohol (probably for purification). Although they kept this promise, they asked for the cancellation of the oath for some reason.⁶¹ On the 6th day of the 12th month of the same year, Aoyama Sukehyōe *no jō* from Echizen province (present-day Fukui prefecture) asked for the cancellation of an oath as follows:

The letter from Aoyama Sukehyōe *no jō* of Echizen province arrived. He and his wife wrote an oath to divorce but reconciled as a result of persuasion by their children and relatives. However, the punishment of the oath is more important [than the persuasion of their children and relatives]. Therefore, they asked [Kanemi] for a prayer and the cancellation of the oath.⁶²

Then, Kanemi performed the ritual of the cancellation of the oath: he chanted toward all the directions of heaven and performed ceremonies three times, with eight plates of food offerings.

Although Kanemi's diary contains no entries about the cancellation of an oath dealing with Kōga, the following entry for the 9th day of the 12th month of Tenshō 12 (1584) (Table 2/19) shows that the people of Kōga attempted to avoid divine punishment, adopting the new practices of Yoshida *Shintō*:

Wakadayū, a *Shintō* priest of the Ox-head shrine in Giga estate, Kōga, said he had carried out the duties of the shrine since he had been appointed as head priest in recent years. He had to perform a purification ritual with [cold] water every morning, which he found unbearable. For this reason, Wakadayū eagerly asked for a judgment order, so I sent him a judgment order [which allows him to use hot water]. As for precedents, I allowed another priest of the Sakuradani shrine in Ōmi province to do the same. Using hot water for the purification ritual is the correct teaching.⁶³

Inoue Tomokatsu, who studies Yoshida *Shintō*, argues that this lineage invented new practices, such as the cancellation of an oath and *Shintō saikyojō* (Yoshida's licenses concerning *Shintō* affairs), and thus relieved the anxieties of people toward deities.⁶⁴ These innovations undoubtedly influenced people's attitudes toward oaths as Inoue and Chijiwa suggest, but it is also worth noting that the Yoshida was reluctant to perform the cancellation of an oath. Kanemi often used the word *konmō* (懇望), which means »earnest requests,« to describe demands for the cancellation of an oath. This expression shows that Kanemi performed the cancellation of an oath only when his clients requested it fervently.

60 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 2, 155.

61 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 2, 215-216.

62 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 2, 249.

63 Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō, vol. 2, 250.

64 Inoue, *Yoshida Shintō*, 38-50.

The same attitude clearly appears in the diary of Yoshida Kanemigi, Kanemi's father. In Tenbun 3 (1534), Kanemigi performed the cancellation of an oath for Ōtsuka Zen'emō *no jō*, a retainer of the Mikumo of Kōga, but he confessed in his diary that he could not decline Ōtsuka's request because Ōtsuka had helped him in restoring one of his landholdings.⁶⁵ The entry for the 27th day of the 5th month of Tenbun 19 (1550), translated below, shows Kanemigi's hesitation to cancel an oath:

Ozaki Hikoemon, a merchant of Shimogyō [in Kyoto], said that there are brothers named Yasutada and Yoshihisa who live near the Hikuma shrine in Tōtōmi province (present-day Shizuoka prefecture). They wrote an oath to swear to sever their ties due to a sudden argument. Ozaki asked for a talisman to reconcile them. Although the cancellation of an oath has been strictly prohibited in recent years, this is not a consequential oath. Also, the reconciliation of the brothers meets the spirit of mercy, so the gods will understand it as well.⁶⁶

To summarize, the people of Kōga had two attitudes toward the oaths and its divine punishment: On the one hand, they were indeed afraid of divine punishment, but on the other, they ultimately found ways to avoid divine punishments and thus felt less guilty for breaking promises to deities. The Yoshida also had the same attitude. They created the rites of the cancellation of an oath to fulfill people's desire to cancel an oath, but at the same time, they tried to restrict its practice into limited and inconsequential occasions. These ambivalent attitudes suggest that the Warring States period cannot simply be characterized as either »the age of religion« or »the age of secularization.« This article must leave this problem to future research, but it is certain that we need a more nuanced understanding of to what extent people respected oaths and feared divine punishments. Perhaps this very framework could be reconsidered as well.

Epilogue: After the Kōga District Collective

The Kōga district collective came to an end in Tenshō 13 (1585) when Toyotomi Hideyoshi, who would reunite Japan in 1590, banished many local Kōga warriors as a punishment for their negligence during his military campaign against the Negoroji temple of Kii province, a monastic institution that maintained considerable autonomy. For example, Ōhara *Kenmotsu*, who frequently appeared in Yoshida Kanemi's diary, was banished in 1585 from Kōga and forced to live in Ise province (Table 2/21). After this sudden banishment, called *Kōga yure* (»the Kōga Earthquake«), the Kōga district collective broke up for good.

65 Yoshida Kanemigi, *Kanemigi-kyō ki*, Tenbun 3 (1534). 11.13, ed. Kishimoto and Sawai, Part 5, 52.

66 Yoshida Kanemigi, *Kanemigi-kyō ki*, ed. Kishimoto and Sawai, Part 10, 81. In Tenbun 7 (1538), Kanemigi in fact declined a request from one courtier, saying »the cancellation of an oath has been entirely suspended.« Yoshida Kanemigi, *Kanemigi-kyō ki*, Tenbun 7 (1538). 3.13, ed. Kishimoto and Sawai, Part 6, 105.

Although some of these warriors maintained local influence, they were not classified as *samurai*, a distinct elite warriors status codified by Toyotomi Hideyoshi, and instead became classified merely as »commoners.« Nevertheless, their residual authority remained, in Keichō 16 (1611), three of them mediated a dispute over mountain resources in the same way as their ancestors had settled a similar dispute in Tenbun 2 (1533).⁶⁷ However, their mediation apparently ceased after Keichō 19 (1614). It was replaced by mediation and adjudication by the Tokugawa *bakufu* and its officials.⁶⁸ At the same time, a new type of oath, which seems to have been written by people of lower status, appeared in Kōga. An example is Princeton oath (5). Although its content is unclear, as its content clause is not present in the surviving Kosaji documents, this oath, which is filled with a number of simple signatures called *ryakuō*, a sign used by illiterate people, could well represent the decline of the local power of the Kōga warriors (see Figure 5).

Some of these former warriors, who had lost their privileged warrior status, petitioned the Tokugawa *bakufu* to serve, calling themselves *Kōga koshi* (»the Old Kōga Warriors«). The Old Kōga Warriors stressed the military merits of their ancestors to the Tokugawa *bakufu* and its founder Tokugawa Ieyasu. They also made claims of being stealthy specialists of *ninjutsu*, or *ninja* martial arts.⁶⁹ Although their attempt to regain status never succeeded, the Kōga *ninja* became a part of Kōga's regional symbol, and the origins of this very famous trope of *ninja*.⁷⁰

The Saji, one of the 21 houses of the Old Kōga Warriors, also experienced the same upheavals. In Bunsei 12 (1829), when Saji Tameyori organized his documents into a scroll, he wrote in the colophon that the Saji's documents had been scattered after the destruction of the Kōga district collective. This description might explain why our Princeton oaths were lost to the Saji sometime prior to 1829.⁷¹ Thus, the Princeton oaths not only demonstrate how medieval oaths functioned in local disputes in Kōga but also tell us of the hardship one local warrior family experienced in the socio-political transition from the medieval to the Tokugawa period.

67 Ishida, *Kōga gunchū sō to Iga*, 365-367.

68 *Kōkashishi hensan iinkai, Kōkashishi*, vol. 3, 282-294.

69 For the transformation from local warriors to *ninja*, see Fujita, *Kōga ninja no jitsuzō*. See in English Souyri, *Autonomy and war*; Turnbull, *Ninja*, Chapter 6.

70 Today, Kōga is best known as the birthplace of the Kōga *ninja*.

71 Kosaji monjo, Bunsei 12 (1829) Saji Tameyori's colophon. This scroll of the Saji's inherited documents does not contain the Princeton oaths, which indicates that the Princeton oaths were lost to the Saji before 1829. Miyajima Keiichi points out that the oaths left in Kōga often lost their invocation clauses. Therefore, an alternative explanation that invocation clauses were considered less important than content clauses and were deliberately separated from the content clauses of these documents. Chijiwa Itaru assumes that missing invocation clauses would have been burnt during rituals of burning and consumption of oaths in front of temples and shrines. However, the new find of the Princeton oaths casts doubts on Chijiwa's assumption. Miyajima, *Sengoku ki ni okeru*, 23; Chijiwa, *Seiyaku no ba*, 13.

Table 1: Oaths issued for mediation and adjudication of local disputes in Kōga.

Date	From	To	Summary	Invocation Clause	Source
1 Daiei 2 (1522). 4-27	Kashiwagi three families (Tomo, Yamanaka, and Minobe) collective	Yamanaka Sadatoshi	A dispute over ceremonies at the Wakamiya shrine.	Reisha	Kashiwagi jinja monjo
2 Daiei 5 (1525). 6	Yamanaka Sadatoshi	Intermediaries (<i>gohanshū</i>)	Sadatoshi asks for a fair judgment on a dispute with Tomo Shinroku.	Unknown	Yamanaka monjo, doc. 204, 421
3 Tenbun 2 (1533). 7-26	Local warriors (Tomo, Saji, Yamanaka, Ikeda, Taki-Iwano, Usami, Tsuda)	Ushikai village	A dispute between Ushikai village and four other villages (Shiono, Yamagami, Ichihara, Somanaka) over mountain commons.	Reisha	Ushikai kyōyū monjo
4 Tenbun 7 (1538). [9-17]	Yamanaka Hisatoshi	Tachibana Hyōe <i>no jō</i> , Minobe Rokurō uemon <i>no jō</i>	An agreement on the distribution of income from the right of jurisdiction in criminal matters.	Unknown	Yamanaka monjo, doc. 206
5 Tenbun 7 (1538). 9-17	Yamanaka Hisatoshi	(Same as above)	(Same as above)	Reisha	Yamanaka monjo, doc. 207
6 Tenbun 9 (1540). 12-10	Naiki Sanetoshi and two other warriors	Sugitani village collective	A dispute between Sugitani and Isō villages over mountains.	Unknown	*
7 Kōji 2 (1556). 6.20	Isano family collective	Saji Tarōsaemon <i>no jō</i>	A dispute between the Saji and the Isano families over grass.	Daishi	Kosaji monjo + Princeton (1)
8 Eiroku 6 (1563). 6.25	Local warriors (Yamanaka, Tongū, Taki, Ikeda, Minobe, Taki, Ōno, Giga, Ōki)	Saji [Tarōsaemon <i>no jō</i>]	A dispute between the Saji and the Isano families over reclaimed rice paddies.	Jōei	Kosaji monjo + Princeton (2)
9 Eiroku 8 (1565). 6.29	Kashiwagi three families (Tomo, Yamanaka, Minobe) collective	(Three villages of Ishibe?)	A dispute between the three villages of Ishibe and Himono village over irrigation water.	Unknown	Yamanaka monjo, doc. 232
10 [Eiroku 8 (1565). 6.29]	(Same as above)	(Himono village?)	(Same as above)	Reisha	Yamanaka monjo, doc. 406
11 Eiroku 8 (1565). 7.2	Collective of the eight villages of Takano	Himono village	(Same as above)	Unknown	**
12 Eiroku 9 (1566). 12.15	Kashiwagi three families (Tomo, Yamanaka, Minobe) collective	-	An agreement on punishments for criminals.	Reisha	Yamanaka monjo, doc. 235

<i>Date</i>	<i>From</i>	<i>To</i>	<i>Summary</i>	<i>Invocation Clause</i>	<i>Source</i>
13 Eiroku 10 (1567). 12.18	Yamanaka family collective's adjudicator(s)	Yamanaka Toshiyoshi, Kashiwagi village	A dispute between Yamanaka Toshiyoshi and the Minobe-Otani family.	Unknown	Yamanaka monjo, doc. 238
14 Eiroku 12 (1569). 6.3	Local warriors (Tomo, Iwamuro, Taki, Yamanaka)	Saji Tarōsaemon <i>no</i> Saji Tarōsaemon <i>no</i> Saji Mimasaka <i>no kami</i> , Kosaji village	A dispute between the Saji and the Isa-no families over grass.	Reisha, Daishi	Kosaji monjo + Princetown (3, 4)
15 Eiroku 13 (1570). 3.24	Ōhara family collective	-	The rules of the Ōhara family collective.	Reisha	***
16 Genki 2 (1571). 8.27	Kōga district collective	Handōji temple	A dispute between the Handōji temple and the Shingū and the Yagawa shrines.	Reisha	Yamanaka monjo, doc. 243
17 Genki 3 (1572). Int. 1.25	Yamanaka Toshiyoshi, Hachirōsaemon <i>no jō</i> , Hizen <i>no kami</i>	-	Promises to mediate a dispute between Iwasaka village and (Yamanaka) Shin'uemon.	Reisha	Yamanaka monjo, doc. 245
18 Tenshō 1 (1573). 12.7	Kōga district collective, Iga province collective	Wada family	A dispute between the Wada and the Tsuge families over mountains.	Reisha	Shimogō kyōsaikai shozō monjo
19 Tenshō 11 (1583). 12.16	Local warriors (Taki, Ōhara, Saji)	Ushikai village	A dispute between Ushikai village and the villages of Yamagami and Nakamura over mountains.	Reisha	Sakaue Ichitarō shi shozō monjo
20 Tenshō 12 (1584). 10.28	Former Kōga district collective	Yamanaka Toshiyoshi	A dispute between Yamanaka Toshiyoshi and the Naiki and the Kita-Oka families over the land.	Reisha	Yamanaka monjo, doc. 記30
21 Tenshō 12 (1584). 11.6	Former Kōga district collective	Mochizuki-Fukuya family, Isō village	A dispute between the villages of Sugitani and Isō over the boundary of mountains.	Reisha	****
22 Tenshō 19 (1591). 9.28	Uda village collective	(Yamanaka Toshiyoshi?)	Promises to repay a debt.	Reisha	Yamanaka monjo, doc. 263

Sources: * Kōkashishi hensan iinkai, *Kōkashishi*, vol. 2, 384, fig. 263. ** Shigaken Kōka gun kyōiku iinkai, *Kōka gun shi*, vol. 1, 276. *** Hasegawa, *Sengokuki no chiiki kenryoku*, 85-94. **** Kōkashishi hensan iinkai, *Kōkashishi*, vol. 2, 256, fig. 176.

Table 2: Kōga people in Yoshida Kanemi's diary, source: Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō.

Date	Summary
1 Genki 1 (1570). 6.5	A husband and wife from Kōga, who had already lost two sons, asked Kanemi for a prayer for a safe birth this month. Kanemi examined their astrological elements and found they had conflicting elements of fire and water. Kanemi gave them talismans.
2 Genki 2 (1571). 2.16	Mochizuki Shimotsuke <i>no kami</i> of Kōga reported that a wild fox was haunting a woman, and she fell into a trance. She transferred an oracle that if Mochizuki built a shrine to worship the Inari Daimyōjin (the god of foxes), the fox would leave. Kanemi gave him a talisman.
3 Genki 3 (1572). 2.7	Uhyōe <i>no jō</i> , who lived in Aburahi village of Kōga, asked Kanemi for talismans to appease a spirit of a deceased monk named Ryōjun, who had brought a curse on the village. Kanemi gave talismans. Uhyōe <i>no jō</i> visited Kanemi to thank him for appeasing the spirit. (See also 1.24 and 25)
4 Genki 3 (1572). 7.23	Ōsakaya (lit. a big brewer) of Kōga asked Kanemi for three talismans for his daughter and sons.
5 Genki 3 (1572). 9.24	Mochizuki Shigekiyo of Kōga asked Kanemi to perform a prayer. He had felt ill after writing an oath.
6 Tenshō 3 (1575). 12.30	Maruoka Yoritaka, a <i>Shintō</i> priest of a shrine of Kōjibukuro, Kōga, did not usually eat fish or chicken [from the new year] to the eighth day of the first month. In recent years, Yoritaka had ordered lower priests to perform rituals while he frequently went out to serve Sakuma Nobumori (a commander of the Oda domain). [Since he was offered meat at new year parties] he had a problem with the taboo against eating meat. [Today,] Yoritaka earnestly asked Kanemi for permission [to eat meat] through Yamaoka Kagetaka (a warrior of Kōga). Kanemi approved it and issued a judgment order.
7 Tenshō 4 (1576). 3.1	The head priest of the Ise shrine (Fujinami Yoshitada) sent a messenger to Kanemi concerning a god of water of Kōga. Kanemi answered Yoshitada that he wanted to see a map of the course of the river(s).
8 Tenshō 4 (1576). 3.18	Ōsakaya asked Kanemi for a yearly prayer.
9 Tenshō 7 (1579). 5.16	Ōsakaya asked Kanemi for a yearly prayer.
10 Tenshō 8 (1580). Int. 3-21	Ōsakaya asked Kanemi for a yearly prayer.
11 Tenshō 8 (1580). 12.24	Takamine Kanrokurō of Kōga asked Kanemi to perform a prayer to appease an evil living spirit.
12 Tenshō 10 (1582). 2.5	Hikozaemon <i>no jō</i> of Owara Ichiino of Kōga asked Kanemi for a prayer. His three sons had been feeling ill, and he suspected that it was due to a grudge of a woman with whom he had previously had a relationship.
13 Tenshō 10 (1582). 9.30	Ōhara <i>Kenmotsu</i> of Kōga asked Kanemi for a prayer.
14 Tenshō 11 (1583). 1.13	Ōhara <i>Kenmotsu</i> of Kōga asked Kanemi for a prayer.

Date	Summary
15 Tenshō 12 (1584). 1.17	Ohara <i>Kenmotsu</i> of Kōga asked Kanemi for a prayer. Ohara has asked for prayers in the first, fifth, and ninth months since the last year.
16 Tenshō 12 (1584). 2.16	Ohara <i>Kenmotsu</i> of Kōga asked Kanemi for a prayer for having a child. His wife, who was 41 years old, had no children, and she had not menstruated since last month. Kanemi gave him a talisman.
17 Tenshō 12 (1584). 9.5	Ohara <i>Kenmotsu</i> of Kōga asked for a [regular] prayer for this month. His wife was supposed to give birth this month, so <i>Kenmotsu</i> asked for a special prayer. Kanemi gave him talismans and performed a ritual.
18 Tenshō 12 (1584). 12.3	Ohara Jirōsaemon, a relative of <i>Kenmotsu</i> , consulted with Kanemi about his plan to worship the spirit of his ancestor, who had been killed 21 years before, as a god. Kanemi performed a <i>Shintō</i> ceremony and gave him a talisman to appease the spirit. (See also Tenshō 13.1.26)
19 Tenshō 12 (1584). 12.9	Wakadayū, a <i>Shintō</i> priest of the Ox-head shrine of Giga, Kōga, said that he had been appointed the head priest, so he had carried out duties related to the shrine in recent years. He had to perform a purification ritual with [cold] water every morning, which he found unbearable. For this reason, Wakadayū eagerly asked for a judgment order, so I sent it to him [and allowed him to use hot water].
20 Tenshō 13 (1585). 3.29	Mochizuki Tobimatsu of Kōga asked Kanemi for a prayer as his wife had become ill and had been unable to walk since she gave birth the previous month. Kanemi gave him talismans and performed special rituals for him. (See also the entries for 3.30, 4.3, and 4.4.)
21 Tenshō 15 (1587). 1.26	Ohara <i>Kenmotsu</i> of Kōga, who now lives in Ise province due to the last year's banishment, sent a letter about a regular prayer to Kanemi. <i>Kenmotsu</i> also asked for a talisman for his newborn son. Kanemi gave two talismans for Kanemotsu's son and daughter.
22 Tenshō 19 (1591). 8.3	Takenaka Kouemon <i>no jō</i> of Minakuchi, Kōga, aged 50, asked Kanemi for talismans to purify a building site.

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Abbreviations

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List of Figures and Tables

- Figure 1: Princeton oath (1) Reverse, Princeton University Library, East Asian Collection, [Kishōmon. 1556-1615].
- Figure 2: Princeton oath (2) Reverse, Princeton University Library, East Asian Collection, [Kishōmon. 1556-1615].
- Figure 3: Princeton oath (3) Reverse, Princeton University Library, East Asian Collection, [Kishōmon. 1556-1615].
- Figure 4: Princeton oath (4) Reverse, Princeton University Library, East Asian Collection, [Kishōmon. 1556-1615].
- Figure 5: Princeton oath (5) Obverse, Princeton University Library, East Asian Collection, [Kishōmon. 1556-1615].
- Figure 6: The Japanese archipelago
- Figure 7: Ōmi province and surrounding areas
- Figure 8: Kōga and local warriors in the Princeton oaths

Table 1: Oaths issued for mediation and adjudication of local disputes in Kōga.

Table 2: Kōga people in the Yoshida Kanemi's diary, source: Yoshida Kanemi, *Kanemi-kyō ki*, ed. Kaneko and Endō.

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Loyalty Oaths and the Transformation of Political Legitimacy in the Medieval West

Stefan Esders*

Starting from more general considerations on the nature and functioning of promissory oaths, this article seeks to shed light on the Christian contribution to the legitimate use of oaths since the Late Antique period. Taking oaths – contrary to Christ’s prohibition of swearing as formulated in the Sermon on the Mount – led to a qualification of oaths and to ecclesiastical punishment of perjury, while early medieval oath formulas show a remarkable legal diversification of the notion of fidelity. General oaths of fidelity enabled post-Roman kings to establish a special kind of legitimacy for their rule that addressed their subjects of Roman and barbarian origin alike. Focusing on individual commitment, enhancing religiously motivated devotion to a ruler, and linking loyalty to essential concepts of the Christian religion, the widespread use of these oaths introduced a change in political discourse that eventually led to the Carolingians addressing their subjects as the *fideles Dei et regis*, the »faithful of God and the king.«

Keywords: Oath, perjury, Christianity, fidelity, loyalty, Carolingian empire, military

Oaths have been most often used in situations when stakes were high, and where interpersonal trustworthiness and reliability could not be achieved otherwise than by making a solemn personal declaration that focused quite radically on essential religious and social values. Taking individual commitment to the extremes, oaths on a more general level thus can lead us into the heart of the question of how social and political relations were constructed in societies at a given time, and which social tensions and risks, but also which shared values, rendered oaths indispensable.

Naturally, religion is a crucial factor in understanding the power of oaths, as the gods themselves are usually expected to sanction any abuse of an oath spelled out in their name. Still, religions seem to take a different stand on how a human being may use a god or the God’s name for earthly purposes. In medieval and early modern Christian societies, the omnipresence of oaths illustrates these societies’ need to solve conflicts and create social bonds on a large scale, as well as the delicate question of how to use oaths in societies dominated by a religion whose founder had explicitly forbidden his adherents to swear. This may be illustrated by a seventeenth-century painting kept today at Bad Säckingen in southern Germany

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(located about 20 miles east of Basel on the shore of the Upper Rhine) – the so-called »Eidtafel« of 1682.¹ It was produced by order of the mayor of Säckingen to remind all oath-takers of the risk they took and of the dangers of perjury. It contains large texts explaining the rite of swearing with three fingers and on the terrible fate of three persons of the region who had perjured themselves. With Christ portrayed as eternal judge, and an angel with sword and scales standing on the coat of arms of the Habsburg monarchy, a horror scenario of the imagined post-mortem fate of the three perjurers is evoked in the lower register (see Figure 1): Their hands or arms have turned black, while the foul flesh of the corrupted hand even survived the skeletization of the human bones so that the devil’s helpers could easily identify the perjurers, drag them even out of their graves and lead them straight to the eternal fire of hell.²



Figure 1: Bad Säckingen, Eidtafel of 1682 (detail), photo: Stefan Esders

The »imaginaire« of oath-related consequences certainly would have differed according to culture and religion. And indeed, it may be regarded as typical for societies dominated by the Christian religion that the abuse of the oath is sanctioned not only by God, but also by ecclesiastical and even »secular« institutions on earth.

In what follows, I shall proceed from some more general observations on how oaths functioned, before discussing the impact of Christian religion and secular law on the practice of swearing in medieval Western Europe, as becomes evident from oath formulas and texts on sanctions imposed on persons who swore falsely or who did not fulfill their sworn promises. The final part will then focus on the role played by oaths in the transformation of the late Roman world and in the emergence of »post-Roman« or »medieval« kingdoms.

1 Bad Säckingen, Hochrheinmuseum Schloss Schönau, Inv. Nr. B-82.

2 See Roller, Eidschwurtafel, Säckingen 1682, 661-662 (L 242), with a transcription of the texts. On the general background, see Brückner, Eid, Meineid; Holenstein, Seelenheil und Untertanenpflicht.

Promissory Oaths as a Type of »Contractual« Binding

Oaths are a common phenomenon that we encounter in most, if not all, societies past and present, quite independent of these societies' dominant religions. For this reason, it seems helpful to start with a very general definition that seeks to do justice to the broad array of types and forms of oaths that we encounter in history:

An oath is a solemn speech act performed according to some established formal procedure. This speech-act contains either a promise for the future to be kept or a statement on events of the past that are explicitly claimed to be true. Typical for many, if not most, oaths is that a deity is invoked as witness, whose punishment is called down if the promise is broken or if the statement given under oath should turn out to have been given falsely.³

Of course one could broaden this definition, as a deity is not invoked in all cases, and since an oath-taker also often calls down a conditional curse on himself or herself, his or her family or even his testicles. Moreover, it is not always easy to separate an oath from a vow. It might therefore be helpful to say that, in an oath, the deity and its punishing power is invoked as a witness, whereas a vow is usually made to a deity with the promise to give or sacrifice something in return for some supernatural help one hopes to receive.⁴ Also, the dividing line between oaths and ordeals appears fluid, if we consider both as instruments of judicial proof. An ordeal is a carefully prepared ritual with the aim that a deity's will may become manifest and decide a case, whereas in oaths the deity is used as a witness⁵ – quite a powerful witness, it seems, which in the worst case could directly turn into a judge.⁶

One should also note at the outset that oaths are usually only one key element among others that constitute a more complex ritual process.⁷ Also, the importance of the ritual element within the oath procedure may differ quite radically: in the Egyptian papyri of the Roman imperial period, for instance, we find written oaths that invoke the emperor as deity, while there is hardly any evidence for a ritual;⁸ by contrast, oaths that we encounter in medieval coronation ceremonies appear as part of a longer series of important procedural steps.⁹ It is thus for practical reasons and due to the mostly poor documentation in our early medieval sources that this study focuses on oaths.

3 See Esders, Schwur, 30.

4 Esders, Schwur, 30-31.

5 Roberts, Oaths, autonomic ordeals, and power; Bartlett, *Trial by Fire and Water*.

6 As is often attested in hagiographical texts; see Esders, Der Reinigungseid mit Helfern.

7 Le Goff, Le rituel symbolique de la vassalité; Débax, Le serrement des mains; Depreux, La prestation de serment.

8 Packman, Notes on papyrus texts.

9 Nelson, Symbols in context; *eadem*, Inauguration rituals.

Modern systematization often distinguishes between promissory and assertive oaths, that is, promises made under oath, and formal testimonies in court. This distinction, already introduced by medieval jurists, may sound to some extent artificial. For instance, Giorgio Agamben states that an oath given in court can in a way also be considered a promise – a promise to tell the truth.¹⁰ Still, I think for our purposes this distinction can be helpful, as a focus on promissory oaths will bring us more closely to the manifold political functions and meanings of swearing.¹¹

Here, it is essential to recognize the element of self-obligation in order to understand why oaths can create interpersonal trust and commitment, so that they can be considered as having a contractual aspect. To be sure, by no means all oaths were sworn voluntarily. Still, what makes an oath such a powerful instrument is the fact that, by performing a speech and ritual act, an individual personally creates an obligation and calls down heavenly sanctions to be applied in case this obligation is not met. The oath links the promise explicitly to essential religious and social values ideally shared by all members of a society – values that create trust. The trustworthiness of a person is hugely important, while the oath procedure serves to eliminate distrust, which may arise for a number of reasons. To talk about the functioning of oaths thus means to talk about social reputation.¹² If, as is most often the case, an oath is sworn in public, the public gets involved as witness, thereafter exercising some sort of social control over the credibility and standing of the person who has sworn, and also taking some responsibility for the promise to be put in effect.

Another prominent feature of oaths is that they considerably narrow the space for any future negotiation on the issue that was the subject of the oath. Naturally, most oaths are preceded by negotiations on the precise contents of a promise; this might even go so far as to negotiate on individual clauses in the oath formula to be used. But once an oath is sworn, the room for maneuver becomes considerably narrower, and deliberately so, as it will be extremely difficult to find good arguments to justify breaking the oath – particularly arguments that are suitable to convince others on whose opinion the oath-taker depends. If someone has sworn loyalty to a ruler, for instance, it remains possible to question this ruler's qualification and to form a conspiracy together with some other people, but it will not be so easy to transform this into an argument that leads the public or even the religious elite to allow the breaking of a promise personally given in the presence of others. Oaths, once sworn, narrow social discourses and channel them into a specific direction.

However, the most important point, at least as I see it, is the internalization of the promise. Despite creating a lengthy, sometimes lifelong obligation, a promise given to someone under oath is the result of a specific situation. An hour later or so, the person to whom the oath is sworn might not even be present anymore. But the person who has sworn is still there, of course, and he or she has undergone a procedure intended to transform obedience

10 Agamben, *Das Sakrament der Sprache*, 12.

11 Kolmer, *Promissorische Eide im Mittelalter*.

12 Hirsch, *Über die Gesellschaftsbezogenheit des Eides*.

to a norm or some kind of expected behavior into an aspect of his or her inner self. One may or may not call this »conscience,«¹³ but what matters above all is that the whole thing becomes a personal obligation with which the person who has sworn has personally to come to terms. It is your business now. From a sociological and psychological perspective, an oath thus can serve to transform heteronomy into self-coercion.¹⁴ Looked at from the perspective of a ruling authority, promissory oaths can thus be used to impose obligations and allow for a transfer of norms.¹⁵ The internalization of norms by sworn promises explains why oaths were an indispensable tool and played a particular role in societies that, for whatever reasons, were in desperate need of creating reliability and personal bonds on a large scale. In his sociology of law, Max Weber, adapting here a dichotomy borrowed from Henry Sumner Maine's important monograph *Ancient Law* from 1861,¹⁶ distinguished as ideal types »purposive contracts« and »status contracts,« of which the latter changed a person's whole attitude, mind and status completely, whereas the former were confined to a certain action to be performed in the near future.¹⁷ Weber also observed that both types of contract could be confirmed by an oath, which happened occasionally in the case of »purposive contracts,« but was a defining feature of »status contracts.«¹⁸ Many medieval oaths, such as oaths of fidelity, can indeed be considered as »status contracts«, but as we shall see, this required that they be defined as precisely as possible.

Oaths thus allow the transformation of power and authority into law, so to speak. A ruler or lord may not be powerful enough to control permanently the loyalty of his subjects and to compel personally their military support, but he is often strong enough to urge or even force them to swear. For this reason, the self-binding contained in an oath makes it to some extent work as a functional equivalent of more institutionalized modes of creating trustworthiness and exercising control, and of »statehood.«¹⁹ In particular, where obedience cannot be controlled on a daily basis, self-commitment becomes crucial. Loyalty may entail obedience,²⁰ but it is a different value. It appeals to notions such as honor and self-esteem, while it also contains an important emotional element, the impact of which can hardly be overestimated.²¹

The importance of oaths as an instrument to create law becomes relevant against the backdrop of normative and indeed legal pluralism.²² Each individual lives in a world characterized by various rules and norms – religious, social and others – that impact on his or her life. These norms are often in conflict with one another. The function of a promise given under oath is to prioritize certain norms over others. This is achieved by self-obligation.

13 Holenstein, *Eid, Gewissheit, Gewissen und Seelenheil*; Schlesinger, *Promises, Oaths, and Vows*.

14 Holenstein, *Die Huldigung der Untertanen*, 52.

15 Esders, *Treueidleistung und Rechtsveränderung*.

16 Maine, *Ancient Law*, 170 (»from status to contract«).

17 Weber, *Wirtschaft und Gesellschaft*, 402.

18 Weber, *Wirtschaft und Gesellschaft*, 402.

19 Esders and Schuppert, *Mittelalterliches Regieren*, 195-206.

20 Becher, *Eid und Herrschaft*, 157 and 163.

21 Esders, *Fideles Dei et regis*.

22 Esders and Reimitz, *Diversity and convergence*.

The person who swears uses the deity as a witness and, in doing so, pledges his spiritual well-being on earth and possibly even after death, making it dependent on his willingness and ability to fulfill the promise in the future.²³ It is thus this pledge of one's most highly valued future life that allows one to liberate oneself from other expectations, norms and rules of conduct that are also regarded as vital.²⁴ For instance, if, as in ancient Rome, a person swears to be more loyal to the emperor than to his own family, we see this potential conflict of norms made explicit by the oath and prioritized in favor of the emperor.²⁵ For this reason, one may venture to say that oaths of promise often contain a vital element of individualization and of »dissolidarization,« while they allow entry into new groups that are constituted as sworn communities.²⁶ Oaths thus played an important role in societies characterized by a plurality of norms and laws. In the medieval West, all sorts of oaths were sworn in many different contexts – fidelity,²⁷ guilds,²⁸ peace agreements,²⁹ cities,³⁰ universities,³¹ etc.

Early Medieval Oath Management. Formulas and Contexts of Promissory Oaths

It is well known that, as a good Christian, you are not allowed to swear an oath. It was specifically prohibited by Christ himself in one of the few passages of the New Testament that explicitly address legal issues, the Sermon on the Mount (Mt. 5.33-38), and also in the Epistle of James (James 5.12). I cannot go into more detail here about why Christ was so rigorous about oaths.³² What matters for medieval Europe, with its societies dominated by Christian ideas and world-views, is that the prohibition of swearing did not, of course, lead to the abolition of oaths. They were simply considered too important to be discarded in obedience to the letter of the Biblical law. But it did impact on how oaths needed to be formulated in order to justify their being sworn or accepted even in the face of Christ's explicit prohibition. Evidently, there were several simple strategies to mitigate the problem, for instance by historicizing the Bible and saying that Christ's prohibition was directed against the Jews, whom the Christians at that time suspected of being more easily inclined to commit perjury, or by saying that the Apostle Paul often swore in his letters, and so on. Or there has been a suggestion that Christ, in the Sermon on the Mount, was not actually referring to

23 Oexle, *Conjuratio* und Gilde im frühen Mittelalter.

24 Esders, »Faithful believers.«

25 Herrmann, *Der römische Kaisereid*.

26 Oexle, *Conjuratio* und Gilde im frühen Mittelalter; Wuk, Constructing clandestine communities.

27 Magnou-Nortier, Fidélité et féodalité; *eadem*, *Foi et fidélité*; *eadem*, Nouveaux propos; Débax, *La féodalité languedocienne*, 99-233; Esders, Rechtliche Grundlagen.

28 Oexle, *Conjuratio* und Gilde; *idem*, Gilden als soziale Gruppen.

29 Koerner, *Iuramentum und frühe Friedensbewegung*.

30 Ebel, *Der Bürgereid*; *idem*, Zum Ende der bürgerlichen *coniuratio reiterata*.

31 See in general Michaud-Quantin, *Universitas*, 233-245; more specifically Miethke, *Der Eid an der mittelalterlichen Universität*.

32 Kollmann, *Das Schwurverbot Mt 5,33-37 / Jak 5,12*; *idem*, *Erwägungen zur Reichweite des Schwurverbots*; Vahrenhorst, »Ihr sollt überhaupt nicht schwören.«

swearing in general, but only to perjury – an argument that obviously posed an exegetical challenge.³³ In fact, several Church fathers, particularly in the Eastern Roman Empire, including Basil of Caesarea³⁴ and John Chrysostom,³⁵ took Christ's prohibition much more seriously and completely declined to swear, and of course every good heretic declined to swear for obvious reasons, too.³⁶ However, in the long term, it became more important in the West that Jerome³⁷ and Augustine³⁸ developed theories that allowed a Christian to swear in special circumstances. Jerome in particular, in an influential passage, claimed that any statement given under oath should be given deliberately and be true and just.³⁹ Accordingly, in the early medieval West, *iudicium*, *iustitia*, and *veritas* served as criteria for an oath to be lawful and in accordance with Scripture.⁴⁰ In their medieval reception, Jerome and Augustine thus came to be read as the two Church Fathers who allowed and justified the practice of oath-taking.⁴¹

In medieval societies contradictory oaths posed a danger to an individual's soul as well as to the pervading world-view, since an individual could swear or be forced to do so on a number of occasions. For this reason, many oaths required qualification. Accordingly, oath formulas could not only become increasingly complex, but might also incorporate religious and other ideas in a characteristic way. Another important factor contributing to this development was the influence of »secular,« particularly Roman, law, which contained many clauses that we also find inserted into medieval oath clauses. To give but one example: in the Carolingian Empire, each free-born adult male was obliged to swear fidelity to Charlemagne (r. 768-814) and his successors using this formula:

I swear that from today on I will be faithful (*quod fidelis sum*) to the most pious emperor Lord Charles, son of Pippin and Queen Berta, with a pure mind (*pura mente*), without fraud and malice (*absque fraude et malo ingenio*), from my side to his side (*de mea parte ad suam partem*), as (*sicut*) according to law (*per dicitum*) a man (*homo*) has to be loyal towards his lord (*domino suo*) – so help me God (*si me adiuvet Deus*) and these saints' relics (*et ista sanctorum patrocinia*), who are in this place, that, as God may give me intelligence (*quantum mihi Deum intellectum dederit*), I will all my life (*diebus vitae meae*) of my own free will (*per meam voluntatem*) strive (to achieve that aim) and give my assent (*sic attendam et consentiam*).⁴²

33 Kreusch, *Der Eid zwischen Schwurverbot Jesu*.

34 Basil of Caesarea, *Letters*, trans. Deferrari, 22, 33 and 188.

35 John Chrysostom, *Homilies on the Gospel of Matthew*, trans. Prevost, 17, 5-7; *idem. De Anna*, trans. Hill, 1,1.

36 Vauchez, *Les refus du serment*.

37 Jerome, *Commentary on Matthew*, trans. Scheck, 1, 5, 34.

38 Augustine, *De serm. Domini*, ed. Mutzemberger, 1, 51; *Serm.* 180. See Boodts, Augustine's *sermo* 180.

39 Jerome, *Commentary on Jeremiah*, ed. Reiter, 1, 69.

40 Landau, *Eid*, Historisch.

41 Kreusch, *Der Eid zwischen Schwurverbot Jesu*, 81-112.

42 *Capitularia missorum specialia a. 802: Capitularia regum Francorum* 1, ed. Boretius, no. 34, 101.

Some aspects of the Carolingian formula look more traditional – for instance, the reference in the promise to the dynasty (here to Charlemagne’s parents, but in other cases also to the ruler’s sons); its connection to the imperial or royal title, which created a special type of legitimacy;⁴³ the use of relics, which in some cases had only been brought to the place where the oath-taking took place, and specifically for that purpose.⁴⁴ Not all relics were brought in a transportable reliquary. In some cases at least, they remained at the place where the oath was taken and served as a constant reminder of the promise and of the saint whose task it was to surveil the promise to be kept.

What I find remarkable about these oath formulas is the amount of work spent on making these detailed distinctions as precise as possible through careful wording. This oath’s wording is arguably a masterly juridical formulation, as the formula is full of clauses that ultimately and purposefully defined the nature and content of fidelity as precisely as possible, and prevented an individual from falling into perjury too easily. For instance, »without fraud and malice« is a clause we find in Roman private law, and also in Roman oaths of office.⁴⁵ It clearly makes the point that the promise is given »in good faith« (*bona fide*). Also, the clause »according to my knowledge und capability« (*secundum meum savirum et posse*), which we encounter in many formulas,⁴⁶ refers to Roman legal ideas, as it was an old Roman axiom that no one should be held to something he was clearly not able to perform (*nemo obligetur ultra posse*)⁴⁷ – in fact, in an oath formula these words could be used to express some kind of mental reservation.

Other clauses emphasized the »voluntary« nature of the promise (which was often voluntary in name only, as there was an obligation to swear that many subjects sought to evade by flight), the intent to act out of one’s own motivation, and the understanding that fulfilling the promise also depended upon God’s will – God not only served as a witness here, but was also expected to give strength. In yet other texts we find »friend-foe-clauses« (that is, to have the same friends and enemies as the person who accepted the oath) that were already part of many Antique oath formulas,⁴⁸ while more typical for medieval oaths are »reservation clauses,« which prioritize certain obligations over others, as an individual would most likely enter several oath-bound relationships in his life. This was a way of anticipating potential collisions of norms and obligation at an early stage – while it also served to keep intact the validity of the oath as an instrument to create trust.

43 Capitularia missorum generalia a. 802, c. 2: *Capitularia regum Francorum* 1, ed. Boretius, no. 33, 92.

44 Becher, *Eid und Herrschaft*, 180-190.

45 Becher, *Eid und Herrschaft*, 128-138.

46 Ewald, *Formelhafte Wendungen*.

47 Liebs, *Lateinische Rechtsregeln*, 98, 146.

48 On the Roman background, see de Libero, *Die Freund-Feind-Klausel*; see also Wallach, *Amicus amicus*.

This shows that there must have been an enormous awareness of the dangers and perils inherent in this undertaking of making hundreds of thousands of people swear fidelity. One might call this self-reflexive. Asking the people to make a promise they could not keep and that would cause them to commit involuntarily perjury would have devalued the oath as a political and legal instrument. There might be a thin line between fidelity and perjury, between commitment and treason. In fact, one of the arguments put forward by some Frankish bishops when they deposed Louis the Pious in 833 was that he had made too many contradictory resolutions on which he let the people swear. Thus, through his many policy changes, he caused his people, entrusted to him by God, to involuntarily break their oaths and put their souls' salvation in danger⁴⁹ – a breach of one of the most prominent tasks for a ruler according to the medieval idea of kingship.

A final notable point in Charlemagne's formula is that the oath-taker promised fidelity »as a man should show to his lord according to law«: *sicut per drectum homo domino suo esse debet*. This »*sicut*-clause«⁵⁰ characterizes the relationship as a legal matter⁵¹ between ruler and subject in military terms, as the whole notion of fidelity is basically military, and one of the most important duties of a subject was to carry out military service in Charlemagne's numerous campaigns. The military thus served as the frame of reference to define the nature and scope of fidelity, which was clearly based in customary law, while the whole sentence is constructed with a *sicut*-clause, which the Carolingians introduced and which became widespread and legally differentiated, in the Carolingian era and later, continuing in some regions into the eighteenth or nineteenth centuries.

Further *sicut*-clauses may illustrate the enormously broad stratum of specific meanings that could be expanded into a more general notion of fidelity, and how being bound by an oath was linked to a variety of normative expectations and legal customs: in 854, Charles the Bald (r. 823-877) ordered the general oath of fidelity to be sworn according to a special formula. It stated that any adult free man had to swear to be loyal (*fidelis*), »as a free man should according to law be towards his king« (*sicut Francus homo per rectum esse debet suo regi*).⁵² A more specific notion was to use vassalage as reference system. Thus Tassilo III, duke of Bavaria, is alleged to have promised loyalty (*fidelitas*) to Charlemagne's father, King Pippin, in 757, »as a vassal has to be according to law towards his lords« (*sicut vassus recta mente et firma devotione per iustitiam, sicut vassus dominos suos esse deberet*).⁵³ By contrast,

49 Relatio episcoporum Compendiense a. 833, c. 2: Booker, Public penance of Louis the Pious. See de Jong, *Penitential State*, 45, 212-213, 239.

50 Esders, *Fidelität und Rechtsvielfalt*.

51 On *d(i)rectum*, *rectum*, *rehto* in oath formulas, see Althoff, *Ungeschriebene Gesetze*, 286; Becher, *Eid und Herrschaft*, 163-165; Esders and Mierau, *Der althochdeutsche Klerikereid*, 58-59.

52 Capitulare missorum Attiniacense a. 854: *Capitularia regum Francorum 2*, ed. Boretius and Krause, no. 261, 278.

53 *Annales regni Francorum a. 757*, ed. Kurze, 6, 14 and 16.

in 877, the bishops promised fidelity towards Louis II, »as a bishop is obliged rightfully to his senior« (*sicut episcopus recte seniori suo debitor est*),⁵⁴ clearly echoing the limits of episcopal subjection caused by their office. Around 800, local priests in Bavaria had to swear a vernacular oath to their bishop, promising fidelity and that they would be obedient to him and stay devoutly in his diocese »as I am obliged according to canon law« (*so ih mit rehto aphter canone scal*).⁵⁵ Here, interestingly, fidelity is combined with ecclesiastical law.

There are numerous further examples of oath formulas using this clause. For instance, in eleventh-century Saxony, a freedman who had been manumitted by his bishop from slavery and received the status of a *litus* (a category of people who were not fully free), swore fidelity to his bishop, »as a dependent litus is deservedly obliged to« (*sicut proprius liddo merito debuit, eidem ecclesiae et episcopo fidelitatem fecit*).⁵⁶ Similarly, in the thirteenth century, we find a castellan swearing to be loyal to King Rudolf of Habsburg, »as a castellan should be towards his lord« (*in omnibus fidelis et utilis, prout burgravius suo domino esse debet*).⁵⁷

We encounter the *sicut*-clause also in mutual oaths, most famously in the Strasbourg oaths of 842, when the two half-brothers Charles the Bald and Louis the German (r. 817-876) swore love and support, »as a brother should exercise towards his brother according to law« (Old French: *si cum om per dreit son fradra saluar dist*, Old High German: *soso man mit rehtu sinan bruodher scal*), which was, ironically, aimed against their half-brother Lothar I (r. 817-855).⁵⁸ Three years later, Pippin II swore to his uncle, Charles the Bald, that he would be henceforth loyal »as a nephew should be towards his uncle« (*ei fidelis sicut nepos patruo existeret*).⁵⁹ The interesting thing about all these examples is that the two parties were in fact relatives, but the oath was taken to reaffirm their relationship as relatives, as the category »kinship« was not considered sufficient to create the kind of trust needed in this situation. Thus, in the treaty of Bonn of 921, the West Frankish King Charles III (r. 898-929), of Carolingian stock, and the East Frankish King Henry I (r. 918-936), of Saxon stock, promised to be friends, »as a friend according to law should be towards his friend« (*sicut amicus per rectum debet esse suo amico*).⁶⁰ The two kings did not belong to the same ruling family, since only one of them was a Carolingian, and this is why they could and should only be friends now.

54 Capitula electionis Hludowici Balbi compendii facta a. 877: *Capitularia regum Francorum* 2, ed. Boretius and Krause, no. 283, 365.

55 Esders and Mierau, *Der althochdeutsche Klerikereid*, 58-59.

56 *Osnabrücker Urkundenbuch* 1, no. 139, ed. Philippi, 120.

57 *Urkundenbuch für die Geschichte des Niederrheins* 2, no. 687, ed. Lacomblet, 401.

58 Nithard, *Historiarum liber III*, 5, ed. Müller, 44, 36.

59 *Annales Bertiniani ad ann. 845*, ed. Waitz, 32.

60 Treaty of Bonn (921): *Constitutiones* 1, no. 1, ed. Weiland, 1-2.

It is important to see the potential of such oaths as relatable to ideas such as kinship, office-holding, etc. For instance, when Emperor Henry IV (r. 1065-1105) deposed margrave Ekbert of Meissen in 1089 following a trial, he had this justified in a royal charter stating that Ekbert, when making plans to kill the king, »had not remembered that he was our warrior, our margrave and our kinsman, and what is even worse, that he was bound to us by an oath« (*non recordatus, quod noster miles, marchio et consanguineus et, quod maius est, noster iuratus fuit*).⁶¹ It was only the oath that made it possible to conduct a political trial in order to depose this person on a charge of infidelity. Being bound by an oath thus appeared as a more »objective« criterion than kinship and inherited office-holding when it came to deposing a high-ranking functionary.

Returning to the *sicut*-clauses mentioned above, it should be added that we also find them, as adapted from oaths of fidelity, in the legal re-establishment of marriages. Thus, in 865, King Lothar II had to affirm on oath that he would accept his wife Theutberga once more and treat her »as a king has to treat the queen as his legitimate wife« (*sicut decet regem habere reginam uxorem ... legitimam*), which he did on condition that Theutberga would behave towards him »in every respect as a wife has to preserve honor against her senior« (*sicut decet uxorem suo seniori in omnibus observare honorem*).⁶² And according to a reconciliation formula contained in the canon law collection of Regino of Prüm, compiled shortly after 900 and perhaps inspired by Lothar's case, a husband had to treat his wife »as a husband according to law has to hold his wife in love and discipline« (*sicut per rectum maritus suam debet habere coniugem in dilectione et debita disciplina*), while his wife swore to behave »as a wife should be subject according to law to her husband« (*sicut per rectum uxor suo debet subiecta esse marito*).⁶³ These cases no longer contain the word *fidelis*, but refer to a more general notion, which was of course not altogether different from *fidelitas*. There are many more examples, including those of kings such as Charles the Bald, who swore to treat and protect his faithful subjects according to each subject's status as a loyal king should do (*sicut fidelis rex suos fideles per rectum honorare et salvare et unicuique competentem legem et iustitiam in unoquoque ordine conservare et indigentibus et rationabiliter petentibus rationabilem misericordiam debet impendere*).⁶⁴

These oath texts, which have been gathered from legal as well as historiographical sources, show how a nuanced formulary developed a general notion of fidelity and adjusted it to what was needed in a given situation according to a more specific custom or legal tradition. Other formulas are more allusive in wording, but we may assume that the parties involved knew what they were talking about. In particular when sworn in public, for instance in the presence of hundreds of other *fideles*, the »objective« nature and emotional power of the oath becomes manifest.

61 *Die Urkunden Heinrichs IV.*, 2, no. 402, ed. Gladiss and Gawlik, 531.

62 *Annales Bertiniani ad anno. 865*, ed. Waitz, 76-77.

63 Regino of Prüm, *De synodalibus causis II*, 241-2: *Reginonis abbatis Prumiensis Libri duo*, ed. Wassersleben, 308.

64 *Sacramenta Carisiaci praestita a. 858: Capitularia regum Francorum 2*, no. 269, ed. Boretius and Krause, 294.

Protecting the Oath and Sanctioning Its Abuse

A society making so ample use of the oath – as most West European societies did during the medieval period – did not only need to reflect on the proper uses of oaths. Since Christian doctrine on swearing rendered the use of oaths in some way conditional (if not altogether forbidden),⁶⁵ sanctions that followed breaking an oath were also a matter of debate, while, in addition, a certain caution needed to be exercised that oaths were not broken too often and too easily. This is reflected in many narrative sources, which are full of references to perjury, and whose authors lamented that the religious ties that bound their societies together had become atomized in situations of civil strife and were in a crisis of trust.⁶⁶ Nevertheless, the oath as an instrument to create trust remained indispensable; if it was questioned, it was mostly for religious reasons, given the words of Christ. It may in fact be that, paradoxically, one could venture to say that the Gospel prohibition of oath-taking and the consequent need to justify Christian oaths within Christian societies caused their use to become much more formalized.

Usually it was the gods or the deity who were expected to punish if a promise was not kept or a testimony given falsely. The Romans left it to the gods alone to punish the religious violation entailed in breaking an oath (*iurisiurandi contempta religio satis deum ultorem habet*).⁶⁷ Perjury could impinge upon a person's reputation and legal standing, as the concept of *infamia* had a deleterious effect on an individual's future legal capacity. Even so, most sanctions imposed on offenders in oath-related matters were aimed at the misdeed, not at the perjury per se: lèse-majesté (*maiestas*), forgery (*falsum*), rebellion (*conspiratio*), etc. were committed by people who had often sworn some kind of oath beforehand, but the oath was regarded more as indicating the fault than the perjury was seen as a grave misdeed in itself. The punishments for such misdeeds were considered to be hard enough anyway, and no state authority cared about what might happen to a perjurer's soul.

This changed only in the course of time when Christianity became the dominant religion. It took Christian thinkers a while to adapt their attitude regarding the oath to the social, political, and legal necessities. Around 380, John Chrysostom complained that, in Antioch, even Christians were attending synagogues to swear their oaths there, because they regarded such oaths as more valid and the spectacular Old Testament curses probably as more powerful.⁶⁸ In the fifth century, the Christian practice of swearing began to integrate the use of relics (and also the Bible, following the Jewish model of using the Torah for this purpose), while, in the sixth century, we find the first Christian saints specializing in the punishment of perjurers.⁶⁹ Furthermore, we see specific Christian churches regarded as particularly suited and famous for protecting oaths sworn there through the powerful intervention of the saints who punished perjury if their name was invoked – such as Saint Polyeuctus in Constantinople, as is reported at some length even by Gregory of Tours (d. 594) in distant Gaul.⁷⁰

65 Hofmeister, *Die christlichen Eidesformen*.

66 Barthélemy, *Serments et parjures*; Behrmann, *Instrument des Vertrauens*.

67 *Codex Iustinianus IV*, 1, 2.

68 John Chrysostom, *Homilia 1,3 adversus Iudaeos*, PG 48, 847-848, trans. Harkins.

69 Devos, *Saints garants de la foi jurée*; Esders, »Avenger of all perjury.«

70 Gregory of Tours, *Liber in gloriam martyrum*, c. 102, ed. Krusch, 555-557; Esders, »Avenger of all perjury.«

With the emergence of canon law as a distinct legal category, the oath and its abuse also became a legal concern for ecclesiastics. Around 600, in the *Collectio canonum Vetus Gallica*, we find a short title consisting of four canons on perjury (*De periuriis*)⁷¹ and, 400 years later, in the 22-book *Decretum* of Bishop Burchard of Worms, we find one full book devoted to this matter (*De periuriis*), which assembled all the conciliar decisions made on this topic during the previous 600 years or so.⁷² The Church thus began to claim control over the lawful handling of oaths, punishment for perjury, and also, from the seventh century at the latest, the loosening of oaths that were considered to have been sworn unlawfully.⁷³ Of course, infidelity and the like were crimes that were also punishable under »secular,« that is, royal or imperial law, but the separate oath regime imposed by ecclesiastical law became a typical West European feature. Among the ecclesiastical sanctions used to punish perjury, we find excommunication, or a particular penance – both sanctions that explicitly served the purpose of repairing the damaged relationship between the Christian God and an individual soul that had gone astray by abusing or not keeping the oath.⁷⁴

This may sound very theological and theoretical, but it can also be seen as very pragmatic. For instance, in Roman law an oath had never been regarded as causing a legal obligation, and it was only in classical canon law from the thirteenth century onwards that oaths became legally enforceable.⁷⁵ Here, oaths were seen as an expression of an individual's religiously motivated intention; if a Christian, accepted by his God through baptism, decides to take an oath, that oath, even if not held to be a formal contract by the *ius commune*, was considered a »naked contract« (*nudum pactum*) and thus legally enforceable under church law.⁷⁶ Here, the idea emerges of a religiously motivated will that can create law. For instance, if two parties conclude a contract for buying and selling a piece of property before a secular court of law and confirm this contract by their oaths, these oaths allowed each party to transfer legal action over this matter to an ecclesiastical law-court, whose decision would have to be enforced by secular authorities. Oaths thus could in the long term even open up the possibility for »forum shopping,« so to speak.

Loyalty Oaths and the Transformation of Political Legitimacy in the Early Medieval West

My final point goes back to the question of why oaths of fidelity mattered so much in the early medieval West. Although Roman civil law did not accept oaths as creating an enforceable obligation, there were sectors of society where the oath in itself was considered to be the legal basis of a claim, and this holds particularly true of the military oath. The military oath required a soldier to be obedient to his officers and to risk his life when fighting for the Roman Empire and its rulers. It also made a soldier subject to military law, that is, a set of regulations (for instance for making a will) and sanctions to be imposed by military officials on soldiers alone, thus constituting some sort of separate legal system. And the military oath in the Roman imperial period was an oath of fidelity sworn to the emperor as commander of the army.

71 *Collectio canonum vetus Gallica* c. 50: Mordek, *Kirchenrecht und Reform im Frankenreich*, 566-570.

72 Burchard of Worms, *Decretum*, Book XII: *Burchardi Wormaciensis ecclesiae episcopi Decretorum libri XX*, 154-157.

73 Struve, *Das Problem der Eideslösung*.

74 Helmholz, *Religious principles*.

75 Hallebeek, *Actio ex iuramento*.

76 Behrends, *Treu und Glauben*.

The late Roman military oath was particularly important, because it was not only Roman citizens who swore it. The late Roman army of the fifth and sixth centuries was to a large extent composed of 'barbarians' who, upon their entry into the Roman army, swore the military oath. In the later Empire, these non-Romans did not acquire Roman citizenship as a result of their service, which means that the oath became the most important means by which to tie them legally to the Roman polity, while they also maintained their own legal customs. A famous fourth-century verse inscription found near Budapest stating »I am a Frankish citizen, but a Roman soldier in arms« (*Francus ego cives, Romanus miles in armis*) points to the fact that two hearts were beating in a 'barbarian's' chest.⁷⁷ This also held true for their barbarian military commanders who, as kings, dukes, or masters of offices, were part of the Roman military hierarchy, while at the same time acting as kings with their retinue.

When seen from this perspective, the emergence of 'barbarian' kingdoms in the West can be delineated as a process of emancipation of 'barbarian' armies and their leaders. These leaders came to govern a number of Roman provinces, which they did as part of the Roman military, while the oath of their soldiers, who would now swear fidelity to their king instead of to the Roman emperor, was the vehicle for creating a legal basis for a kingship that was more or less independent of the Roman Empire.⁷⁸ Within the Frankish and Visigothic kingdoms, the exaction of general oaths of fidelity by the whole male population thus enabled post-Roman kings to establish a special kind of legitimacy for their rule, which applied to their subjects of both Roman and 'barbarian' origin.⁷⁹ Originating in the late Roman military, these oaths could be used to emancipate early medieval kingship from the framework of imperial legitimation.⁸⁰ The emperors of Eastern Rome could bestow titles and legitimation upon the Western kings, but the Roman people living in the former provinces of Gaul, Germany and Spain became loyal to their kings as they swore a personal oath of fidelity. By extending the oath of fidelity to their 'non-barbarian' subjects, that is, to the majority of Romans, the kings had their people's status transformed from being Roman citizens to become their royal *fideles*. From the seventh-century, we have a formulary for a mandate by which a Frankish king orders a local count to assemble the people in his district to swear fidelity to the king and his son. Obviously, the two recipients were not there to accept the oath personally, which is why the king dispatched a royal envoy (*missus*) to accept the oath on his behalf. This formulary tells us a lot about the administration of general oaths of loyalty. The count had to assemble all the adult men of his *pagus* in the cities, villages, and castles, which means that the whole procedure rested to a large extent on the spatial organization inherited from the later Roman Empire.⁸¹ Deliberately setting aside the ethnic background of the people obliged to swear, the oath-taking was used to create a personal bond of fidelity between king and »subject«. The envoy took the oath, and in later sources we find the king's order to have the names of all those who swore written down in lists that the counts and envoys were expected to keep.

77 *Corpus inscriptionum latinarum* III, 1, no. 3576, ed. Mommsen. For a different translation (»I, a Frank, a Roman citizen, a soldier in arms«) see Pohl, Introduction: Early medieval Romanness, 16.

78 Esders, Implications militaires.

79 Depreux, Les Carolingiens et le serment; Nelson, Carolingian Oaths; Esders, *Regem iura faciunt*.

80 Esders, Implications militaires.

81 Form. Marc. I, 40: *Formulae Merovingici et Karolini aevi*, ed. Zeumer, 68.

One could speak here of an »administered fidelity.«⁸² It is not by chance that this procedure reminds us of military *matricula*, as the most prominent obligation that followed the oath of fidelity was military service. However, the whole political system of the Frankish kingdom can be regarded as an extended military administration, while we can also observe a profound militarization of society in the same period.⁸³ The oath of fidelity thus made the people subject to an administration placed in the hands of dukes, counts, hundredmen, and the like, as it made them subject to mandates issued in the name of the royal ban (the authority to command and coerce).⁸⁴ These oaths thus made possible the creation of norms based on a notion of »military law« that centered upon royal authority. In the Carolingian period, we therefore repeatedly observe a coincidence of oath-taking and intensified royal legislation.

A final remark is on discourse. All those who swore an oath of fidelity to a ruler became that ruler's *fideles* – a term that was equally applied to the inner circle of royal followers and vassals and to the whole population of the Frankish kingdom or Empire. It transformed the political language that was used for centuries to come. The inhabitants of the Frankish kingdom and its successor states were not collectively termed citizens, subjects, or the like, but people who were »faithful«. Focusing on individual commitment, on honor and self-esteem, on self-motivation rather than obedience, and thus creating manifold emotional implications, the new language enhanced personal, religiously motivated devotion to a ruler and linked this to essential concepts of the Christian religion – also in the long term.⁸⁵ Carolingian political discourse centered on ideas such as *fideltas*, *consensus fidelium*, and the like.⁸⁶ However, the most emblematic and rhetorically polished catch-word was in Charlemagne addressing his subjects as *fideles Dei et regis*, people who are »faithful to both God and the king.« In fact, this was a pun created by a rhetorical device, a so-called zeugma, where a single word, here *fideles*, because of its extended meaning, is stated only once while it relates to two parallel constructed objects – God and the king. This was possible, because the term *fideles* could since Antiquity apply equally to Christian »believers« who had been baptized, and to loyal soldiers who had sworn an oath of fidelity. In Carolingian discourse, the single use of the word *fideles* led to baptism and taking an oath as complementary legal acts, symbolizing that being a Christian and being a loyal supporter of the king were closely related concepts, the one being unthinkable without the other.⁸⁷ This points to a certain hubris not untypical of Carolingian religious-political discourse, with a huge and long-lasting effect in the medieval West to come.

82 Esders, Bassetti, and Haubrichs, *Verwaltete Treue*.

83 Bennett et al. (eds.), *Early Medieval Militarization*.

84 Esders, *Amt und Bann*, 264-275.

85 Herman, *Language of fidelity*.

86 Hannig, *Consensus fidelium*.

87 Helbig, *Fideles Dei et regis*; Esders, *Fideles Dei et regis*.

In conclusion, one can say that the power of oaths to create interpersonal social bonds of trust rendered promissory oaths indispensable instruments to establish new polities in post-Roman kingdoms given their ethnically mixed populations, and to regulate numerous political relations. They therefore contributed to a profound transformation of methods to establish legitimacy. The Christian character of the societies and the Christian prohibition against oaths called for a precise definition of these bonds in order to reduce the danger of perjury and to preserve the importance and value of the oaths. However, the omnipresence of swearing also transformed the whole political discourse, as oaths implied – at least in theory – a voluntary and contractual element. For this reason, in the long term, when in the course of the medieval period the post-Roman kingdoms developed into Western monarchies, promissory oaths were also able to act as a nucleus for the idea of a political contract.

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Abbreviations

- CC SL Corpus Christianorum Series Latina
 MGH Monumenta Germaniae Historica
 DD Diplomata
 SS Scriptores
 PG Patrologiae Cursus Completus, Series Graeca, ed. Jacques-Paul Migne
 (Paris, 1857-1866).

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Figures

Figure 1: Bad Säckingen, Eidtafel of 1682 (detail), Bad Säckingen, Hochrheinmuseum Schloss Schönau, Inv. Nr. B-82, photo: Stefan Esders, 2023.

The Promise of History: Oaths in Frankish Historiography

Helmut Reimitz*

The article explores narratives of the oath in the Histories of the post-Roman Frankish kingdom – the most enduring successor state of the Western Roman Empire – and how they reflect the increasing salience of the oath of fidelity for the constitution of legitimate political authority in that kingdom. It studies the ongoing work on the interpretation and function of the oath of fidelity from the Frankish kingdoms under the Merovingian dynasty (ca. 480-751 CE) to the early Carolingian rulers – from the establishment of the general oath of fidelity as the legitimizing basis of post-Roman rule to its increasing sacralization in the Carolingian period establishing a dualism of fidelity to God and the ruler, as is well documented in the formula *fideles Dei et regis*. As Paolo Prodi observed some time ago in his study on the Sacrament of Power (*Il sacramento del potere*), it was in the Carolingian period that the Christian church managed to establish its interpretative prerogative to define how oaths could be linked to claims to power. The study of histories written in the early medieval Frankish kingdom indicates that this was not a steady process of increasing ecclesiastical control over the interpretation of the oath, but should be seen as a more dynamic process in response to the intensified instrumentalization of the dualistic view of the oath by early Carolingian politics.

Keywords: Oath of fidelity, transformation of the Roman world (West), Frankish kingdoms, Merovingian period, Carolingian period, Gregory of Tours, Chronicle of Fredegar, Continuations of the Chronicle of Fredegar/Historia vel Gesta Francorum (Childebrand, Nibelung), Annales regni Francorum

In a concise article about storytelling and oaths, Yves Reuter explored how oaths are social, legal, religious, or cultural acts that are themselves charged with meaning. The commitment of an individual or community to actions and deeds in the future assumes a generally known order or set of expectations.¹ In narratives, oaths play a more active role than just an object of the narrative. They can structure the plot in terms of chronology, causality and hierarchy, and they can also contribute to the coherence and legibility of a narrative. This does not mean that our extant narrative sources reflect only the codified meaning of oaths. Instead, these narratives assume that the oath's codified meaning will connect them to specific ideological, religious, political, and social programs. This, in turn, allows us to study the relationship of these narratives to other social discourses. In this paper, I would like to explore

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1 Reuter, Serment et narrativité.

historical narratives from the most successful and enduring successor state of the Western Roman Empire, the Frankish kingdoms. How do the promises of oaths structure the plot of these histories? How do these narrative structures reflect not only the ideas of their authors but also the political and social structures of their time? I hope these questions will provide some starting points for assessing similarities and differences in the discourses about the oath between early and late medieval Europe and medieval Japan.

The Ten Books of Histories, composed by the bishop of Tours, Gregory, provide a good starting point. With these Ten Books of Histories – *Decem libri historiarum* – Gregory wrote the first comprehensive post-Roman history in the Latin West.² He worked on it in the last decades of the sixth century, roughly a century after the last Western Roman emperor, Romulus Augustulus, was deposed. During this century, a new political order was established in the former provinces of the Western Empire. The empire was replaced by a multitude of kingdoms – *regna* – in the terminology of the time: the Ostrogothic kingdom in Italy, a kingdom ruled by Burgundian kings along the Rhône in Southeastern France, the Visigothic kingdom in Southern France and Iberia, the Vandal kingdom in Africa.³ Some of these kingdoms had a relatively short half life. The kingdom in which Gregory lived, however, the Frankish kingdom ruled by the Merovingian dynasty, became the most enduring and successful polity in the post-Roman West and played therefore an important role as filter and transmitter of Roman models and post-Roman experiments that shaped the social and political structures of Europe after the end of the Western Roman empire.

Oaths played a very important role in this process. They established formalized agreements in the nascent kingdoms emerging from these little Romes.⁴ A general oath of fidelity that had to be sworn by the whole free population in the new kingdoms established the king as the highest legal and military authority.⁵ The oath had its roots in the Roman military oath of fidelity, which had a lengthy pedigree in Roman history. The oath became increasingly redefined as an oath of loyalty to the emperor. With the reconfiguration of the Roman imperial constitution in the principate.⁶ This was further reinforced by the fact that Roman troops played an increasingly important role in supporting their commander to claim the imperial throne.⁷ The military oath was also sworn by non-Roman or barbarian troops who fought increasingly with or within the Roman armies for Western provinces.⁸ Upon rising to the highest military ranks, commanders of these Roman armies must have been responsible for the administration of the military oath, and not least for the swearing in of barbarian

2 For studies on Gregory of Tours see below, n. 39.

3 Recent overviews: Brown, *Rise of Western Christendom*; *idem.*, *Through the Eye of a Needle*; Halsall, *Barbarian Migrations and the Roman West*; Wickham, *Inheritance of Rome*, Pohl, *Die Völkerwanderung*; and Wood, *Christian Economy*; for the Franks see Wood, *Merovingian Kingdoms*; Esders *et al.* (eds.), *East and West*; and the collection of essays in Meier and Patzold (eds.), *Chlodwigs Welt*.

4 See the contribution of Stefan Esders in this volume, with further references.

5 Esders, *Sacramentum fidelitatis*.

6 Esders, *Schwur*, cols. 38-40.

7 Shaw, *War and violence*.

8 Esders, ›Faithful believers‹.

units that were hired by the Roman empire to support the Roman army.⁹ Thus, oaths must have been a well-known instrument of establishing the chain of command and legitimating the authority of barbarian governors. Extending this oath from the military to the whole free population allowed them to create a new social contract with their subjects and to establish legitimate rule. But this also came with a price. In exchange for their oath, new rulers had to grant far-reaching autonomies and privileges to local and regional populations, confirm their social and legal status, and concede to various laws. As Stefan Esders has shown: »The general oaths of allegiance belong to the most important legal foundations of early medieval statehood, since they represent an unprecedented process of legalization, intended to establish a direct legal relationship between the ruler and the individual subjects. While the oath of fidelity enabled a partial reception of ancient models of governance and statehood their adoption in the post-Roman kingdoms brought about the decisive changes that characterized the transformation from the constitution of the Roman empire to those of the post-Roman kingdoms.«¹⁰

The same was the case when Clovis I (481/82-511 CE), the first Christian king of the regnum, established Frankish rule over most of the former provinces of Gallia and Germania. His descendants, also known as the Merovingian dynasty, came to rule roughly the territory of modern France until the middle of the eighth century.¹¹ Despite starting out as the governor of a relatively small client-kingdom in the territories of modern-day Belgium, Clovis became the ruler of most of the territory of modern France in only two decades.¹² After establishing his rule over the highly militarised and increasingly independent power-blocs in the Northern half of Gaul in the first decade of his reign, he moved into the wealthy and densely populated areas of Aquitaine where Visigothic kings had already established their post-Roman regnum. Conquest certainly contributed to this process. However, as populations had already started to develop their own post- or sub-Roman policies and constitutions, negotiations and agreements with these quite diverse regions were equally if not more important for integrating those populations into a common political framework of the Merovingian kingdom.

9 Esders, *Rechtliche Grundlagen*, 423-425.

10 Esders, *Rechtliche Grundlagen*, 425: »Die allgemeinen Treueide gehören daher zu den wichtigsten rechtlichen Grundlagen frühmittelalterlicher Staatlichkeit, stehen sie doch für einen massiven, ja beispiellosen Verrechtlichungsprozess, insofern sie eine direkte Rechtsbeziehung zwischen dem Herrscher und dem einzelnen Reichsbewohner herstellen sollten. Ihre Transferfunktion bestand darin, dass der Eid eine partielle Rezeption antiker Staatlichkeitstraditionen ermöglichte, was aber gleichzeitig zu entscheidenden Veränderungen gegenüber der antiken Staatlichkeit führte.«

11 Wood, *Merovingian Kingdoms*, 33-54.

12 See the excellent collection Meier and Patzold (eds.), *Chlodwigs Welt*.

This strategy may have been more significant for Clovis's integration of the Frankish *regnum* than in the case of other post-Roman kingdoms. The primary legitimation of Clovis's rule was not a mandate from the Roman empire.¹³ His legitimacy may well have depended more on agreements and contracts in which he provided concessions and benefits in exchange for submission to his rule. This was certainly true for the highly militarized regions of Northern Gaul, but the basic principle was also observed in the establishment of Merovingian rule over the ›little Romes‹ of the South, from Bordeaux to the Côte d'Azur and the Provence. The laws and rights of the inhabitants of the regions and cities remained valid, and in many cases there was even continuity of administrative structures and offices.¹⁴ So the Merovingian Frankish kings did more than rule a highly socially and ethnically diverse kingdom; indeed, they multiplied this diversity by granting rights to different legal communities and ceding some autonomy to regional elites. In doing so the Merovingian kings placed themselves equidistant to all the various groups within their kingdom – that is, at the centre of a power balance that was difficult to conceive without them.¹⁵

This Merovingian equilibrium still existed when Gregory of Tours wrote his Histories at the end of the sixth century. It had even been reinforced by the peculiar system of succession established after Clovis's death. The kingdom was divided among his four sons. This provided the model for later partitions of the kingdom as well.¹⁶ When Gregory became bishop of Tours in 573 CE, there were three Merovingian kings: Gunthram (d. 592 CE), the ruler of the former Burgundian subkingdom where Gregory had grown up, Sigibert I (d. 575 CE), the king of the Austrasian kingdom to which Tours belonged, and Chilperic I (d. 584 CE), the ruler of the Northwestern kingdom of Soissons who clearly cast an eye on Tours with its prestigious shrine of Saint Martin. The perpetual competition between the kings intensified even in Gregory's time when the three grandsons of Clovis ruled.¹⁷ Having grown up in Gunthram's kingdom and presiding as bishop in Tours, Gregory was uniquely positioned to reflect on the disposition of the three subkingdoms as he was also particularly exposed to the rather limited but nevertheless vicious fights between the three kings.¹⁸ His bishopric lay in the Loire valley, which was a crucial juncture between the Northern territories containing the political centres of the three kings and the wealthy Southern regions of Gaul. When the different kings attempted to extend their influence by persuading or threatening cities and regions to submit to their lordship, Tours and its bishop were often directly or indirectly involved in the conflicts.

13 Esders, Nordwestgallien um 500, 352-357.

14 Liebs, Geltung kraft Konsenses; Siems, Die Entwicklung von Rechtsquellen; for the Burgundian kingdom under Merovingian rule: Wood, Governing class of the Gibichung; on administrative continuities see still: Buchner, *Die Provence in merowingischer Zeit*.

15 For a longer discussion with further references, see Reimitz, *History, Frankish Identity*, 96-103.

16 Widdowson, Merovingian partitions, Ewig, Die fränkischen Teilungen.

17 Wood, *Merovingian Kingdoms*, 55-70.

18 See, Halsall, Preface to book V; Brown, *Ransom of the Soul*, 152-157.

However, the competition between these kings for the support and loyalty of the elites provided ever new possibilities for their members to profit and to confirm (or even renegotiate) privileges. Gregory himself clearly knew how to capitalise on these possibilities when Childebert II, the successor and son of Gregory's patron Sigibert I, sent his tax collectors to Tours.¹⁹ In this episode, Gregory, narrating his own actions, described how he received the legates of the king politely but also informed them that the city had been exempt from taxes since the time of Clovis's son, Clothar I, the present king's grandfather. Clothar, so explained Gregory to the tax collectors, had originally granted the exemption because of his love for Saint Martin, the patron of the church of Tours. He also emphasized that Charibert, Clothar's son, renewed this grant when the city had written its oath of fidelity to him.

»After king Clothar's death this people swore an oath of loyalty (*sacramentum*) to king Charibert and he swore that he would not impose any new laws or customs (*leges consuetudinesque novas*) and guarantee the status and rights that they had under the rule of his father; and he also promised that he would not impose any new ordinance or assessment.«²⁰

According to Gregory, Charibert had even burned the tax rolls of the city in reverence for and fear of Saint Martin. After Charibert's death, his successor Sigibert I followed this example by never asking for any taxes from the city; and his son, the present king Childebert, followed suit in the first fourteen years of his rule. According to Gregory, the legates ought to think carefully:

»Now it is in your power whether a tax should be collected or not, but beware of the harm which you will do if you act contrary to the king's oath (*sacramentum*).«²¹

Additionally, Gregory sent his own messengers to the king, and they came back with a charter in which the king confirmed the tax exemption: out of reverence for Saint Martin (*pro reverentia Sancti Martini*), the people of Tours should not be subjected to tax assessments.²²

The story illustrates that the political economy around the oath of fidelity had been well established in the first hundred years of the Merovingian kingdoms. There is ample evidence for this. Both literary and administrative sources demonstrate a shared notion of the social and political function of the oath of fidelity.²³ However, the episode in Gregory's Histories highlights the need to avoid overstating its power. While the situation obviously demanded a clear reference to the oaths and the mutual obligations that were concluded between the rulers and the city of Tours, Gregory emphasizes repeatedly the reverence for Saint Martin and the fear of God, which were above all else the main bases for the privilege. This is in direct harmony with one of Gregory's main agendas in writing his Histories. In his first four books, he took great care to reconstruct the long history of Christian Gaul, the formation of

19 Gregory of Tours, *Decem libri historiarum*, IX.30, ed. Krusch and Levison, 448f.

20 Gregory of Tours, *Decem libri historiarum*, IX.30, ed. Krusch and Levison, 449, transl. Thorpe, 516 (with slight changes).

21 Gregory of Tours, *Decem libri historiarum*, IX.30, ed. Krusch and Levison, 449, transl. Thorpe, 516 (with slight changes).

22 Gregory of Tours, *Decem libri historiarum*, IX.30, ed. Krusch and Levison, 449.

23 Esders, *Sacramentum fidelitatis*, 226-306.

Christendom in late Roman and post-Roman Gaul, and Christendom's constitutive function within the post-Roman kingdom. The Christian future of this earthly regnum was his main concern. Its social cohesion depended not on oaths between humans but on their covenant with the Christian God. Throughout his *Histories* Gregory maintains a somewhat ambivalent stance towards oaths and oath-taking. Whether this had more to do with Jesus's prohibition of oath-taking in his Sermon on the Mount (Matthew 5:33-37) or with the increasing salience of various oaths in the post-Roman kingdom of Gregory's time is up to historical inference.

Patristic commentaries most commonly interpret the prohibition of oaths in the Sermon on the Mount as a deliberate statement to distinguish the new covenant from the old. Given that Christians were obliged to be truthful, oaths were actually redundant for Christian communities.²⁴ Hilarius of Poitiers, one of the well-promoted saints of Gaul in Gregory's *Histories*, also followed this line of argument in his commentary on Matthew. Like many other early Church fathers, Hilarius explained that Jesus was mostly concerned with oaths in the name of God.²⁵ From early on Christian theologians used the elasticity of terms like *sacramentum* and *fides* to reflect on the relationship of political loyalty and Christian faith. This created a relatively wide spectrum of opinions from justification to resistance on the blending of imperial and Christian connotations, one example being the reinterpretation of the *sacramentum militia* into a *militia Christi* and the integration of different meanings of the *sacramentum* in a *militia Christi*.²⁶ In his early fifth century translation and continuation of Eusebius's Church history, Rufinus writes that Theodosius won the decisive battle against the pagan alliance under Arbogast by relying not on the army but on fasts and prayers.²⁷ Rufinus's contemporary Orosius emphasizes the Theodosian integration of imperial and Christian virtues even more. Theodosius was a second Trajan. But although he was »Trajan's equal in all the virtues of our mortal life, he surpassed him beyond all comparison in his fidelity to the faith (*sacramentum fidei*).²⁸ By putting all his trust in the help of Christ (*omnem fiduciam sui ad opem Christi*), he defeated the barbarians as well as the *tyrannus Maximus*, who although worthy of the throne had established his rule by usurpation *contra sacramenti fidem*.²⁹

Gregory cited both Rufinus's Church history and Orosius's history in his *Decem libri historiarum*.³⁰ However, he does not blend different meanings of *fides* in his portrayal of Theodosius: »Theodosius put all his hope in the grace of God (*omnem spem suam et fiduciam in Dei misericordiam ponit*), and achieved his victories not so much through the sword, but through prayers (*multas gentes non tam gladio quam vigiliis et oratione conpescuit*).³¹ More

24 For an excellent brief overview of the the early Christian discussion, see Esders, *Schwur*, cols. 45-54, with further references; and *idem*, »Faithful believers«.

25 Hilarius of Poitiers, *In Matthaem 4*, ed. Doignon, 142.

26 Morgan, *Roman Faith and Christian Faith*; Michaélidès, *Sacramentum chez Tertullien*; Kolping, *Sacramentum Tertullianeum*.

27 Rufinus, *Historia Ecclesiastica*, XI, ed. Schwartz *et al.*, 1037.

28 Orosius, *Historiarum Adversum Paganos*, Libri VII, VII.34.2-3, ed. Zangemeister, 521f..

29 Orosius, *Historiarum Adversum Paganos*, Libri VII, VII.34.9, ed. Zangemeister, 524.

30 On Gregory's sources, see the introduction of the edition of the *Histories* in Krusch and Levison, p. XIX-XXI; and cf. Reimitz, *Genre and identity*, 166-172, with further references.

31 Gregory of Tours, *Decem libri historiarum*, I.42-43, ed. Krusch and Levison, 28.

so than his predecessors, Gregory seems concerned with drawing a clearer distinction between a worldly and a spiritual sphere. Gregory's dual role as author and actor in his story appears again when, as bishop of Tours, he has to deal with the crimes of a certain Pelagius. Responsible for the royal stables, Pelagius repeatedly abused his power to the detriment of the church of Tours and its people.³² By a certain point Gregory had enough and excommunicated him. Pelagius, however, responded to his expulsion from the Christian community by resorting to the worldly tool of a purgatory oath. With twelve oath-helpers in tow acting as guarantors of Pelagius's honor and the truthfulness of his oath, he reproached Gregory. But Gregory could not allow perjury on such a scale. For this reason he received the oath from Pelagius alone, sending away the twelve oath-helpers. By doing so Gregory had saved not only the souls of the twelve but also their lives. Pelagius died in the following summer, and Gregory interpreted this as the punishment of Saint Mary in whose church Pelagius had performed his false oath.

Oaths appear quite often throughout Gregory's Histories. They were frequently used in all kinds of agreements, political alliances, and peace negotiations. But they were broken as often as sworn. While the Histories suggest that oathtaking was ubiquitous in Gregory's world, the practice does not seem to have been very effective in keeping peace and order in the kingdom. Oaths were unjustly enforced, sworn with bad intention, and broken.

At one point Gregory himself was even forced to swear an oath. He was accused of a *crimen maiestatis* – i.e., of high treason. Gregory had allegedly spread rumors that Queen Fredegund, the wife of king Chilperic I, had committed adultery with bishop Bertram of Le Mans. From his account it is clear that he found this to be a very difficult situation.³³ Gregory had to defend himself at a synod, which was followed by the intervention of not only of bishops but also members of the royal family, before he was eventually acquitted. To be exonerated, Gregory had to swear (a *sacramentum*). In his narrative he comments that this was only on behalf of the king, as the oath was actually against the laws of the church.³⁴ The story is one of the last episodes in Gregory's book V, in which there are notably many stories about the precariousness of the oath as a social and political instrument.³⁵ The frequency may vary in other books, but the tendency is the same.³⁶ Gregory's own hopes as bishop as well as historian become defeated in the course of his Histories. At the end of book VII, he tells of a conflict between two citizens of Tours: Sichar and Chramnesind. This involved the murder of

32 Gregory of Tours, *Decem libri historiarum*, VIII.40, eds. Krusch and Levison, 406f.; for a more comprehensive discussion, see Esders, *Der Reinigungseid mit Helfern*.

33 Wood, *Gregory of Tours*, 15-17; Wood, *Individuality of Gregory of Tours*, 44.

34 Gregory of Tours, *Decem libri historiarum*, V.49, ed. Krusch and Levison, 261; on the trial against Gregory see now the discussion in Stüber, *Der inkriminierte Bischof*, 243-265, with further references.

35 Gregory of Tours, *Decem libri historiarum*, V.2; 5; 14; 16; 18; 25; 26; 32; 35; 38; 48; 49, ed. Krusch and Levison, 195f.; 200-202; 211; 214; 223f.; 231; 232; 237; 241f.; 245; 258; 259-261.

36 E.g. Gregory of Tours, *Decem libri historiarum*, IV.4; 23; 30; 45; 46, ed. Krusch and Levison, 137f.; 155f.; 162f.; 180; 182; *ibid.*, VI.3; 11; 12; 31; 43, ed. Krusch and Levison, 267; 280-282; 282; 299-302; 314-316; *ibid.*, VII.7; 12; 13; 23; 24; 26; 29; 36; 38; 47, ed. Krusch and Levison, 330; 333; 334; 343; 344; 345; 346-349; 357f.; 359-361; 368; *ibid.*, VIII.9; 16; 30; 40, ed. Krusch and Levison, 376; 383f.; 394; 406f.; *ibid.*, IX.14; 16; 18; 20, ed. Krusch and Levison, 428; 430f.; 431f.; 434-439; *ibid.*, X.3 and 9, ed. Krusch and Levison, 485f. and 491f.

a servant, which started a spiral of violence that could be stopped and sorted out by a judge and the court of the city of Tours. Even then a satisfactory compromise could only be found by bending the rules and paying a significant contribution to the compensation from the funds of the church of Tours which, as Gregory admitted, was against the law. »They swore to each other (*datis sibi partes invicem sacramentis*) that they would from now on abstain from any further violence«. *Et sic altercatio terminum fecit.* »And so was the conflict concluded,« as was book VII.³⁷ However, we learn in book IX that Gregory's intervention and hope was in vain. He had to admit that »the two parties resumed the fighting and hostilities which he had thought to be concluded (*superius diximus terminatum*).«³⁸

Over the last decades studies on Gregory's writings have shown that the bishop of Tours was by no means the naïve story-teller that older generations of historians had painted him to be.³⁹ On the contrary, Gregory knew of the dangers of writing history⁴⁰ but was convinced that as a pastor of a new age it fell within his remit and responsibility. His audience needed to be told and shown how »the other world was woven into this world,« and Gregory did this »with a circumstantiality that had not occurred before in Latin Christian literature.«⁴¹ The business of truth was important for Gregory the pastor as an actor in and author of his Histories. The complexity of his times provided Gregory with enough stories to invite his readers to join him in seeing the core truth beneath narrative patterns. The codes of this world, whether narrative or legalistic, should not determine the parameters of such a search in his Histories. Gregory's overall pastoral agenda explains his insistence on the precarious nature of the oath, its multiple meanings, and the possibility of various outcomes. The great attention he dedicates to oaths suggests that he may have also wanted to contribute his perspective to the contemporary discourse about oaths and oathtaking, and their increasing importance in the social and political life of the post-Roman kingdom.

Gregory was well aware that his view was one of many in the Merovingian kingdoms. This becomes obvious when comparing his Histories written in the last decades of the sixth century with the so-called Fredegar-chronicle (the second oldest history of the Merovingian kingdoms), which was compiled roughly two generations after Gregory died in 594 CE. The Fredegar-chronicle did not receive its current name until the early modern period, and its true authors remain unknown.⁴² It presents readers with a comprehensive world chronicle from the beginning of the world until the middle of the seventh century. Starting with the

37 Gregory of Tours, *Decem libri historiarum*, VII.47, ed. Krusch and Levison, 367f., for a critical discussion of the story as evidence for an early medieval »feud«, see Halsall, Reflections.

38 Gregory of Tours, *Decem libri historiarum*, IX.19, ed. Krusch and Levison, 432.

39 One important turning point for the establishment of a new view on Gregory's work was around 1990 with: Goffart, *Narrators of Barbarian History*; Heinzlmann, *Gregory of Tours*; Gauthier and Galinié (eds.), *Grégoire de Tours et l'espace gaulois*; Breukelaar, *Historiography and Episcopal Authority*; Wood, *Gregory of Tours*; Mitchell and Wood (eds.), *The World of Gregory of Tours*; for a more recent volume, see Murray (ed.), *A Companion to Gregory of Tours*; for a recent study, see Rotman, *Hagiography, Historiography, and Identity*; but see already Brown, Relics and social status.

40 Reimitz, *History, Frankish Identity*, 51-73.

41 Brown, *Ransom of the Soul*, 151-152.

42 Wood, Fredegar's fables; Fischer, *Die Fredegar-Chronik*.

Liber generationis, which includes comprehensive lists of biblical prophets, ancient peoples, kingdoms, emperors, kings and Roman popes, the chronicle provides a chain of chronicles including a reworking of Jerome's world chronicle (until 378 CE), its continuation by the Chronicle of Hydatius, a rewrite of Gregory's books I through VI, and a continued narrative up until the middle of the seventh century in the last book.⁴³ The extant chronicle was most likely compiled in the 660 CE.⁴⁴ However, the incomplete oldest extant manuscript rather reflects an ongoing work on the chain of chronicles that continued the work of earlier compilers over several decades.⁴⁵ The authors and compilers of the extant redaction of the chronicle had a particular interest in the rise of Frankish elites and the role of these elites in securing the well-being and stability of the Frankish kingdom.⁴⁶ The oaths in the overall narrative and across the different chains of chronicles serve to illustrate the rise of these elites in the post-Roman kingdom.

In the first books on ancient and Roman imperial history, oaths and loyalty are sworn by or to emperors and the empire.⁴⁷ But as the narrative proceeds into the dissolution of the Western Roman empire, post-Roman rulers take over this role.⁴⁸ By the third book of the chronicle, the réécriture of Gregory of Tours's Histories, the Merovingian kings are the arbiters of oaths.⁴⁹ Just like in Gregory's account, these oaths often do not help to establish peace and stability. The *sacramentum* between Childebert I (d. 556 CE) and Theuderic I (d. 533 CE) was quickly broken, and many of the senators' sons who were given as hostages became enslaved.⁵⁰ After king Chilperic had sworn to the Visigothic legates that he would never depose the Visigothic princess Galswinth after their marriage, he had her killed.⁵¹ Similarly, the peace treaties and oaths between Sigibert (d. 575 CE), Chilperic (d. 584 CE), and Gunthram (d. 592 CE) – all grandsons of Clovis – were broken as often as they were sworn.⁵²

43 For a comprehensive discussion, see Fischer, *Die Fredegar-Chronik*.

44 See Wood, Fredegar's fables; Fischer, *Rewriting history*, 189-199

45 For a discussion of the possibility of earlier layers in the decades before 660, see Reimitz, *History, Frankish Identity*, 190-199.

46 See Reimitz, *History, Frankish Identity*, 176-190.

47 E.g. Fredegar, *Chronicae*, II.37, ed. Krusch, 62 (Trajan); *ibid.*, II.57, ed. Krusch, 75 (the Visigothic king Theoderic I to the Empire); *ibid.*, II.62, ed. Krusch, 85 (the emperor Justinian and Belisarius).

48 Fredegar, *Chronicae*, II.57, ed. Krusch, 80-81 (to the Ostrogothic king, Theoderic I); *ibid.*, II.58, ed. Krusch, 83 (the Visigothic king Alaric II to the Frankish legate); *ibid.*, III.3, ed. Krusch, 94 (to the Frankish magister militum Arbogast).

49 Fredegar, *Chronicae*, III.60, ed. Krusch, 109.

50 Fredegar, *Chronicae*, III.37, ed. Krusch, 105.

51 Fredegar, *Chronicae*, III.60, ed. Krusch, 109.

52 Fredegar, *Chronicae*, III.55, ed. Krusch, 108; *ibid.*, III.71, ed. Krusch, 112.

Unlike in Gregory's accounts, however, the boundaries between political loyalty and Christian faith are not clearly drawn. The chronicle reports that Clovis (the first Christian Frankish king) demonstrated his faith after his baptism by claiming that he would have defended Jesus with his troops had he been there.⁵³ Furthermore, the chronicle purports that the Frankish elites above all others demonstrate their faith and loyalty to the kingdom – sometimes in lieu of the kings, and sometimes even when the kings fail to keep the peace. The Frankish legate defends the Lombard Queen Gundeberga in a mission to the Lombard kingdom – a *parens Francorum* – as she is held prisoner by king Rothari despite his own oath as well as the *sacramenta* of the Lombards to the queen. On his own initiative, the Frankish legate threatens king Rothari and warns him not to provoke the Franks and their kings. Rothari immediately frees Gundeberga and renews the treaties and agreements between the two kingdoms.⁵⁴

When the various Merovingian kings themselves were not able to come to an agreement, sometimes members of the Frankish elite had to intervene to keep the peace and stability. On several occasions we hear that kings themselves asked for a *iudicium Francorum* to resolve their conflicts.⁵⁵ In 625/626 CE, for instance, king Chlothar II and his son, the Austrasian sub-king Dagobert, had a dispute over the territory between the Ardennes and the Vosges. They agreed to let a *iudicium Francorum* of twelve bishops and wise men (*pontifices et viri sapientissimi*) decide.⁵⁶ A member of this committee was Arnulf of Metz, who along with the mayor of the palace Pippin excelled in faith, loyalty and wisdom. About a decade earlier, both Pippin and Arnulf were instrumental in helping Chlothar II defeat Brunhilde, the powerful queen-regent of the Austrasian and Burgundian kingdom, in 613 CE (after she had not agreed to call a *iudicium Francorum* to end the conflict). In turn, this victory helped Clothar II establish his monarchy in all three kingdoms.⁵⁷ And like Arnulf, Pippin plays an important role as a member of the elite in guaranteeing the well-being of the Frankish republic.⁵⁸

Pippin and Arnulf became celebrated ancestors of the Carolingian dynasty after the family usurped the Frankish throne in the middle of the eighth century.⁵⁹ To legitimate the new Carolingian kings, Childebrand and Nibelung – two members of the new royal family – reworked and continued the Chronicle of Fredegar until the year 768 CE under a new title: *Historia vel Gesta Francorum*.⁶⁰ The colophon stating names of the authors and title comes right after the account of the elevation of their relative Pippin:⁶¹

53 Fredegar, *Chronicae*, III.21, ed. Krusch, 101: »Iam fidem his verbis ostendens, christianum se verum esse adfirmat«

54 Fredegar, *Chronicae*, IV.71, ed. Krusch, 156f.

55 Fredegar, *Chronicae*, IV.37, ed. Krusch, 138 (between Theuderic II and Theudebert II); *ibid.*, IV.40, ed. Krusch, 140 (between Chlothar II and Brunhilde).

56 Fredegar, *Chronicae*, IV.54, ed. Krusch, 147.

57 Fredegar, *Chronicae*, IV.40, ed. Krusch, 140.

58 Fischer, *Karl Martell*; Wood, *Merovingian Kingdoms*, 273-292.

59 See the overviews in Becher and Jarnut (eds.), *Der Dynastiewechsel von 751*; Semmler, *Der Dynastiewechsel von 751*; Schieffer, *Die Karolinger*, 59-67; Airlie, *Making and Unmaking*, 27-52.

60 See Collins, *Die Fredegar-Chroniken*.

61 *Continuationes Chronicarum Fredegarii* c. 33, ed. Krusch, 182.

»Up to this point, the illustrious Childebrand, uncle of the said King Pippin, took great pains to have his history or ›geste‹ of the Franks (*historia vel gesta Francorum*) recorded. What follows is by authority of the illustrious Count Nibelung, Childebrand's son.«⁶²

This chapter and the preceding chapter on Pippin's coronation constitute a double break in the narrative: the change from Merovingian to Carolingian rule, and the change from Childebrand to his son Nibelung as the author of the narrative. However, this double break may well have been a very deliberate move. It highlights what has been called ›a double continuity‹ between Merovingian and Carolingian rule which was the construction of a continuity with Merovingian history as well as continuity with Carolingian history as important members of the Frankish elites under Merovingian rule. Before the takeover of the royal throne by his nephew Pippin, the author of the earlier part of the chronicle, Childebrand, fought alongside Pippin's father Charles Martel – the powerful mayor of the palace – to defend the kingdom against the Saracens. The chronicle depicted this victory as a heroic battle with strong biblical overtones – that is, as a fight to save the Christian kingdom from Saracen dominance.⁶³ Taking action and responsibility for the Frankish and Christian commonwealth, both Childebrand and his brother Charles were presented as true descendants of Pippin and Arnulf, the two supporters of Chlothar II in the first decades of the seventh century. Now, after Pippin's elevation or usurpation of the Frankish throne, Childebrand's son Nibelung, who continued the narrative after 750 CE, and the new king Pippin himself, as the main actor of Nibelung's narrative, would follow the models of their ancestors and also assumed their responsibility for the Frankish kingdom. In the *Historia vel Gesta Francorum* they do so in the different roles of a Frankish ruler and a member of the new royal dynasty, but in continuity with their Merovingian and Carolingian past.⁶⁴

Although the *Historia vel Gesta Francorum* holds critical importance as a historical source for the eighth century, its narrativity has not been widely appreciated by modern scholarship. The nature of its writing has often led to its dismissal as a martial account of the great triumphs of Carolingian generals, mayors, and kings, representing a rough and uneducated milieu of a warrior culture.⁶⁵ However, it is in fact a carefully crafted text that blends a biblically inspired epic style with legal and formulary language to legitimate the new Carolingian rulers.⁶⁶ In the effort to present Pippin as a legitimate ruler, the authors of the *Historia* faced a serious problem. As we saw, members of the new royal dynasty and their ancestors had

62 *Continuationes Chronicarum Fredegarii*, c. 34, ed. Krusch, 182: »Usque nunc inluster vir Childebrandus comes avunculus predicto rege Pippino, hanc historiam vel gesta Francorum diligentissime scribere procuravit. Abhinc ab inlustre viro Nibelungo, filium ipsius Childebrando, itemque comite, succedat auctoritas«, trans. Wallace-Hadrill, 101-103.

63 *Continuationes Chronicarum Fredegarii*, 20, ed. Krusch, 177f.

64 For a longer discussion of this strategy, see: Reimitz, *Viri inlustres und omnes Franci*; and for the term »doppelte Kontinuität«, see Wolfram, *Intitulatio I*, 145-150.

65 The standard English translation of Fredegar by John-Michael Wallace-Hadrill still supports this judgement influentially (Fredegar, *The Fourth Book of the Chronicle of Fredegar*, trans. Wallace-Hadrill); for different views see Becher, *Eine verschleierte Krise*; Collins, *Die Fredegar-Chroniken*; McKitterick, *Die Anfänge des karolingischen Königtums*, 155-156; McKitterick, *History and Memory*, 133-140; an excellent discussion of the interaction and connections of various arenas of royal representation in the historical and diplomatic evidence is Airlie, *Making and Unmaking*, 43-51; a careful discussion of how the rise of the Carolingians is orchestrated in the ›house-chronicle‹ of the *Historia vel Gesta Francorum*. Nelson, *King and Emperor*, 39-41, 55-62.

66 Reimitz, *History, Frankish Identity*, 299-304 and 320-326.

been important members of the political elites before the coup in the 750s CE. It is very likely that as mayors of the palace, as royal officials, and as members of the court, they themselves had already sworn the oath of loyalty to the Merovingian kings. Charles Martel, the father of the new king Pippin, had increasingly monopolized access to the king and had used this position to establish himself as the *de facto* ruler of the Merovingian kingdom.⁶⁷ Contemporary sources addressed him with the title *princeps*.⁶⁸ For most of his reign, he had always ruled under a Merovingian king. But in 737 CE he seems to have been powerful enough to continue his reign without one. When he died in 741 CE, his two sons Pippin and Carloman inherited his practical power as the kingdom's *de facto* ruler. By 743 CE the two brothers had already decided to install another Merovingian king, Childeric III, who held the office until Pippin deposed him in 751 CE with the support of the Roman pope.⁶⁹

Josef Semmler has argued that the papal intervention and legitimation of the Carolingians' usurpation of the Frankish throne may have been necessary to absolve the new king Pippin from the oath he had sworn to Childeric III.⁷⁰ His evidence came from the Byzantine chronicler Theophanes.⁷¹ Frankish sources, however, avoid this sensitive issue. In the *Historia vel Gesta Francorum*, the uncle and cousin of the new king presented readers with an alternative political theory. The loyalty that the subjects of the Merovingian kingdoms owed to their Merovingian *reges Francorum* was increasingly interpreted as a loyalty owed not only to the kings but also to the community they represented – the Franks. The emphasis of the Fredegar-chronicle on the responsibility of Frankish elites, to which prominent Carolingian ancestors also belonged, provided the perfect foundation for this argument. The general consensus of this community (with their Carolingian leaders) thus served not only to legitimize the Carolingians' ascendancy to replace the Merovingian kings but also – as the new *reges Francorum* – to redirect the *sacramentum fidelitatis* towards the Frankish community and their newly anointed kings.

The new arrangement of the Merovingian Fredegar-chronicle and its continuation by Pippin's relatives in the *Historia vel Gesta Francorum* carefully developed this redirection and channelling of loyalties with the help of further constructions of double continuities. Episodes about the Saxons living along the Northeastern periphery of the Frankish kingdoms from the very beginning provide an excellent example. In the Fredegar-chronicle they are depicted as being under the authority and influence of their Frankish neighbors. This relationship included tribute payments; book IV tells us of a tribute of five hundred cows per year that the Saxons had provided since the times of Chlothar I (d. 561 CE). The defeat of the Saxons under Chlothar in the mid-550s CE is also recounted in the chronicle's third book, which is an abbreviated version and reworking of Gregory of Tours's *Histories*. But this story is unusually comprehensive in retelling Gregory's story in detail. The Saxons see an opportunity to renegotiate their deal during the seventh century

67 Fouracre, *Age of Charles Martel*; Fischer, *Karl Martell*.

68 Wolfram, *Intitulatio I*, 147-151.

69 Airlie, *Making and Unmaking*, 27-43.

70 Semmler, *Der Dynastiewechsel von 751*, 23-31.

71 Theophanes, *Chronographia*, a. 6216 (724 CE), ed. De Boor, 403, trans. Mango and Scott, 557.

when Dagobert I ruled the Eastern kingdom as subking of his father Chlothar II. They sent legates to Dagobert asking whether he would waive the tributes they had paid since Chlothar I's reign if they would take over the military defense of the Eastern border against the Slavs.⁷² On the advice of his Western courtiers, Dagobert agreed and the Saxons swore solemn oaths (*sacramenta*) to protect the border as Frankish clients, which as the author of the chronicle already knew in the 660s CE they would not hold.⁷³ Easterners like Arnulf or Pippin would have known better already at the time when Dagobert concluded the treaty with the Saxons.⁷⁴

The *Historia vel Gesta* picks up the story of the Saxons at the time of Charles Martel, the father of the future king Pippin. In chapter 11, Charles defeated a Saxon rebellion⁷⁵ and when the *paganissimi* Saxons revolted again in 738 CE, he moved into their territory, causing a terrible bloodshed and resubjected them to tributes.⁷⁶ When his two sons Pippin and Carloman had taken over the government of the kingdom, Carloman had to fight against the Saxons again. He defeated them and this time they were not only subjected to Frankish rule but also consecrated by the *sacramentum* of baptism.⁷⁷ In the year 747 CE Carloman abdicated and entered the monastery of Montecassino in Italy. At this point Pippin became the sole Carolingian *princeps* of the kingdom although nominally still mayor of the palace under king Childeric III. When the Saxon revolted again in 748 CE, Pippin, confronted them holding them to the oaths they had sworn to his brother. After their defeat, the Saxons asked for peace, and submitted to Frankish rule as they had done since old times (even promising to pay the tribute that they had once pledged to the Merovingian king Chlothar I).⁷⁸

The next revolt is recounted in the narrative of the *Historia vel gesta* right after the chapters of Pippin's elevation to king and the colophon of the two authors, Childebrand and Nibelung. It is again the same story. The Saxons broke the oaths they had sworn to the *praefatus rex* – the above-mentioned king. On the one hand, this was a king had just been elected; but on the other, this was the same man to whom they had given their oaths three years ago as the mayor of the palace. The king marches into their lands with the whole army of the Franks – *commoto omni exercitu Francorum* – and after another devastating defeat, the Saxons swear *sacramenta* and to pay an even higher tribute than before.⁷⁹

72 Fredegar, *Chronicae*, 74, ed. Krusch, 158.

73 Fredegar, *Chronicae*, 74, ed. Krusch, 158: »Sed parum haec promissio sortitur aefectum.«

74 Wood, Fredegar's fables, 364.

75 *Continuationes Chronicarum Fredegarii*, 11, ed. Krusch, 174f.

76 *Continuationes Chronicarum Fredegarii*, 19, ed. Krusch, 177.

77 *Continuationes Chronicarum Fredegarii*, 27, ed. Krusch, 180f.

78 *Continuationes Chronicarum Fredegarii*, 31, ed. Krusch, 181: »Saxones ... pacem petentes, iure Francorum sese, ut antiquitus mos fuerat, subdiderunt et ea tributa quae Chlothario quondam prestiterant plenissima solutione ab eo tempore deinceps esse reddituros promiserunt.«

79 *Continuationes Chronicarum Fredegarii*, 35, ed. Krusch, 182f.: »His transactis, sequente anno, iterum Saxones eorum fidem, quod praefato rege dudum promiserat, solito more iterum rebelles contra ipso existent. Convidentens Saxones penitentia commoti, cum solito timore clementia regis petunt, ut pacem eis concederet, et sacrameta atque tributa multa maiora, quam antea promisserant, redderent et numquam ultra iam rebelles existerent.«

The plot is wheeled out repeatedly for old Frankish territories such as the Alemannic, Bavarian duchy, and also for Burgundy, Provence, and the long-winded conflicts with the Aquitanian dukes.⁸⁰ The Fredegar-chronicle extensively presents claims of historical Frankish overlordship and its revival under Carolingian rule, particularly concerning the Lombard kingdom. Here too the story could be linked to the episodes in the older chronicle about Frankish domination over Italian territories and the Lombards.⁸¹ In this success story king Pippin plays a particularly important role and the restoration of oaths figure as an equally important aspect. After the pope had visited the new king in Ponthion and asked for help against the Lombards,⁸² Pippin convened his army and began his campaign against the Lombard kingdom and their king Aistulf.⁸³ After being defeated, Aistulf asked for peace through the magnates of the Franks. He swore oaths to preserve the peace and promised to respect the authority and laws of the Franks. He vowed to never revolt against king Pippin and the Frankish authority, and he swore to refrain from waging war against the apostolic see.⁸⁴ Like the Saxons before him, however, Aistulf, broke the promises and oaths he had sworn, so that Pippin once again had to march out with the whole army of the Franks. That army's strength proved too great for Aistulf, who again turned to the Frankish nobles, bishops, and magnates for intercession.⁸⁵ As in the case of the Saxons, the narrative duplicates the ritual of submission. And similarly, the report is part of a chain of references linking the submission to Frankish rule (*ditio Francorum*) under Pippin to Merovingian precedent: old obligations owed to the Franks now had to be sworn to the Carolingian kings.

80 McKitterick, *Charlemagne*, 75-88.

81 Fredegar, *Chronicae*, IV, 34; 51; 70, ed. Krusch, 133f, 145f., 156.

82 Buc, Warum weniger die Handelnden selbst, Airlie, *Making and Unmaking*, 39-41.

83 *Continuationes Chronicarum Fredegarii*, 36, ed. Krusch, 183: »*Ibique Stephanus papa Romensis ad praesentiam regis veniens, multis muneribus tam ipsi regi quam et Francis largitus est, auxilium petens contra gentem Langobardorum et eorum regem Aistulfum, ut per ejus adiutorium ab eorum oppressionibus vel fraudulentia de manibus eorum liberaretur, et tributa et munera, quae contra legis ordinem a Romanis requirebant facere, desisterent. ... praefatus rex ad Kalendas Martias omnes Francos, sicut mos Francorum, Bernaco villa publica ad se venire praecepit.*«

84 *Continuationes Chronicarum Fredegarii*, 37, ed. Krusch, 184: »*Sacramenta et obsides ibidem donat, ut numquam a Francorum ditione se abstraheret, et ulterius ad sedem apostolicam Romanam et rempublicam hostiliter numquam accederet.*«

85 *Continuationes Chronicarum Fredegarii*, 38, ed. Krusch, 185: »*Haec Aistulfus rex Langobardorum cernens, et iam nullam spem se evadendi speraret, iterum per supplicationem sacerdotum et optimatum Francorum veniens, et pacem praedicto regi supplicans, et sacramenta quae praefato regi dudum dederat, ac quod contra sedem apostolicam rem nefariam fecerat, omnia per iudicium Francorum vel sacerdotum plenissima solutione emendaret. Igitur rex Pippinus solito more iterum misericordia motus, ad petitionem optimatum suorum vitam et regnum iterato concessit. Aistulfus rex per iudicium Francorum vel sacerdotum, thesaurum qui in Ticino erat, id est tertiam partem, praedicto regi tradidit, et alia multa munera maiora quam antea dederat, partibus regis Pippini dedit. Sacramenta iterum et obsides donat, ut amplius numquam contra regem Pippinum vel proceres Francorum rebellis et contumax esse debeat, et tributa quae Langobardi regi Francorum a longo tempore dederant, annis singulis per missos suos desolvere deberent.*«

The effort to legitimate the Carolingian usurpation of the royal throne was an ongoing project for several decades after 750 CE.⁸⁶ After the *Historia vel gesta Francorum* ended its account with the death of the first Carolingian king Pippin in 768 CE, the authors of the Royal Frankish Annals took over the task for his successor, Charlemagne. The narrative was structured in years counted from the incarnation of Jesus Christ. But it started only in 741 CE, ten years before the coronation of Pippin. The Carolingian takeover and the ensuing success story of Carolingian rule was knitted into the seams of an endlessly expandable story. Numerous breaks in the extant text suggest that it was written in multiple stages.⁸⁷ Its first obvious break was in 788/89 CE with the account of the deposition of Tassilo III, Charlemagne's cousin and the powerful duke of Bavaria.⁸⁸ To legitimate his deposition, the Annals claim that Tassilo broke the oath he had sworn to the Carolingian rulers and the Franks, first to Pippin as early as 757 CE and later to Charlemagne in 781 CE.⁸⁹ According to the Annals, Tassilo forced Charlemagne to react by continuously challenging his authority. This culminated in a trial – a *iudicium* – and the duke's deposition in 788 CE.⁹⁰ It is obvious that the authors of this part of the Annals used the playbook of the *Historia vel gesta Francorum*. But unlike Childebrand and Nibelung, they assumed Charlemagne's legitimate role as the ruler and representative of the Frankish community to whom these oaths needed to be sworn and kept.

This may well have been more contested than the Annals would have readers believe. The continuation of the narrative after 788 reflects continued efforts to reinforce the authority of the Carolingian king, albeit with a stronger and more explicit integration of political elements with spiritual ethics. The narrative reflects ongoing work on the language of faith – *fides*. This finds its most powerful expression in the formula *fideles Dei et regis*, where the rhetorical configuration deliberately omits a word in the combination of two clauses: in this case, *fideles*.⁹¹ It can therefore be translated as »the ones who have faith in God and the king« or as »the ones who are loyal to God and the king.« This purposefully blends the two kinds of *fides* that Gregory of Tours tried to keep distinct in his Histories. The formulation appears in the Carolingian period and goes on to have a long history in texts and documents of the Middle Ages and beyond.

86 McKitterick, *History and Memory*, 133-155.

87 McKitterick, *Charlemagne*, 31-43.

88 Becher, *Eid und Herrschaft*.

89 For a discussion of the doubtful accuracy of these claims, see already Wolfram, *Grenzen und Räume*; Wolfram, *Tassilo III*; Airlie, Narratives of triumph; *Annales regni Francorum*, a. 757, ed. Kurze, 14-16; for a careful and detailed reconstruction of the series of events see now also: Nelson, King and Emperor, 186-191, 244-248, 251-254.

90 *Annales regni Francorum*, a. 787, ed. Kurze, 72-80.

91 Esders, *Fideles Dei et regis*.

The first occurrence of *fideles Dei et regis* appears in a charter for the abbot of the monastery of Saint Denis as early as 755 CE. The monastery had received some property that had been confiscated by the treasury after a trial of high treason in a *iudicium Francorum*.⁹² After this, there is a period of over 30 years in which this formula is not used in the extant evidence. Its big entrance into history came only in the late 780s, more precisely in 788 CE in the trial against the Bavarian duke Tassilo. Because Tassilo was Charlemagne's relative, the king did not execute him after the judgement; rather, together with the *fideles Dei et regis*, Charlemagne allowed the deposed Bavarian duke to enter a monastery if he swore to enter the community of the *fideles Dei et regis*.⁹³ After the account of Tassilo's deposition, the narrative of the Royal Frankish Annals repeatedly accentuates this integration of political loyalty and Christian faith, in particular in the accounts of the ongoing wars with the Saxons and the triumph over the Avar empire in the last decade of the eighth century.⁹⁴ In the decades around the renovation of the Roman empire by Charlemagne in the year 800 CE, the use of this new rhetoric of fides emerges in many other Carolingian texts and documents.⁹⁵ But it is already in connection with the Avar campaign where voices are raised that express strong reservations about the equation of faith and loyalty. Two bishops responsible for the Christianization of the Eastern periphery of the Carolingian empire made it clear in several statements that the conversion to Christianity was not just a one-off decision but a longer process. The success of conversion depended on thorough guidance and education of the new members of the Christian community and should not be too easily conflated with political submission of the *gentes* of the Avars or the Saxons.⁹⁶

Conclusion

The short overview of the historiographical sources from the Frankish world may help to demonstrate that the Carolingian period was a crucial moment for the oath of fidelity's interpretation as a Christian sacrament, as Paolo Prodi observed in his admirable study on the sacrament of the oaths some time ago.⁹⁷ However, at least in the historical writings of the Carolingian period, it seems that this was above all supported by the spin doctors of the new royal dynasty while members of their Church were taking a more critical stance on the conflation of the different meanings of fides. They still reflect the concerns of the earlier historian and bishop Gregory of Tours, who tried to keep Christian faith in a different category by attempting to put oaths into perspective with their different meanings. In Gregory's narrative oaths do not help to give order to the historical narrative. Rather, they emphasize the precarious nature of human obligations. A social code and a set of expectations may

92 D. Kar. I, nr. 8, ed. Mühlbacher, 12f.; for a longer discussion, see Esders, *Fideles Dei et regis*, 338-342, with further references.

93 *Annales regni Francorum*, a. 788, ed. Kurze, 80.

94 Reimitz, *Grenzen und Grenzüberschreitungen*; see also Reimitz, *Conversion and control*; Flierman, *Saxon Identities*, 89-118.

95 Esders, *Fideles Dei et regis*, 343-352.

96 Reimitz, *Conversion and control*.

97 Prodi, *Das Sakrament der Herrschaft*.

shine through in Gregory's Histories but only through their constant contestation in the various case histories of the Ten Books. Gregory's Carolingian successors as bishop and pastors seem to have shared at least some of his reservations. Like Gregory, they may have worried about the blending of the political meaning of oaths and the Christian sacrament of baptism. Unlike the time of Gregory, there are extant voices of contemporaries from the eighth and ninth centuries whose instrumentalization of sacred promises the Carolingian pastors found disturbing. The authors of these histories built upon the epic style of the Old Testament to create a providential perspective on the rise of the Carolingians and their legitimation as the new rulers of the Frankish kingdoms. In these narratives the profane and spiritual meanings of oaths increasingly permeate each other. The ongoing efforts to define this semantic program resulted in the brilliant rhetorical design of the zeugma *fideles Dei et regis*. The zeugma managed to integrate various social codes of the oaths, their instrumentalization as well as problematization, and so became one important focus for ongoing debates and reflections on how to draw the boundary between the sacred and the profane. The formation of this discourse is of course a history that would demand further studies including more and other sources, such as normative texts, and above all hagiographical narratives. However, I hope that for the purpose of this collection of essays that aim at a comparison between different social and cultural contexts, between the early and the late Middle Ages, between medieval Europe and medieval Japan, the evidence of the historical narratives can still provide some starting points for further discussion.

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Abbreviations

- MGH Monumenta Germaniae Historica
 DD Diplomata
 SS Scriptores

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Oaths as an Instrument of Power in Southern France, 11th-12th Centuries

Hélène Débax*

In the Languedoc of the eleventh and twelfth centuries, given the absence of a state or an uncontested sovereign authority in this southern part of the kingdom of France, oaths were instruments of power. They constituted the backbone of this society, with very specific modalities for taking them and for the contents of the commitments. In the last analysis, this sacramental act, very flexible in the formulation of its provisions, and based on faith, was far superior to homage in securing power relations. These southern oaths were widely practiced at all levels of aristocratic society, and even had an effect of standardization – creating a formal homology between great lords and petty castle lords (same words, same conditions). However, the oath was probably never free from the hint that it implied service. From the end of the twelfth century, some greater lords (e.g., the King of Aragon and the Count of Foix) asked one of their relatives to take the oath in their place, or promised to pledge their *causimentum* or their *credentia* in lieu of an oath. The texts preserved show the casuistry of situations when sworn commitments were not kept, but more often than not it was the actual balance of power that settled the conflicts.

Keywords: Oaths, aristocracy, Southern France, castles, feudalism, fiefs and vassals

Historical Context

The region under consideration, the Languedoc, is located in the south of the Kingdom of France, between the Garonne and the Rhône rivers, from Toulouse to Nîmes, and between the Pyrenees and the southern foothills of the Massif Central. Although it belonged to the Kingdom, this Languedoc was completely outside the effective influence of the king of France between the 940s and the second half of the twelfth century. The last traces of the presence of southerners at the French court or of a personal bond between the king and the local

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representatives of power date to the middle of the tenth century. The first tentative royal interventions occurred in the middle of the twelfth century, when the Capetian ruler Louis VI (r. 1108-1137) tried to seize Toulouse in the name of his wife Eleanor (in 1141) and his son Louis VII (r. 1137-1180) went on pilgrimage to Santiago de Compostela (in 1155). The period under consideration came well before the major intrusion of French northerners into the region at the beginning of the thirteenth century – the so-called Albigensian crusade (1209-1229), which ultimately led to the integration of these lands in the royal demesne.¹



Figure 1: Languedoc at the end of the 12th century

The eleventh and twelfth centuries are therefore a period of royal absence.² But what about local Occitan powers? At the higher level, it is difficult to understand the power and actions of the counts. The Counts of Toulouse had theoretical authority over Languedoc, thanks to their title »marquis of Gothia«: in addition to Toulouse, Albi, Cahors, and Rodez, they dominated the ancient Visigothic Septimania, i.e., the counties of Nîmes, Agde, Béziers, Lodève, and Narbonne. They had to reckon with two other comital dynasties: the Counts of Carcassonne, until 1067-1068, and the Counts of Melgueil, whose lineage died out in 1176.

- 1 For a general picture of these power relations, see in English: Bonnassie, *From the Rhône to Galicia*; Bisson, *La terre et les hommes*; idem, *Lordship and tenurial dependance*; and in French, Débax, *La féodalité languedocienne*. See also Graham-Leigh, *Southern French Nobility*, for the end of the period.
- 2 Given that the region is part of the Kingdom of France, we are talking here about the Capetian King. From the mid-12th century onwards, two other kings are protagonists in power relations: the Kings of Aragon and the Kings of England. However, they act here respectively as Counts of Barcelona and Dukes of Aquitaine not really as kings.

These comital lineages, all powerful in the tenth century, suffered a clear erosion of their capacity for action in the eleventh century, being threatened by the local reorganization of powers around the castles.³ Above all, the counts had everywhere to deal with viscounts, who gained autonomy between the tenth and eleventh centuries. In the tenth century, they had been delegates of the counts, appointed by the latter in each of their counties, and they had regularly appeared in the counts' entourage and subscribed to counts' charters. In the eleventh century, however, they were freed from the orbit of the counts, who can no longer be seen intervening in the areas controlled by the viscounts. Examples of such viscounts are the Trencavels, who settled first in Albi and Nîmes, then in Béziers, Agde, Carcassonne, and the Razès, or the viscounts of Narbonne, who held the coastal zone north of Roussillon.⁴ In southern Rouergue, we witness the rise of the viscounts of Millau, who became counts of Rodez at the very beginning of the twelfth century. Other dynasties, with or without title, imposed their power more locally, for example the viscounts of Minerve (in the Narbonnais) or Lautrec (in the Albigeois), the lords of Anduze (county of Nîmes), of Montpellier (county of Melgueil), or of Termes (in the Corbières).

Thus, in eleventh- and twelfth-century Languedoc, there was no king. Rather, there were relatively evanescent counts, more powerful viscounts and barons, and especially an exceptional flowering of castles (Latin: *castra*, *castella*) and castral lordships. From approximately 980, the castles multiply in the documentation. In Languedoc, one can truly speak of the »castellization« or »castralization« of the landscape,⁵ as the landscape lends itself to this: most of the area studied is characterized by medium-height mountains or by plateaus (tablelands) deeply scored by valleys, creating highly compartmentalized localities. The only lowland is a narrow plain on the Mediterranean coast, and the Lauragais corridor. Everywhere, on small elevations, edges of valleys, or rocky peaks, towers sprang up.⁶

3 One classic exposition of this model is Poly and Bournazel, *Feudal Transformation*. For the controversies about the so-called »feudal revolution,« see the state of the field in Buc, What is order?. On the political evolution in Occitania during the eleventh century, see Débax, *L'aristocratie méridionale*. On the role played by castles and on the novelty of their multiplication in the late 10th and 11th centuries: Koziol, *The Peace of God*, 27-31.

4 Débax, *Vicomtes et vicomtés*; Cheyette, *Ermengard of Narbonne*; Caille, *Medieval Narbonne*.

5 The classical distinction between *castrum* (the territory controlled by a castle, sometimes named *mandamentum*) and *castellum* (the castle itself) is not so obvious in the documentation. In the oaths, we meet both terms used alternatively for the same site without clear distinction. On these terms and about *incastellamento*: Toubert, *L'incastellamento aujourd'hui*; Debord, *Aristocratie et pouvoir*; Coulson, *Castles in Medieval Society*. For Languedoc, see: Bourin-Derruau, *Villages médiévaux*; *eadem*, Valeur stratégique.

6 See the comparative report of a Franco-Japanese conference on castles, Souyri, Chevaliers et samurai, underlining that, in Japan, permanent castles are late, and date from the fifteenth century. They are, then, a product of the intensified warfare of the Late Middle Ages. Earlier, there were fortified mansions and temporary mountain fortifications. This position is consistent with Souyri's time line, with a »second feudal age« beginning ca. 1350; see *idem*, *World Turned Upside Down*.

This phenomenon becomes very clear if one compares two maps: that of castles attested in the ninth to tenth centuries (see Figure 2) and that of castles attested in the eleventh to twelfth centuries (see Figure 3). In the Carolingian and post-Carolingian period, there are few attested castles, between approximately five and ten per county, despite the relative abundance of documents (we can count approximately 1,000 charters for the ninth and tenth centuries, with, among other things, a good ten wills of members of comital or vice-comital lineages in the second half of the tenth century). In contrast, the profusion of castles in the eleventh and twelfth centuries is such that it defies any mapping on the same scale. In some areas, it is impossible to fit all the attested fortified structures into a page: the map (Figure 3) should be understood as an evocation and not an accurate geography of castles, which would require a much larger-scale level of representation. Moreover, the terms for the ancient structures of population management, such as the *ministerium*, *vicaria*, or *pagus*, disappear from the sources and are replaced by the *terminium* («boundary») or the *mandamentum*, or *territorium castri* («land controlled by a castle»), or by the *parrochia* («parish»).⁷ At the head of all these small castles, one meets a multitude of lords about whom abundant documentation is preserved. It is this data that will interest us now.



Figure 2: Castles, ninth-tenth century

7 Viader, *Vigueries et autres circonscriptions*.



Figure 3: Castles, eleventh-twelfth century

Documentary Corpus

We shall therefore be dealing with a stateless society,⁸ where the powers at the higher level had undergone intense fragmentation and where oaths took a primary place in organizing relations of power. The exceptional character of the region's sources lies in that fact that they preserve not only the mention of oath taking, but also the texts of the oaths themselves.⁹ Compared to the rest of western Europe, the southern French documentation is very rich, consisting of an exceptional corpus of 585 oaths (at least) preserved *in extenso* for the eleventh and twelfth centuries. They can be divided into two categories: oaths for a castle (494) and »securities« (91).¹⁰

These oaths constitute a new type of legal instrument that emerged at the very end of the tenth and beginning of the eleventh century. Some of the formulas were borrowed from Carolingian oath forms, but the complete form for the oath for a castle did not exist before the end of the tenth century.

Both categories of oaths generally follow the same forms, but the oaths for a castle include in addition clauses that concern the status of the fortification that they mention.

8 The expression »stateless society« is to be understood in the sense given to it by Patrick Geary (*Vivre en conflit*), i.e., the absence of a judicial and military coercive force.

9 For Languedoc and Catalonia, see Bonnassie, *Feudal conventions*; Kosto, *Making Agreements*; Bisson, *Crisis of the Twelfth Century*, 104-11; for the feudal documentation elsewhere in Europe, see Nieus, *Le vassal, le fief et l'écrit*; Bagge, Gelting, and Lindkvist (eds.), *Feudalism*.

10 Securities are oaths that do not mention a castle. Débax, *L'aristocratie languedocienne*.

Table 1: Number of oaths and securities in the sources

11th century							
	oaths	securities	infeudations	reprises en fief	recognitions	restitutions	lists, roles
Trencavel	96	5	3	7			
Montpellier	15	1	1				
Maguelone							
Agde		1					
Béziers			4			1	
Saint-Sernin			1				1
Aniane				1			
Gellone			3	5		7	
Lagrasse			2		1	1	
Douzens							
HGL <i>et alii</i>	9	7	2				
total XI	120	14	16	13	1	9	1

12th century							
	oaths	securities	infeudations	reprises en fief	recognitions	restitutions	lists, roles
Trencavel	201	41	63	20	8		
Montpellier	103	14	27	14	11		5
Maguelone	20	1	12	5	11	1	1
Agde		3	3		4	1	
Béziers	1				2	3	
Saint-Sernin			4	2	3		
Aniane	5		5	13		2	
Gellone		2	4	4	3	3	
Lagrasse	2	2	1	1		6	
Douzens					2	3	
HGL <i>et alii</i>	42	14	16	13	12		
total XII	374	77	135	72	56	19	6

TOTAL 494 91

Sources: Trencavel (viscounts of Carcassonne, Razès, Albi, Nîmes, Béziers, Agde): unpublished cartulary (Société archéologique de Montpellier, ms 10), Archives Nationales (Trésor des Chartes, J 300 to J 330) and HGL (C. Devic and J. Vaissète, *Histoire Générale de Languedoc* (Toulouse, ed. Privat, 16 vols, 1872-1904); Montpellier (lords of): Germain, Alexandre, *Cartulaire des Guilhem de Montpellier. Liber instrumentorum memorialium* (Montpellier, 1884-1886); Maguelone (bishops and counts): Rouquette, J., and A. Villemagne, *Cartulaire de Maguelone* (Montpellier, 1912); Agde (chapter): Terrin, Odile, *Cartulaire du Chapitre d'Agde* (Nîmes, 1969); Béziers (bishop and chapter): Rouquette, J.-B., *Cartulaire de Béziers*,

Livre Noir (Paris-Montpellier, 1918-1922); Saint-Sernin (canons): Gérard, Pierre, and Thérèse Gérard, *Cartulaire de Saint-Sernin de Toulouse* (Toulouse, 1999); Aniane (Benedictine monks): Cassan, L., and E. Meynial, *Cartulaire des abbayes d'Aniane et de Gellone, Cartulaire d'Aniane* (Montpellier, 1900); Gellone (Benedictine monks): Alaus, P., L. Cassan, and E. Meynial, *Cartulaire des abbayes d'Aniane et de Gellone, Cartulaire de Gellone* (Montpellier, 1897); Lagrasse (Benedictine monks): Magnou-Nortier, Elisabeth, and Anne-Marie Magnou, *Recueil des chartes de l'abbaye de Lagrasse*, Vol. 1 (Paris, 1996) and Pailhès, Claudine, *Recueil des chartes de l'abbaye de Lagrasse*, Vol. 2 (Paris, 2000); Douzens (Templars): Gérard, Pierre, and Elisabeth Magnou, *Cartulaire des Templiers de Douzens* (Paris, 1965); *HGL et alii* (counts of Toulouse, counts of Foix, viscounts of Narbonne, archbishops of Narbonne); Léonard, Emile G., *Catalogue des actes de Raimond V, comte de Toulouse* (Nîmes, 1932); Macé, Laurent, *Catalogues raimondins (1112-1229). Actes des comtes de Toulouse, ducs de Narbonne et marquis de Provence* (Toulouse, 2008); Belmon, J., Une seigneurie châtelaine en Gévaudan aux XIe-XIIe siècles. La terre et le lignage des sires de Peyre, in: R. Fossier (ed.), *Seigneurs et seigneuries au Moyen Âge* (Paris, 1993) 69-97.

Table 1 includes all types of feudal documents. »Enfeoffments« are donations in fief; »reprises en fief« are more complex operations, which include a donation in »allod« (full property) by the vassal to the lord, then a restitution in fief by the lord to the vassal, and finally an oath. It should be noted that lay sources (viscounts Trencavel, lords of Montpellier, counts of Melgueil) make up an overwhelming proportion of the corpus.¹¹ Ecclesiastical institutions were not unaware of the vectoring of power relations through oaths, but institutions that were collectives, such as chapters, were less likely to use oaths in their dealings with the laity than individual bishops or some abbots, who more readily personalized their power.

Oaths

The core matter in these oaths is that one person commits himself or herself to another about a castle. The oath-giver promises not to cheat the oath-taker, not to take the castle away from him or her, to return it to him or her, and to provide him or her with help. The terms of the promise are anchored in the material reality of the *castrum* (#1 to 8).¹²

Securities

In what this article dubs »securities«,¹³ there is no commitment for a castle (#9 to 12). The oath-giver simply promises not to attack the oath-takers' person or property: it is a personal safeguarding promise, an oath that falls into the categories of alliance and agreement. Unlike an oath for a castle, a security does not establish a hierarchy and is often reciprocal. It may also set a seal on offensive alliances (one promises to help the oath-taker against someone). In the context of the twelfth-century »great southern war,« all the counts, viscounts, and great lords of the Midi concluded securities within the alliances and leagues that were being formed – for or against Toulouse, for or against Barcelona.

11 Débax, *La voix des vassaux*.

12 For the 24 individual oaths, see the corpus of texts below. The form »he or she« (and its derivatives) is all the more justified as women were lords and vassals, one of the most famous being Ermengard viscountess of Narbonne, see Cheyette, *Ermengard of Narbonne*; Débax, *Le lien d'homme à homme*.

13 The French non-emic technical term is »sécurité,« as used in studies of neighboring Catalonia, e.g. Zimmerman, »Et je t'empouvoirrai«, 18-19; *idem*, *Ecrire et lire*, 38-58. Zimmerman notes that »sécurité« might translate the Latin word *securitas*, although it is absent in his Catalan sources. One should note, however, that *securitas* is attested elsewhere.

A confusion between the two types may arise due to the fact that securities sometimes came as the prelude to an oath for a castle. The oath-giver first promised not to attack the person of the oath taker, and then promised to return the castle upon demand (for example # 5).

Protagonists

These oaths all were given and taken within the aristocracy, i.e. the holders of the power of *bannum* (or *bannus*, »ability to constrain«). Thus they all were lords at some level.¹⁴ In the case of oaths for a castle, this is obvious: all oath-givers are castle holders. As for the securities, they all concern lords capable of concluding alliances or agreements with the upper level of the regional aristocracy. However, the oaths for castles are systematically sworn by a lower lord to a higher lord, because the main purpose is the recognition of a superior power over the castle. Oaths establish a hierarchy, anchored in fortifications whose control was central to Occitan politics. On the other hand, the securities may be reciprocal and do not have a ranking effect (#11, 12). They contain a promise of non-aggression, and are sometimes supplemented by a defensive or offensive alliance. Therefore, not everyone can swear such oaths: only aristocrats, from petty *castellani* (castle-lords) to counts and viscounts.

To whom does one swear such oaths? It all depends on the sources. Any member of the regional aristocracy could receive oaths (be an oath-taker), and their names are preserved in many archives, lay as well as ecclesiastical (see Table 1). How frequent were these oaths? On the one hand, oaths for castles had to be sworn in each generation, that is, after the death of the vassal or the lord. The feudo-vassalistic bond, which is »from man to man,« has to be renewed every time. Sometimes, a new oath was required after a treason (see below the discussion of oath-breaking). On the other hand, securities could be sworn more frequently; this depended on alliances and wars.

These oaths were very widely practiced at all levels of aristocratic society, and even had the effect of standardization – creating a formal homology between great lords and petty castle lords. However, the oath was probably never free of the hint that it implied service.¹⁵ From the second half of the twelfth century, some greater lords (e.g., the king of Aragon, or the count of Foix, etc.) asked one of their relatives to take the oath in their stead, or promised to pledge their *causimentum* (»self-obligation«) or their *credentia* (literally, their »credit«) in lieu of an oath (#13, 14). This procedure appears in securities as if greater lords wanted to mark their preeminence by using a type of oath that did not determine any *a priori* hierarchy.

14 For a recent English-language presentation of »banal rights« and the controversies surrounding continuities and discontinuities, see West, *Reframing the Feudal Revolution*, 177-181; Giordanengo, »Le vassal est celui qui a un fief.«

15 A similar point is made by Bonnassie, *Le servage*; see also *idem*, *Sur la genèse de la féodalité catalane*.

Making an oath is a commitment, and therefore, from the second half of the twelfth century onwards, the princes who claimed sovereignty attempted to get out of the obligation to swear. The troubadour Peire Cardenal (ca. 1180-ca. 1278) expressed in poetry the underlying logic: he placed the simple pledge of one's good faith above the oath. The latter retained an impression of servility, which the princes were trying to avoid (#15). It was at this same time that the kings of France were asserting that they could not render homage to anyone.¹⁶

Form of Oath-Taking

To use the terminology of »diplomatsics,«¹⁷ these written legal instruments were initially informal, with no protocol (opening clauses) or eschatocol (closing formulas). The »diplomata« were drafted as a series of clauses, initially in the third person (until the end of the eleventh century, #1, 2, 9), later in the first person (from the last third of the eleventh century on, and especially in the twelfth century, see #3 to 8, 10 to 12). The classic form of the diplomatic charters was only reintroduced and reused for this type of act from the middle of the twelfth century on (#7, 8). Before the middle of the twelfth century too, the majority of these legal instruments were not dated; dating only begins to appear in the 1130s, and was not systematic until the second third of the twelfth century.

Until the middle of the twelfth century, these acts were written in a language that was very much influenced by the Occitan vernacular. This suggests that they were fairly faithful renditions of what was actually said (#2, 4). Indeed, we have contemporary legal acts such as charters of donation, sales, or wills, which were written in Latin and which generally respected the classic forms. This means that the particular form of the oaths was deliberately chosen, since one cannot explain their informality by some southern ignorance of the classic forms and even less by a demise of Latin in the area. For these oaths, it was likely important to keep the language close to their oral delivery: these texts were written to preserve a transcription of at least some of the words that had actually been pronounced.¹⁸

Oaths

What is at stake in the oath of fidelity (or fealty) is the oath-giver's affirmation that the castle will be returned to the lord upon any summons from him. The fact that the lord can demand the restitution of the *potestas* (a word commonly used for a »lordship«) establishes a hierarchy of powers. And this restitution must be made without delay (*sine mora*), by day or by night (*die vel nocte*), in war or in peace (*iratus vel pacatus*, literally, whether there is anger or peacefully), that is to say unconditionally. The oaths also contain a commitment to provide help (*adjutorium*) to the lord. At first, the aid was connected to the control of the castle: the

16 Suger, abbot of Saint-Denis, regent of the kingdom for King Louis VII, theorized the superior power of the king, vassal to no one. Suger, *De Administratione* 1.4, ed. Gasparri, 66: »... si rex non esset hominum ... debere«; Bournazel, *Le gouvernement capétien*; Giordanengo, *État et droit féodal*.

17 German: *Urkundenlehre*; French: *diplomatie*, the science of the study of conveyance documents, *diplomata* or »charters.« Kosto and Winroth, *Charters, Cartularies, and Archives*.

18 Exactly as in Catalonia: Zimmermann, *Langue et lexicographie*; *idem, Ecrire et lire*.

oath-giver promised to provide it if the castle escaped his or the lord's power, and until the castle was taken back. At the end of the eleventh century, aid no longer concerned the castle alone, and had to be rendered at any summons from the lord. The notion of counsel (*consilium*) is also omnipresent from the eleventh century onwards. It is sometimes expressed in the rather peculiar form of a promise of silence: the oath-taker undertakes not to divulge any words entrusted to him by the lord.

Some clauses, especially the initial clauses in the oath, are expressed in the negative. The oath-taker promises not to use deceit to rob his lord of the castle (*decebrare, decipere, bauzare*), not to take it from him by force (*tolre, auferre*), or not to forbid him or her entry into it (*devedare, vetare, prohibere*). The vassal undertakes not to act against his or her lord and not to harm the lord's property, but this is not mere passive loyalty, since he or she also agrees to provide *auxilium et consilium*.

Securities

Some securities come as an introduction to an oath for a castle, while others stand alone. Here, the main object of the commitment is the person of the oath-taker. Like oaths for a castle, the securities begin with *de ista hora in antea non decebra ...* (from this hour forward he will not betray ...), but following this, instead of stating the name of a fortification, the promise concerns the individual who receives the oath: *de sua vita et de sua membra que ad corpus suum se tenent* (about his life and about his limbs that are attached to his body). In Occitan, one swears *lor vida e lor membra* (life and limbs). This clause is found throughout the feudal west: it must have Carolingian antecedents.¹⁹ Sometimes the text is reduced to this single formulation (#10). It may also be spelled out in the commitment not to kill the oath-taker or take him prisoner. The security may also include a clause protecting the oath-taker's property, either in a concise and all-encompassing form (*tua honor*) or in more detailed form (with an enumeration of the oath recipient's possessions).

Oaths for a castle and securities are therefore both part of a loyalty *continuum*, but these two kinds of legal acts play a different structural role. The security seals an alliance, without prejudging the respective places of the parties, thus without establishing a hierarchy; the oath for a castle establishes a feudo-vassalistic relationship, based on the recognition of the superior power of the lord over the castle.

19 Magnou-Nortier, *Foi et fidélité*.

Ritual

The oaths of fidelity preserved in the southern archives are the written record of a more general ritual which, when all is said and done, will always remain enigmatic. In fact, the scribes only recorded on parchment the words pronounced, the »verbal act«; the actions or gestures are barely mentioned. It should also be noted that this ritual is not an homage. Homage is something else: it is a ritual in which the vassal, kneeling, places his hands between the hands of the lord, who stands.²⁰ This ritual is univocal and does not allow for any nuance – for example, on the content of the loyalty or on the conditions set for its respect. Testimonies to homage are preserved in the French south, and are actually among the earliest in the feudal west (from the mid-eleventh century onwards). This is an additional ceremony that sometimes accompanies the oath swearing.

The feudal oath ritual itself is different. We only have some hints in the sources, but we can reconstruct bits and pieces of the ceremony. It began with an interpellation: the oath-giver apostrophized the recipient to attract his or her attention, concretely of course, but above all symbolically. Instead of the usual impersonal narrative (*De ista hora in antea, non decebra ...*), some oaths open with a vivid call: *Aus! Audis!* (listen!), *Antenz!* (hear!), *Cai gara! Za gara! Say garda!* (beware!). The usual order in which the protagonists of the oath are named, is then reversed. In classic oaths, the vassal identifies himself or herself first and then the lord (according to the formula »*juro ego tibi*«...). Here, the apostrophe is immediately followed by the name of the oath-taker: »Listen, you so-and-so, I, so-and-so ...« This particularly vivid form reproduces Occitan orality, and seems to be a fairly faithful transcription of what might have been the beginning of the ceremony, a symbolic interpellation that set up the two protagonists and marked the opening of the ritual. It is preserved in about 40 texts (here in #16, 17).

The ritual's second phase is closely linked to the first: the apostrophe introduces the statement identifying the two protagonists in the oath. With very few exceptions, this designation of the actors is made by stating their name followed by their mother's name, in the form of »so-and-so son of so-and-so.« This form of identification is quite specific to oath texts, and can be found in all geographical areas where this type of document has been preserved, from Provence to Catalonia, from Toulousain to the Mediterranean.²¹

After the lord has been apostrophized, and after the identities have been declared, some of the oath texts reveal the third important phase of the ritual, the shaking of hands: *Antenz fils de Guillelma Ato cui eu per la man ten ...* (»Hear me, son of Guillelma, Ato, that I hold by the hand«), *Ausz Bernard fils de Ermengard cui eu per est manu ten ...* (»Listen to me Bernard, son of Ermengard, that I hold by this hand«), *Say garda P. abbas cui eu per esta ma tienh ...* (»Take care P. abbot that I hold by this hand«). The gestures of both parties are parallel. One hand of the oath-giver embraces one hand of the oath-taker; and they shake hands. In the sources, the hand is always in the singular. All this clearly differentiates this ritual from that of homage with its asymmetrical gesture, where the two hands of the vassal are clasped between those of the lord, and for which the sources always use the plural (for example: #3).

20 The classic discussion of the ritual of homage, informed by anthropology, is Le Goff, *Symbolic ritual of vassalage*.

21 For the mention of mothers, possibly a class marker, see also Cheyette, *Ermengard of Narbonne, 189-197*; Débax, *Le serrement des mains*.

The sources then transcribe the words pronounced by the vassal (*fidelis*, the »faithful«), by which he or she undertakes to help and advise the lord, to hold one or more castles, and to return them to him or her upon demand. Then comes the fourth phase of the ritual: the oath-giver commits his or her word to *res sacrae* (sacred objects). The texts explain that the vassal puts his or her faith on the line (*per fide, per ma fe*), and this faith is pledged on sacred things. The formula is very short and stereotyped: *per Deum et haec sancta, per aquetz sanz* (by God and these holy objects; by this saint: that means either altar or relics). From the second half of the twelfth century, we may find: *per haec sancta Evangelia* (by these Holy Gospels). Chronologically, the first sacred objects that the sources mention were therefore relics, then, a little later, the Gospels.

Whether involving holy bodies or holy books, the ritual's final part raises the problem of the gesture. The oath-giver takes the divinity as witness by extending a hand over the *res sacrae*, or by placing it on the Gospels (the texts sometime say *tactis sacrosanctis Evangeliiis*, having touched the sacrosanct Gospels). Given the symbolic lateralization in force in the whole of the medieval west, it is unthinkable that it was the left hand. One can only take an oath before God with the right hand. However, we have seen that, at the beginning of the ritual, one hand of the vassal embraces one hand of the lord: here too, it has to be the right hand – and that is sometimes specified. It must therefore be assumed that the two right handed gestures are performed one after the other.

The oath, with its well-individualized and formalized ritual, provided the general framework for entry into vassalage in the Languedoc from the eleventh to the twelfth century. Its importance cannot be doubted, as shown by the care that the princes took in transcribing these texts in their cartularies. Its flexibility, unlike a rigid and unique rite such as homage, must have contributed to its success and its general diffusion. Indeed, the clauses are infinitely modulable. Thus one may conclude that the oath, which manifested openly a person's entry into a fidelity, constituted the fundamental structure of Languedocian feudalism.

Sanctions in Case of Oath-Breaking

Oaths are taken with God as witness, with one's hand placed on relics or on the Gospels. However, no penalty for perjury is mentioned. And we have no mention of ecclesiastical repression of perjury, in particular before ecclesiastical tribunals. Breaking the oath is simply called-treason. The vocabulary expressing this betrayal or trickery is very rich, with the nouns *traditio* / *traicion*, *proditio*, *forfactum*, *engan*, *bauza*, denoting treason and felony, and the verbs *decipere* / *decebrare*, *enganare*, *malmenare*, *forfa*, denoting deceit, ruse, manipulation. When taking the oath, all these words are expressed in negative form: the vassal obviously undertakes not to perform such reprehensible acts [#18, 19].

The sanction for breaking an oath sworn for a castle is very clear: the item will be confiscated by the lord [#20, 21]. This demonstrates that the castle that is object of the oath is really a fief; the oath establishes vassalage and makes the castle a fief.

But confiscation was not always effective or did not last very long, because these cases are always primarily the consequence of power relations. For example, a young »castellan« (*castellanus*) from Cerdanya was accused by the count of having betrayed his oath. His transgression was to have asked for a delay before returning the castle when his lord had asked him to do so. The misdeed is expressed by the verb *male agere* (misbehave), but above all by

the beautiful neologism *ejurare* («unswear»). However the young man came from a great lineage whose support the count probably needed. There is therefore no mention of sanction – simply a sort of *mea culpa*. In the end, the oath was repeated, with the promise to henceforth return the castle upon summons and without delay (#22).

Oaths could also be broken in other circumstances: they might be invalidated »legally« by a peace treaty or a judicial agreement. Dissolutions of oaths are attested in the twelfth-century context of a quasi-permanent war. For instance, when in 1142 Alfonse Jourdain, Count of Toulouse, and Roger I, Viscount Trencavel, struck a peace-pact, it was decided that the count would cancel a number of oaths that had been unduly sworn to him during the hostilities by a number of castle lords. The count was first obliged to dissolve the oaths received for Narbonne from the men of Narbonne (*debet solvere ipsa sacramenta que homines Narbone et Narbonensis ei fecerint de Narbona*), and he had to return the parchments on which these oaths had been recorded (called the *sacramentalia*). He was then to dissolve the oaths received for Bruniac and to destroy the fortifications built in Candeil in Albigeois (*et debet solvere sacramentum de Bruniac et enderocare vallos de Candel*), and force one Isarn to swear an oath to Viscount Roger for Graulhet (*ipse comes faciat jurare Isarnum castellum de Gravoletto predicto Rogerio*), etc. (#23).

Another case concerns the lords of Puylaurens in the Tarn in 1149. It was again a controversy over an oath, but of a different nature. A lord named Pons de Dourgne lodged a complaint against one Gausbert de Puylaurens and Viscount Roger I. Pons accused Gausbert of having sworn directly to the viscount. The court of *probi homines* (men of good repute) of the *castrum* were asked to judge, and they decided that this oath was undue and had it cancelled. These arbiters (they are called *iudices*, judges) also demanded the return of the parchment on which the oath had been written (the *sacramentale*) and had it burned in public (#24). The local elite of the *castrum*, constituted in judicial court, knew therefore who had the right to swear to whom, and the judges ensured that hierarchies were respected: the petty castellan of Puylaurens is clearly only the rear vassal of the viscount and cannot in any case swear to him directly. These cases demonstrate that feudal lords therefore practiced not only oath-taking, but also oath cancelling. The precise ritual that accompanied such a cancellation is not known, but the solemn return of the parchments bearing the text of the oaths must have played an important part in it.

The sacramental process seems then to be entirely in the hands of the aristocracy, which decides on its performance and abrogation, which judges the appropriateness of compelling to swear, or which codifies the sanctions applied to traitors and perjurers, even if the oath-swearing ritual necessarily includes a divine guarantee.

Oaths and Fiefs

After this detailed analysis of the text of the oaths, it is necessary to insist on the crucial distinction between oaths and securities. For too long, the fact that they took similar forms has led to their conflation. However, the oath of fidelity is rooted in the reality of the *castra*: it constructs hierarchies of domination over the castles, and manifests the existence of a superior power over the castles and the submission of the vassals to that lordly power. A security refers rather to the dimensions of alliance and negotiated peace, and may also seal offensive coalitions against some other party. The two forms are situated within the same feudo-vassalistic framework and context, but their meaning for our understanding of power hierarchies is different.

In oaths, the main thing is that one person commits himself or herself to another in relation to a castle. This is how the most essential and crude vassalage was expressed at the beginning of the eleventh century. It cannot be said, as was long the case, that these texts only express negative loyalty or promise non-aggression.²² Everything that revolves around the castle is positive and truly commits the vassal, who must be ready to return the castle and provide aid. In fact, these texts express a fundamental fact: the oath-giver recognizes an authority over the castle that is greater than his or her own.

Oaths, infeodations, and »reprises en fief« thus made possible a hierarchy within the aristocracy. They also demonstrate the strength of the lordly lineages. The castellans were dependent on a superior lord, but at least the most powerful lineages were able to impose a number of constraints on him or her. In this frame, power is always the result of a negotiation. Vassalage is therefore the bond established at the time when the feudal relationship is concluded and put into words.²³ In eleventh- and twelfth-century Languedoc, vassalage was non-existent before the establishment of a fief. Thus, being a vassal was not an absolute reality, but was always related to a castle. All lords of castles of a certain importance had several castles and often several vassals for each castle, each of which had its own seigniorial situation. It seems to me that we should forget the metaphor of the feudal pyramid in Languedoc. There was instead a neat hierarchy of higher lords with vassals and these vassals' own vassals, thus juxtaposed hierarchical fragments. Thus we have here a feudal regime that was built in a pragmatic and progressive way from the eleventh century onwards in the form of a network.²⁴ The aristocracy progressively constructed itself as the complicated juxtaposition of a plurality of segmentary political fidelities certified by oath, and based on fiefs made of castle-lordships for which these oaths were sworn.

What radically changed around the eleventh century was the mode of circulation of power within this aristocracy. In this feudal context, power was no longer delegated – as it could be in the Carolingian and post-Carolingian context – but shared. »Everywhere in the medieval West men appointed to guard castles, collect customary revenues and keep local order behaved not as agents but as lords on the make... Nowhere in these lay societies was it possible to delegate power; one could only share it.«²⁵ Oaths were the main instruments of this sharing. They were the framework of feudal society, a stateless society structured by networks of loyalty, simple in principle but complex in its actual implementation, resulting – as we see in the sources – in entangled fidelities.

22 Magnou-Nortier, *Fidélité et féodalité méridionales*, 479: »Une fidélité sans support foncier, une «féodalité» sans support juré, une aristocratie sans vassaux.«

23 On the importance of the words spoken, see Leveux, *Le serment, une parole sacrée?*; *eadem*, *Prêter serment*. See also Morsel, *L'aristocratie médiévale*, 173, where he illustrates the power of the words with the parable of the marquis of Carabas in the tale of the »Puss in Boots«.

24 Débax, *La seigneurie collective*.

25 Bisson, *The »feudal revolution,«* 36-37.

CORPUS OF TEXTS**Oaths****1) 1000-1032: Oath for Auriac (Haute-Garonne) to Aton II (Trencavel)**

De ista hora in antea non decebran Odalricus neque Bernardus frater ejus filii Aladice Atonem filium Gauciane de illo castello de Auriago, neque de illa forteza que hodie ibi est et in antea facta erit, ni no lol tolran, ni no lol vedaran, ni illi ni homo ni femina ab illorum ingenio, ni ab illorum consilio suo sciente. Et si homo est aut femina qui hoc faciat, ipse Odalricus nec ipse Bernardus cum illo homine nec cum illa femina societatem non tenran a dampno de ipse Atone suo sciente. Intro ipse Ato recuperatum habeat ipsum castellum de Auriago, in adjutorium erit ad ipsum Atonem de ipso homine aut de ipsa femina de illo castello sine inganno et deceptione, intro recuperatum habeat ipsum castellum. Et si Odalricus ipse aut Bernardus recuperaverint ipsum castellum, in potestate de ipso Atone lo tornaran sine inganno et sine deceptione et sine lucro, si comprobatum non viderint ipse Odalricus et ipse Bernardus frater suus ipsum Atonem de ipso castello que tultum habeat aut vedatum, [...] comprobatum aut victum per batalia aut extractum quod audeat facere bataliam. Sicut superius scriptum est in isto pergameno et clericus legere potest, si o tenran et si o atendran ipse Odalricus et ipse Bernardus frater suus contra Atonem filium Gauciane, fors quantum ipse Ato lor en absolvra ad ipsum Odalricum et ad ipsum Bernardum suo gradient animo sine forcia.

Cartulaire des Trencavel [henceforth referred to as CT], n°34, fol. 9.

From this hour forward, Odalric and Bernard his brother, sons of Aladice, shall not deceive Aton, son of Gaucia, of the *castellum* of Auriac, nor of the fortification which is there today or will be henceforth constructed there, nor shall they seize it away from him, nor forbid [entry in] it, neither they nor man nor woman via their deceit nor by their known counsel. And if there is a man or woman who does it, neither Odalric nor Bernard will knowingly have any association with him or with her to the detriment of Aton. Until Aton has recovered that *castellum* of Auriac, he [Odalric or Bernard] will provide aid to Aton against that man and woman for that *castellum*, without deceit and without deception until he [Aton] has recovered that *castellum*. And if Odalric or Bernard should recover this *castellum*, they shall return it to the power of Aton without deceit and without deception and without gain, if it cannot be proved by Odalric or by his brother Bernard that Aton has taken or forbidden them the *castellum*, and this proof would be a defeat in a duel or a refusal to fight a duel. As it is written above on this parchment, and as a clerk may read it, Odalric and his brother Bernard will hold and maintain it towards Aton son of Gaucia, except when Aton shall absolve them, Odalric and Bernard, of this, by his gracious spirit, without violence.²⁶

26 That is (here and elsewhere below) without being constained by violence to relieve them of this aspect of the promise, but rather, willingly and graciously.

2) 1060-1074: *Oath for Roquefort (Tarn) to Frotaire and his nephew Raimond Bernard Trencavel*
De ista hora in antea Ugo filius Gilla de illo castello de Rocafort qui est super fluvium Sor nol li tolra a Froterio episcopo, ni a Raimundo filio Rangardis illo castello suprascripto nol lor tolra, ni nol lor desvedara, ni no len decebra de illa forcias que ara i sunt ni adenant factas i serant, ni hom ni femna per son gen ni per son consel. Et si hom era ni femina qui o fazes, Ugo filius Gilla len adjudera senes engan. Ab els ni ab elas qui o fazesson fin ni societat non auria, entro Froterio o Raimundo recobrat l'aguessunt senes engan.

CT, 212, fol. 66; Devic and Vaissète, *Histoire Générale de Languedoc* [henceforth referred to as HGL], vol. V, n° 264-II, col. 521 (incomplete).

From this hour forward, Ugo son of Gilla will not seize away from Froterius, bishop, nor from Raimond, son of Rangardis, the *castellum* of Roquefort, which is upon the Sor River, neither will he seize it, nor forbid [entry to] it, nor deceive them of the fortifications that are there today and that are to be built [there] henceforth, nor will man nor woman do it via his deceit or by his advice. And should there be a man or a woman who does it, Ugo son of Gilla will provide aid without deceit. Neither with them [masculine] nor with them [feminine] who do that, will he have agreement or association, until Froterius and Raimond recover it without deceit.

3) 1067-1100: *Oath for Routier (Aude) to Ermengard (viscountess of the Trencavel lineage)*
De ista hora in antea ego Bernardus filius Ermengardis fidelis ero tibi Ermengard filie Rangardis sicut debet esse homo suo seniori cui manibus si est comendatus per rectam fidem sine inganno. De ista hora in antea ego Bernardus suprascriptus non decipiam te Ermengard suprascriptam de ipso castro de Rivotorio, neque tibi illum tollam neque tibi illum vetabo ipsam turrem, neque ipsos muros neque ipsas forticias que ibi hodie sunt et in antea facte erunt, nec ego nec homo ni homines nec femine per meum consilium neque per meum ingenium. Et per quantas vices tu inde me comonueris per te ipsam aut per tuum missum aut per tuos missos, in potestate tua illum tornarei sine tua deceptione et sine lucro. Et si homo est aut homines, femina vel feminas qui tibi illum tollat aut tollant, vetet aut vetent, ab illo neque ab illis, ab illa neque ab illas finem nec societatem nec amicitiam neque tregam non prendrei ni non tenrei, excepto qualem tu habueris. Adjutor ten serei usque illum recuperatum habeas, abs te et sine te, per fidem sine inganno. Et si recuperare illum potuero, in tua potestate illum tornarei sine lucro de tuo avere et sine tua deceptione. Et in antea istum sacramentum tibi tenebo sicut superius scriptum est, si to tenrei et to atendrei ego Bernardus suprascriptus tibi Ermengardis suprascripta me sciente, exceptis quant tu mihi absolveris tuo graziente animo sine forcia te sciente.

CT, 205, fol 63v.

From this hour forward, I, Bernard, son of Ermengard, shall be faithful to you, Ermengard daughter of Rangard, as a man or woman must be to his [her] lord to whom he recommended himself by the hands, in good faith and without deceit. From this hour forward, I, the aforesaid Bernard, shall not deceive you, the aforesaid Ermengard, of that *castrum* of Routier, nor shall I seize it away from you, nor forbid [your entry in] that tower to you, nor these walls nor those fortifications that are there today and that are to be built [there] henceforth, nor shall I or any man or men or women by my advice or via my deceit. And as many times as you will summon me either by yourself or by your envoy or by your envoys, I shall return it to your power without deceiving you and without gain. And if there is a man or men, woman or women who takes it or take it from you, or forbids or forbid [your entry in] it, neither with him nor with them, neither with her nor with them, shall I take nor hold neither agreement nor association nor friendship nor truce, except these that you may have [with these persons]. I shall

be your helper until you recover it, with you or without you, faithfully and without deceit. And if I can recover it, I shall turn it over into your power without gain from your goods and without deceit. And from now on I shall keep this oath towards you as it is written above, and I, the aforesaid Bernard to you, the aforesaid Ermengard, will hold to it and maintain it, conscientiously, except when you will free me from it by your gracious spirit, without violence that you would be aware of.

4) 1068-1090: *Oath for Le Pouget (Hérault) to Guilhem V of Montpellier*

De ista hora in antea, ego Girundes filia Advenia non decebrai Vilelmum filium Ermenjardis de ipso castro quod vocatur Pojet, nun li tolrai ni len tolrai, ni li vedarai ni len vedarai, de illas fortizas que ara i son ni adenant i erun, ni hom ni femena per meun ingen ni per meu art ni per meu counsel. E si hom era u femena quel ti tulgues u ten tulgues, cum illis finem nec societatem non aurai al daun de Vilelmo suprascripto. Et adjudera i ad Vilelmum suprascriptum usquequo habuisset recuperatum et, cum illo et sine illo, adjudar len ai per fidem et sine inganno. Et rendrai lo i per achelas vez que men cumonra per se u per sun mes u per sus misos sine suo inganno et sine sua deceptione, e del comoniment num vederai.

Germain, *Liber Instrumentorum Memorialium*, n°484.

From this hour forward, I, Girundes, daughter of Advenia, shall not deceive Guilhem, son of Ermengard, for the *castrum* called Le Pouget, I shall not seize it nor seize a part of it, I shall not forbid [entry in] it nor [in] a part of it, as to the fortifications that are there today and that will be henceforth – neither I, nor any man nor woman via my deceit or by my artifice or by my advice. And if there is a man or woman who seizes it from you or seizes from you a part of it, with them I shall not have agreement nor association to the detriment of the aforesaid Guilhem. And I shall provide aid to Guilhem until he has recovered it, and with him and without him, I will be a helper faithfully and without deceit. And I shall return it to him as often as he summons me, by himself or via his envoy or envoys, without deceit and without deception, and I shall not shirk from the summon.

5) *Circa 1074-1130: Oath for Saissac (Aude)*

De ista hora in antea ego Isarnus Jordani filius Malnoireda non decebrei te Bernardum At filium Ermengard neque te Ceciliam uxorem ejus neque filios vestros, de vestras vitas, neque de vestros honores, neque de membris vestris, neque de ipso castello Sexaco, neque de ipsas fortizas que ibi hodie sunt et in antea ibi erunt facte, nol vos tolrei ni vos entolrei, nol vos vedarei ni vos envedarei. Et si est homo vel femina, homines vel femine qui vobis illum tollat aut entollant, vetet aut vetent, adjutor vos en serei ab vos et sine vos, et in medio finem aut societatem cum illis non aurei ad ullum vestrum dampnum. Et si illum recuperare potuero, in vestra potestate lo tornarei sine lucro de avere et de honore. Et per quantas vices vos men comonrez per vos ipsos aut per vestrum nuncium aut per nuncios vestros, in vestra potestate lo tornarei sine lucro per fidem sine inganno. Sicut superius scriptum est, sic vobis hoc tenrei et o atendrei per Deum et hec sancta.

CT, 295, fol. 96.

From this hour forward, I, Isarn Jourdain, son of Malnoireda, shall not deceive you Bernard Aton, son of Ermengard, nor you Cecilia, his wife, nor your sons as to your lives, nor as to your honors, nor as to your limbs, nor as to the *castellum* of Saissac, nor as to the fortifications that are there today and that are to be built there henceforth. I shall not seize it from you, nor shall I seize a part of it, nor shall I forbid [your entry in] it nor [in] a part of it. And if there is a man or a woman, men or women, who seize it from you or seize a part of it, forbid it to you or a part of it, I shall be a helper, with you or without you, and publicly I shall not have an agreement or an association with them

to your detriment. And if I can recover it, I shall turn it over into your power without gain from your goods and from your honor. And as many times as you will summon me either by yourself or by your envoy or by your envoys, I shall turn it over into your power without gain, faithfully, without deceit. As it is written above, I shall keep it, by God and these saintly relics.

6) 1132, 13th of April: Oath for Le Vintrou (Tarn)

De ista hora in antea ego Ermengaudus qui fui filius Rixendis femine non decipiam te Rogerium filium Cecilie vicecomitisse de ipso castello quod vocatur Vintro, de ipsis fortibus que hodie ibi sunt vel in antea facte fuerint, nol te tolrei ni ten tolrei, nol te vedarei ni ten vedarei, nec ego nec homo nec femina vel homines aut femine per meum ingenium aut per meum consilium. Et si erit homo aut femina vel homines aut femine chil te tolan ni ten tolan, chil te vedon aut ten vedon, ab achel ni ab achela, ab achels ni ab achelas finem vel societatem non habuero ad tuum dampnum. Et si recuperare illud potuero, in tua potestate lo tornarei sine lucro tui muneris atque honoris. Et per quantas vices lom demendaraz per te aut per tuum missum aut per tuos missos, in tua potestate lo tornarei et redrei sine tuo inganno. Et si de te Rogerio desierit sine infante, totum per eandem convenientiam fratribus tuis Raimundo Trencavello atque Bernardo atendrei sine illorum inganno. Sicut superius scriptum est, tibi et illis totum sine inganno omni vita mea o tenrei et o atendrei per Deum et hec sancta. Factum est hoc apud Carcassonam idibus aprilis anno M°CXXXII incarnationis Dominice, regnante Lodovico rege. Factum est sacramentum hoc in presentia Fredolonis de Monte Rotundo et Petri de Peirola et Willelmus Petri de Castras.

CT, 21, fol. 6.

From this hour forward, I, Ermengaud, son of the late woman Rixendis, shall not deceive you, Roger, son of Viscountess Cecilia, for the *castellum* called Le Vintrou, for those fortifications that are there today and that are to be built [there] henceforth. I shall not seize it from you, nor shall I seize a part of it, nor shall I forbid [your entry in] it nor [in] a part of it, neither I nor a man nor a woman via my deceit or by my advice. And should there be a man or a woman who seizes it from you, or a part of it, who forbids it or a part of it to you, I shall not have an agreement or an association to your detriment with him or with her or with them. And if I can recover it, I shall turn it over into your power without gain from your goods and from your honor, and without deceit. And as many times as you will ask me either by yourself or by your envoy or by your envoys, I shall turn it over into your power and give it back to you, faithfully, without deceit. And should you, Roger, disappear without children, I shall keep it all according to the same pact towards your brothers Raimond Trencavel and Bernard Aton without deceiving them. As it is written above, I shall keep it towards you and them, without deceit, all my life long, by God and these saints. This was made in Carcassone, on the Ides of April [13th of April], in the year 1132 of the Lord's Incarnation, Louis being king. This oath was made in the presence of Fredolon of Montredon, Peire de Peyrolles, and Guilhem Peire of Castres.

7) 1152, 16th of July: Oath for Molandier (Aude)

Anno M°C^oLII^o incarnati verbi divini, IIII^a feria, XVII^o kalendas augusti, Lodovico rege regnante in Francia. Aus tu Raimuns Trencavel vescoms de Beders filz de Cezilia vescomtesse et tu Roger filz de R. Trencavel et de Saura contessa, eu Sicarz de Laurac filz de Ava d'aquesta hora enant lo castel de Mont Lander et las forcas que ara i sun ni adenant i seran non tolrei ni vos entolrei, no las vos vedarei ni vos envedarei. Et per quantas vegadas per vosmet ipsos vel per vestre message o per vostres messages las me demandarez, eu las vos reddrei et redre las vos farei senes lo vostre engan. Et si hom era ni femna qui las vos tolgues ni vos en tolgues,

ni homes ni femnas qui las vos tolguessun ni vos en tolguessun, ab aquels ni ab aquelas fin ni amor ni societate non aurei, tro eu las vos reddes et el vostre poder senes engan et senes logre de vestre honor et de vestre aver los tornes. Aisi co desobre es escript, o tenrei et o atendrei senes engan per hec sancta evangelia. Omnium rerum predictarum est testis [15 names] quorum omnium jussu et Sicardi prescripti filii Ave Arnaldus de Clairano hoc scripsit, sub die et anno prenotato.

CT 306, fol. 100; *HGL*, vol. V, n° 585, IV, col. 1129-1130 (incomplete).

In the year 1152 of the Incarnation of God's Word, Wednesday, on the 17th of the calends of August [16th of July], King Louis reigning in France. Hear you, Raimond Trencavel, Viscount of Béziers, son of Viscountess Cecilia, and you Roger, son of Raimond Trencavel and of Countess Saura, I, Sicard of Laurac, son of Ava, from this hour forward, shall not seize from you the *castel* of Molandier and the fortifications that are there today and that are to be built henceforth, nor will I seize a part of it; I shall not forbid [entry in] it to you nor [in] a part of it. And as many times as you will summon me either by yourself or by your envoy or by your envoys, I shall return it over into your power, or make it be returned, without you being deceived And if there is a man or a woman who seizes it or seizes a part of it from you, or men or women who seize it or seize a part of it from you, I shall not have an agreement, nor love, nor association with them (masculine) or with them (feminine), until I have returned it to you and returned it back in your power, without deceit and without gain from your honor and from your goods. As it is written above, I shall hold and maintain it without deceit, by these holy Gospels. For these things are witness [15 individuals are enumerated], at whose order and at the order of the aforesaid Sicard son of Ava, on the day and the year noted above, Arnaud of Clairan wrote this.

8) 1183, February: Oath for Peyrefitte (Aude)

Anno Christi nativitatis M°C^oLXXXIII^o, Philippo rege Francorum regnante. Notum sit omnibus hoc audientibus quod ego Petrus Rogerii de Mirapeix juro tibi domno Rogerio vicecomiti filio Saure scilicet illam forciam de Peira Fita cum omnibus illis forciis que ibi modo sunt et in antea fuerint. Et quocienscumque illam per te vel per tuum nuncium vel per tuos nuncios recipere et tenere, nocte vel die, iratus vel paccatus, volueris, statim sine omni mora in tua potestate juxta voluntatem tuam illam mitemus. Et si fuerit homo vel femina, homines vel femine qui tibi illam auferant, cum illo vel cum illa aut cum illis amorem vel societatem non habebō, nisi propter recuperandam forciam. Et quando illam recuperare possem, in tua potestate sine mora mitterem sine omni dolo et lucro tui averis et honoris quod a te non peterem. Sic tenebo et observabo, per hec sancta IIII^{or} evangelia. Hujus rei sunt testes [7 names], Bernardus notarius domni R., mandato Petri Rogerii omniumque testium predictorum scripsit hanc cartam in mense februarii, feria III^a et anno quo supra. CT, 529, fol. 207

In the year of the Nativity of Christ 1183, Philip [II, 1180-1223] reigning as king of the Franks. Let it be known to all men who hear it that I, Peire Roger of Mirepoix, swear to you Lord Viscount Roger, son of Saura, this fortification of Peyrefitte, with all bulwarks that are there today and that are to be built [there] henceforth. And as many times as you want to take it back and hold it, either by yourself or by your envoy or by your envoys, by day or by night, in war or in peace, we shall turn it over into your power immediately, without delay, according to your will. And should there be a man or a woman, [or] men or women, who takes it or take it from you, with him or with her or with them, unless in order to recover the fortress. And when I can recover it, I shall release it without delay in your power, without any trick or gain from your goods and from your honor – that I shall not request from you. I shall keep and observe it

thusly, by these four holy gospels. For these things are witnesses: [7 names are enumerated], Bernard notary of Lord R., at the order of Peire Roger and of all witnesses above mentioned, wrote this charter, in the month of February, a Tuesday, in the year [mentioned] above.

Securities

9) 1060-1074: From Raimond Bérenger to Viscount Raimond Bernard Trencavel

Hic est brevis sacramentalis quod fecit Raimundus Berengarius filius Garsendis ad Raimundo vicecomite filio Rangardis. De ista hora in antea ego Raimundus filius Garsendis non decebrai Raimundum vicecomitem filium Rengardis de sua vita nec de sua membra que ad corpus suum tenent, no la vetrai, ni no la prendrai, nec homo nec femina per meum consilium nec per meum ingenium. Et tuas civitates nec tuos castellos neque tuos honores que hodie habes et in antea cum meo consilio acquirere potueris, non las te tolrai ni ten tolrai, nec homo nec femina per meum consilium nec per meum ingenium nec per meum consentimentum. Et si homo vel femina hoc fecerit, ego Raimundus filius Garsendis adjutor tuus ero per fidem sine inganno per illas horas que tu me comonueris per te aut per tuos missos aut per tuum missum ad te Raimundum filium Rengardis, exceptis Raimundum comitem de Ructenis, et fratrem suum Gillelmum de Tolose, et Guifredo archiepiscopo, et comite Barchilone, et comite Carcassone, et Froterio episcopo, et Petro de Menerba, exceptos meos homines de quibus tibi directum facere non potuero si tu Raimundus filius Rengardis apprehendere volueris. Sicut in isto pergameno scriptum est et clericus legere potest, si o tenrai et o atendrai ego Raimundus filius Garsendis a ti Raimundo filio Rengardis.

CT, 413, fol. 155; *HGL*, vol. V, n° 288, I, col. 565-566.

This is the brief of the oath done by Raimond Bérenger, son of Garsendis, to Viscount Raimond, son of Rangardis. From this hour forward, I, Raimond, son of Garsendis, shall not deceive Viscount Raimond, son of Rangardis for his life nor for his limbs that are attached to his body, I shall not take it, nor seize it back, neither a man nor a woman will do it with my advice or via my deceit. And your cities, your castles, your honors that you have today and that you will be able to acquire henceforth with my advice, I shall not take them nor a part of them, neither a man nor a woman will do it through my advice or via my deceit or with my consent. And if a man or a woman does it, I, Raimond, son of Garsendis, shall be your helper, faithfully, without deceit, as many times as you summon me either by yourself or by your envoys or by your envoy – for you Raimond son of Rengardis, except [vis-à-vis] Raimond count of Rouergue, and his brother Guilhem of Toulouse, and Archbishop Guifred, and the Count of Barcelona, and the Count of Carcassonne, and Bishop Froterius, and Pierre of Minerve, and except for my men against whom I will not be able to make justice if you Raimond son of Rengardis want to seize it. As it is written on this parchment, and a clerk can read it, I, Raimond son of Garsendis, shall hold and maintain it for you Raimond son of Rengardis.

10) 12th century

De ista hora in antea fidelis ero Gillelmus filius Guille a ti Bernardum filium Ermengard de tua vita et de tuis membris et de honore tuo per Deum et istos sanctos. CT, 414, fol. 155v

[this security may be the prelude to an oath either for Taillebois (CT, 242), or for Routier (CT, 207), or for Rennes (CT, 209)]

From this hour forward, I, Gillelmus son of Gila, shall be faithful to you, Bernard son of Ermengard, as to your life and as to your limbs and as to your honor, by God and by these saints.

11) *Around 1124: From Ermengaud de Fabrezan to Bernard Aton IV, Cecilia and sons*

Ego Ermengaudus de Faberzano et ego Guilelmus frater ejus qui fuimus filii Ricsovendis femine juramus vobis Bernardo Atonis vicecomiti et uxori vestre Cecilie et filiis ejus Rogerio et Raimundo Trencavel, atque Bernardo quod ab hac hora in antea recti adjutores erimus vobis omnibus diebus vite nostre cum nostris castellis et cum nostro honore et cum hominibus nostris qui nos adjuvare voluerint, scilicet de Aimerico Narbone et de infantibus suis et de omnibus senioribus Narbone qui ab hac die in antea ibi erunt, excepto archiepiscopo, et de omnibus adjutoribus eorum quamdiu adjutores eorum erunt de ista guerra quam hodie habetis cum eis vel in antea habueritis et de totis aliis guerris quas cum ipsis habueritis in vita nostra. Sicut superius scriptum est, sic pluvimus et juramus vobis ut omnibus diebus vite nostre totum vobis teneamus et adtendamus recta fide et sine inganno per Deum et hec sancta.

CT, 372, fol 134v; *HGL*, vol. V, n° 483-II, col. 909.

I, Ermengaudus of Fabrezan and I, Guilhem his brother, who were sons of the woman Ricsovendis, swear to you Viscount Bernard Aton and to your wife Cecilia and to your sons Roger, Raimond Trencavel and Bernard, that from this hour forward we shall be lawful helpers to you all the days of our life, with our castles and with our honor and with our men who will want to help us, vis-à-vis Aimeric of Narbona and his children and all the lords of Narbonne who from now forward will be there, except the archbishop, and vis-à-vis all their helpers as long as they are their helpers in this war that you make on them now or that you will henceforth make, and in all the wars that you will have during our life. As it is written above, we promise and swear to you all this, so that in all the days of our life we shall hold and maintain it by lawful faith and without deceit, by God and these saintly relics.

12) *Around 1124: From Bernard Aton IV, Cecilia and sons to Ermengaud de Fabrezan*

De ista hora in antea ego Bernardus vicecomes et uxor mea Cecilia vicecomitissa et filii nostri Rogerius et R. Trencavelli recti et fideles adjutores erimus vobis Ermengaudo de Faberzano de Aimerico Narbone et de infantibus suis de totas ipsas guerras et remogudas que tibi fecerit quamdiu te eis ad rectum potuerimus habere, et recti et fideles adjutores erimus tibi de Petro Raimundi et de fratribus ejus et de infantibus illorum si voluerunt tollere tibi ipsam tuam partem quam habes et habere debes in Vintrone castro vel ipsos honores quos habes et habere debes per Vintronem ultra montem quam diu te eis ad rectum potueris habere, et haec suprascripta adjutoria fecerimus tibi per quantas vegadas tu nos commonueris per te vel per tuum missum vel per tuos missos et de ipso commonimento non nos vetabimus ullo modo. Sicut superius scriptum est, sic ego Petrus de Monte Irato juro tibi Ermengaudo predicto quod isti suprascripti seniores mei totum adtenderint et tenerint sine inganno per Deum et hec sancta. Hoc sacramentum fecit Petrus de Monte Irato jussione vicecomitis predicti.

CT, 501, fol. 198; *HGL*, vol. V, n° 483-III, col. 909-910.

(American translation at epistolae.ctl.columbia.edu/letter/25463.html)

From this hour forward, I, Viscount Bernard and my wife Viscountess Cecilia and our sons Roger and Raimond Trencavel, shall be lawful and faithful helpers to you Ermengaud of Fabrezan, vis-à-vis Aimeric of Narbonne and his children concerning all those wars and troubles that they will make against you, until we can get them to make reparation to you. And we shall be lawful and faithful helpers to you vis-à-vis Peter Raymond and his brothers and their children, should they want to seize from you that part that you have and ought to have in the *castrum* of Le Vintrou, or those honors that you have and ought to have owing to Le Vintrou on the other side of the mountain, until you can get them to make reparation to you. And we shall give you the said help

as often as you summon us, by yourself or via your envoy or envoys, and we shall not bar ourselves against that summons in any way. In the terms written above, I, Peter of Monte Irato, swear to you, the aforesaid Ermengaud, that my lords (whose names are written above) will attend to and hold all of this without deceit, by God and by these holy things. Peter of Monte Irato swore this oath at the command of the said viscount.

»*In loco sacramenti*«

13) *Around 1130: Security from Roger III Count of Foix to Roger I^{er} and Raimond Trencavel*
De sacramentalibus. [rubric]

Ego Rogerius Fuxensis comes filius Stephanie accipio te Rogeri de Biterris et fratrem tuum Trencavellum filios Cecilie in fide mea et in causimento in tota vita mea, in tali conventionem ut de omnibus hominibus vobis rectus adjutor sim et meos homines ad rectum vobis habeam. Et si eos ad rectum habere non potuero, de ipsis etiam vobis rectus adjutor ero. Sicut in ista carta scriptum est sine inganno et ego vobis dico, sic vobis tenebo in tota vita mea. Per fidem meam sine inganno, juro vobis Deum et istos sanctos.

CT, 412, fol. 155; *HGL*, vol. V, n° 507-II, col. 963.

Concerning oaths' charters. [rubric]

I, Roger, Count of Foix, son of Stephania, receive you Roger of Béziers and your brother Trencavel, sons of Cecilia, in my fidelity and in my *causimentum* [protection] during my whole life, covenanting as follows, that I shall be a lawful helper for you vis-à-vis all men, and I shall make justice to you concerning my men. And if I cannot make justice concerning them, I shall be your lawful helper vis-à-vis them. As it is written in this charter without deceit, and as I say it to you, so I shall keep it towards you during my whole life. By my faith, without deceit, I swear to you [by] God and these saints.

14) *1158: Ramon Berenguer IV, Count of Barcelona, to Raimond Trencavel*

De fidelitate. [rubric]

Notum sit omnibus hominibus quod ego Raimundus comes Barchinonensis et princeps Aragonensis, bono animo et spontanea voluntate, convenio tibi Trencavello fideli meo quod ab hac hora in antea cum omni terra mea et hominibus meis de ista guerra, quam modo cum Raimundo comite Tolosano et Sancti Egidii habebis et de omni guerra quam cum ipso R. comite Tolosano et Sancti Egidii jamdicto vel cum omni posteritate ejus de cetero vel per te vel alium aliquo modo habueris, per bonam fidem et sine omni inganno tibi et tuis adjutor ero in perpetuum. Convenio insuper Trencavello fideli meo jamdicto quod ab hac hora in antea per bonam fidem et sine omni inganno cum predicto R. comite Tolosano et Sancti Egidii vel cum posteritate ejus ullam faciam ego nec mea posteritas conventionem nec treugam nec finem nec concordiam nec pacem sine tua tuorumque voluntate. Et sicut superius scriptum est, tibi et tuis adtendam et adimplebo per bonam fidem et credenciam meam in loco sacramenti sine omni inganno. Et ut ita tibi et tuis firmissime adtendatur, dono tibi Trencavello fideli meo jamdicto juratores, videlicet Petrum de Bello loco, Guillelmum Porcelleti, Dalmadium de Petrataiada majorem, Rembaldum de Besech, Arnaldum de Lercio, Raimund de Villa Mulorum, Gofridum de Roca Bertino, Artaldum de Castro Novo. Nos quoque omnes predicti juratores juramus et convenimus vobis Trencavello jamdicto quod sicut superius scriptum sic vobis et vestris adimpleretur et adtendatur per bonam fidem et sine omni inganno per Deum et haec sancta IIII^{or} evangelia.

CT, 483, fol. 189v; *HGL*, vol. V, n° 626, col. 1221-1222

About fidelity [rubric]

Let it be known to all men who hear it that I, Raimond, Count of Barcelona and Prince of Aragon, by gracious spirit and by my own free will, make with you Trencavel, my faithful, the agreement that from this hour forward with all my land and my men I shall be your helper and the helper of your men in good faith and without deceit, perpetually, for this war that you will now wage against Raimond, Count of Toulouse and Saint-Gilles, and for all the wars that you will lead against that aforesaid R., Count of Toulouse and Saint-Gilles or against all his posterity in the future, or for any war that you will wage either by yourself or in any way through. Moreover I agree with you Trencavel, my aforesaid faithful, that from this hour forward, in good faith and without deceit, I and my posterity shall not make with the aforesaid R., Count of Toulouse and Saint-Gilles, or with his posterity, any pact, nor truce, nor agreement, nor covenant, nor peace, if you and yours are unwilling. And as it is written above, I shall keep and hold it with good faith and credit, in place of an oath, without any deceit. And so that it is held most firmly vis-à-vis you and yours, I give you, Trencavel, my aforesaid faithful, some oath-takers, that is to say: [8 names are enumerated]. We also, all the above-mentioned oath-takers, swear to you and agree with you, aforesaid Trencavel, that, as it is written above, it will be held and kept with good faith and without any deceit, vis-à-vis you and yours, by God and these four holy gospels.

15) Peire Cardenal (~1180~1278)

*A greu sera est segl'en l'estamen
Que a estat, segon que auzem dir,
Que hom era crezutz ses sagramen
Ab sa sol fe, si la volgues plevir,
E veritatz era ses escondire,
Per qu'ieu apel aquest segle traïre*

This world will struggle to return to the state
where it once was, as one hears it said,
when a man was believed without an oath,
only on his faith, if he wanted to pledge it.
And this was then undisputed truth.
That is why I call this world treacherous.

Peire Cardenal, sirventès *Tot enaissi con fortuna de ven*,
edition and French translation in Lavaud, *Poésies complètes*, 512, piece LXXVII, vv. 9-14.

Some Traces of the Ritual

16) 1074-1105: Oath to Viscountess Ermengard for the castellum of Caissargues (Gard)

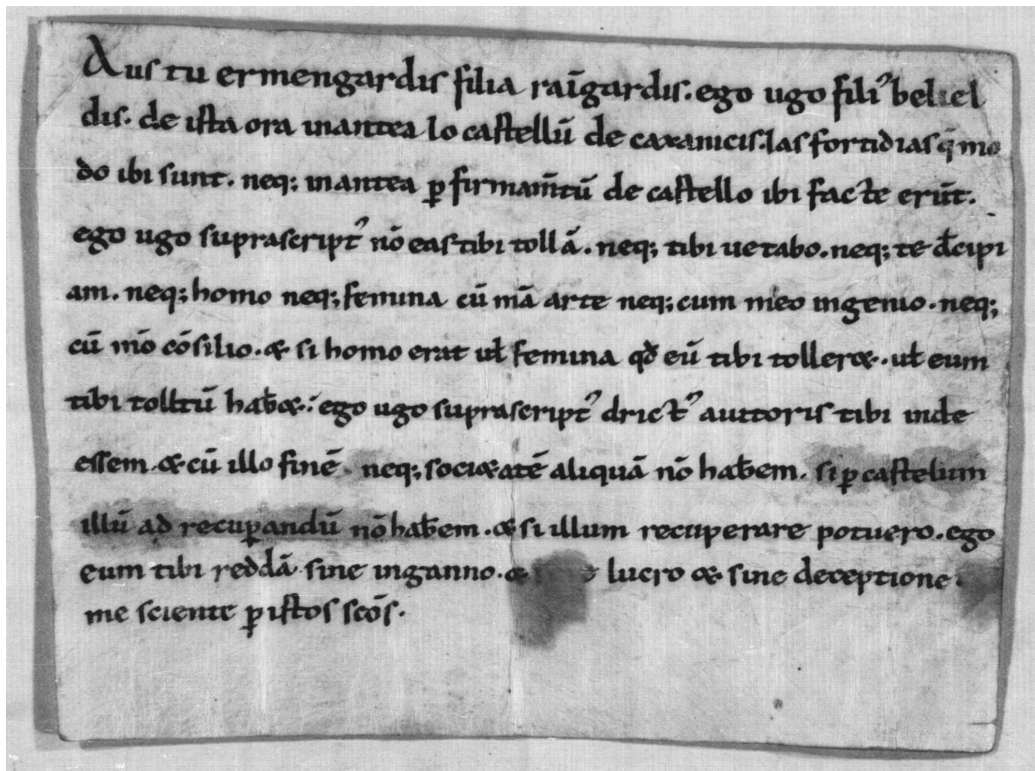


Figure 4: Oath to Viscountess Ermengard

Aus tu Ermengardis filia Raingardis, ego Ugo filius Belieldis de ista ora in antea lo castellum de Caxanicis, las fortidias que modo ibi sunt, neque in antea per firmamentum de castello ibi facte erunt, ego Ugo suprascriptus non eas tibi tollam, neque tibi vetabo, neque te decipiam, neque homo neque femina cum mea arte neque cum meo ingenio neque cum meo consilio. Et si homo erat vel femina quod eum tibi tolleret vel eum tibi tolltum haberet, ego Ugo suprascriptus drictus ajutoris tibi inde essem, et cum illo finem neque societatem aliquam non haberem, si per castelum illum ad recuperandum non haberem, et si illum recuperare potuero, ego eum tibi reddam sine inganno et sine lucro et sine deceptione me sciente, per istos sanctos.

Original : Paris, Archives Nationales, J 304, 98

Listen, you, Ermengard, daughter of Raingard, I Ugo, son of Belieldis, from this hour forward, will not seize the *castellum* of Caissargues, nor the bulwarks that are there today and that are to be built there henceforth to reinforce the *castellum*, nor will I forbid [entry in] it, nor deceive you, neither I nor man nor woman at my instigation, via my deceit nor by my counsel, me knowing. And if there were a man or woman who would seize it from you or would have seized it from you, I, the aforesaid Ugo, shall be a righteous helper, and with this one [who seized the *castellum*] I will not have an agreement or an association. I will not have any [agreement or an association] unless in order to recover the *castellum*, and if I can recover it, I will return it over into your power, without deceit, without gain and without conscious deception, by these saints.

17) 1129: *Oath for Vieussan to Pere Ato sworn by Adalrigs (Hérault)*

Cai gara Pere filz de Gillelma qui vocaris Ato, eu Adalrigs filz de Fideta lo castel de Vinzan, ni las forzas que i sunt ni adenant i seran, no't tolrei ni t'en tolrei, ni hom ni femna ab mon conseil ni ab ma voluntat. Et si hom ni femna lor tolia ni t'en tolia, ab achel ni ab achela fin ni societat non aurai, fors per el castel a recobrar. Et quant cobrat l'auria, a ti el reddria senes logre de ton aver et ses deception. Hoc fuit factum quod superius scriptum est in presentia Raimundi Unauldi, Raimundi de Briva et Willelmi de Auriac, Calveti de Mala Falgaria et Ricardi et Olumbelli et Augerii abbatis de Loddeva, cujus consilio factum fuit sacramentum, anno M° C° XXIX° incarnationis dominice, Petrus scriba scripsit.

CT 420, fol. 158v; *HGL*, vol. V, n° 496-III, col. 947 (incomplete).

Beware Pere, son of Gillelma, called Ato, I, Adalrigs, son of Fideta, shall not seize from you the *castel* of Vieussan, nor the fortifications that are there today and that are to be built [there] henceforth, nor shall I seize a part of it, neither will a man, nor a woman with my advice or with my will [do so]. And if a man or a woman seizes it to them or seizes a part of it, I shall not have an agreement or an association with him nor with her, except for the purpose of recovering the *castel*. And when I have recovered it, I shall turn it back to you without gain from your goods and without deceit. What is written above was made in the presence of [7 names follow], with whose advice the oath was made, on the year 1129 of the Lord's Incarnation. The scribe Pierre wrote [this].

*Oath-Breaking*18) 1061/1062: *Security from Roger to Rangarda, Countess of Carcassonne and to her son*

De ista hora in antea Rogerius, filius qui fui Trudgarda, non decebrei Rangarda filia Amelia neque filium suum Rogarium comitem de ipso castro quem vocant Proliano, neque de castello quem vocant Mirapixo, no.ls ne decebrai ego Rogarius suprascriptus qui fui filius Trudgarda, ne.ls li tolrai, ne.ls l'en malmenarei, ne.ls enganarei, ne-l l'en asolerai, ne.ls lor devedarei, nec ego nec homo nec homines, femina aut feminas per meum consilium vel per meum ingenium. Et si est homo aut femina, homines vel feminas qui tibi Rogario comiti suprascripto vel matri tue Rangarda tulissent illud castrum Proliano neque ipsum quem vocant Mirapixo, ego Rogarius suprascriptus ab illo nec ab illos, ab illa nec ab illas, finem nec societatem neque amicitiam non tenrei ni non aurei. Et adjutor t'en serei a te Rengardis suprascripta et filio tuo Rogerio senes engan et sine ulla deceptione, usque recuperatum habeas ipsum castrum et recuperatos habeatis ipsos castellos. Et si recuperare potuero, per nullum ingenium reddam ipsos castellos vel sine redemptione et sine lucro, et in anta istum sacramentum vos tenrai. Sicut hic scriptus est, sic o tenrai et o atendrai ego Rogarius suprascriptus a te Rengardis comitissa suprascripta m'en solveris [sic] et tu Rogarius comes suprascriptus ad me Rogario suprascripto vestro graziente animo et vestro sciente sine forcia.

CT 343, fol. 115; *HGL*, vol. V, n°261, col. 517 (incomplete).

From this hour forward, Roger who was son of Trudgarda, shall not deceive Rangarda, daughter of Amelia, nor her son Count Roger, of the *castrum* called Prouille, nor of the *castellum* named Mirepoix. I, Roger, whose name is written above, who was son of Trudgarda, shall not deceive her for it, nor shall I seize it from her, nor abuse her for it, nor cheat, nor remove, nor mislead her from it – neither I nor a man nor a woman, nor men nor women through my advice or via my deceit. And if there is a man or a woman, men or women who seizes or seize from you, Count Roger, whose name is written above or from your mother Rangarda this *castrum* called Prouille or the one called Mirepoix, I, Roger, whose name is written above, shall not take or hold agreement nor association nor friendship with this man or woman, these men or women. And I shall be a helper for you Rangarda aforesaid and for your son Roger without

deceit and without deception, until you recover this *castrum* and these *castellos*. And if I can recover it, without any deceit I shall turn over these *castellos* without redemption and without gain, and from now on I shall keep this oath towards you. As it is written here, I will hold to it and take care of it, I, Roger aforesaid towards you, the aforesaid Countess Rangarda, [until] you and your son Count Roger aforesaid absolve me, Roger aforesaid by your gracious spirit, without any violence that you may know of.

19) 1141: *Oath for Berniquaut (Tarn)*

De ista hora in antea ego Jordanus de Rocafort et ego Bertranus frater ejus qui fuimus filii Feraine que Loba vocabatur non decipiemus te Rogerium de Biterris seniore nostrum filium Cecilie de ipso castello quod vocatur Bruniquel neque de ipsis forteciis que ibi hodie sunt vel de hac die in antea ibi erunt facte, no'l te tolrem ni t'en tolrem, no'l te vedarem ni t'en vedarem, no'l te bauzarem ni t'en bauzarem, ni nos ni om ni femna per nostrum ingenium nec per nostrum consilium. Et per quantas vices lo nos demanderas per te vel per tuum message vel per tuos messages, in tua potestate lo tornarem e.l redrem sine inganno tuo. Et si fuerit homo vel femina qui'l te tollant o t'en tollant, qui'l te vetent o t'en vetent, qui'l te bauzen o t'en bauzen, ab aquels finem nec societatem non aurem ad tuum dampnum usque habeamus illud recuperatum. Et si recuperare illum potuerimus, in tua potestate lo tornarem sine lucro.

CT 128, fol. 41v.

From this hour forward, I, Jourdain of Roquefort and I, Bertrand his brother, who were sons of Feraina called Loba, we shall not deceive you, Roger of Béziers, our lord, son of Cecilia, for the *castellum* called Berniquaut, nor for the fortifications that are there today or from this hour forward are to be built, we shall not take it to you nor a part of it, we shall not forbid [your entry in] it to you nor [in] a part of it, we shall not mislead you with it or with a part of it, neither we nor a man nor a woman, via our deceit, with our advice. And as many times as you will summon us either by yourself or by your envoy or by your envoys, we shall return it to your power and give it you back without deceiving you. And if there is a man or woman who takes it from you, or takes a part of it, or forbids or forbid [your entry in] it, or misleads or mislead you, we shall take neither agreement nor association with them for your detriment until we have recovered it. And if we can recover it, we shall turn it over into your power without gain.

20) Around 1109: *Will of Aldebert, bishop of Mende*

Ego Aldebertus dig e man a Bertran, lo fil Bernard Bozuga, que jur lo castel de Peira, la sua maison e forza, e'l castel de Genebrer a.llas filias Girbert et alz efanz qued aun e que auraun de mariz e alz mariz. E se aizo Bertranz no fazia et ab ellz et ab ellas no s'en tenia, que son feu l'en poguesson metre en forfax et en toz logs et en totas cortz l'en apelleson e.ll'en avogassun de tracion.

Brunel, *Les plus anciennes chartes*, 18, n°13.

I, Aldebert, say and command to Bertran, son of Bernard Bozuga, that he will swear the *castel* of Peyre, his house and fortification, and the *castel* of Genebrier, to the daughters of Gilbert [the nieces and heirs of Aldebert] and to the children whom they have or will have with their husbands, and to their husbands. And if Bertran does not do it and does not keep his oath with them, his fief could be put in *forfax* [will be forfeited] and he could be put on trial in all places and in all courts, and they will charge him with treason.

21) 1125: *Re-enfeoffment of the honor of a traitor*

In nomine Domini. Ego Bernardus Ato vicecomes et uxor mea Cecilia vicecomitissa et filii nostri Rogerius et Raimundus Trencavel atque Bernardus donamus tibi Willelmo Calveti et uxori tue ad fevum et propter castlaniam in civitate Carcassona ipsam turrem quam vocamus Monetariam cum ipso manso et cum ipsa estaga et cum exitibus et redditibus suis, et donamus tibi totum ipsum honorem qui fuit Arnaldi de Palajano [...]. Sic donamus vobis ad fevum et propter castlaniam in tali conveniencia ut per quemque annum faciatis staionem in Carcassona per dimidium annum cum vestris hominibus et cum vestra familia et ipsam turrem bene gaitare faciatis et ipsam civitatem bene custodire adjuvetis. Vel predictum honorem, vel aliquid de ipso honore non possitis dare aut vendere vel inpingnorare nisi nostro consilio. Istum prenomi-natum honorem qui nobis advenit et accessit de traditoribus nostris propter illam traditionem quam fecerunt scilicet propter Carcassonam quam in traditionem nobis abstulerunt, donamus tibi predicto Willelmo Calveti et infantibus tuis et posteritati illorum propter ipsam fidelitatem quam tu Gillelmus portasti nobis et tu et posteritas tua portare debetis nobis omni tempore.

CT 387, fol, 141; *HGL*, V, n° 489-VIII, col. 923 (incomplete).

In the name of the Lord. I, Viscount Bernard Aton, and my wife, Viscountess Cecilia, and our sons Roger, Raimond Trencavel and Bernard, give in fief to you, Guilhem Calvet and to your wife, and because of the castellany in the city of Carcassonne the tower that we call Monetaria [»Monetary«] with its *mansum* [hide] and with its *estaga* [dwelling ?], with its entries and exits, and we give you all the honor that belonged to Arnaud of Palaja. We give it to you in fief and because of the castellany according to such a pact that every year you will perform a guard service in Carcassonne for half a year with your men and with your entourage, and you will ensure this tower gets good guard-duty and you will help to protect this city. You cannot give this honor or some part of it, nor sell, nor pawn it unless by our counsel. We give to you this honor mentioned above that returned to us and fell to us from our traitors because of the treason they had committed, that is to say, of Carcassonne which they treacherously took from us, we give it to you Guilhem Calvet and to your children and to their posterity, because of the fidelity that you, Guilhem, bore towards us and that you and your posterity must bear towards us for all time.

22) 1068-1095: *New oath after treason in Cerdanya, castellum de Usson*

Ego Raimundus Arnalli qui sum filius Clemencie femine tibi Guillelmo comiti seniori meo qui fuisti filius Adale comitisse omnibus modis annuo et te juro illud sacramentum et fidancias et fides et omnia que in sacramentale scripta sunt et tibi juravi in puerilibus annis quibus a te castellum de Sono adquisivi, et quale mei anteriores propinqui tibi et tuis juraverunt et consuetudo et jus est jurandi principum Cerdanie. Pro quo dixerunt mihi hactenus quia puer tunc eram et nesciens quod feci, scio me et regnosco male egisse et graviter ejurasse quia inducias tibi quesivi xxx dierum ad potestatem dandi de predicto castello et illius fortitudinibus et de aliis multis rebus quibus contra te offendissem me graviter recognosco. [...] Ut fidelis miles tuus et vir bonus et perfectus, plenus fidei et bone memorie, sicut predictum est, jurejurando super altare sancti Raphaelis quod situm est et consecratum in ecclesia Sancte Marie Corneliani, tactis lignis Dominice crucis et reliquiis innumeris ejusdem loci et omnibus meritis sanctorum, juro deinceps sine engan me esse fidelem tuum, sicut fidelis homo debet esse Deo et seniori quem diligat. Et per quantes vegades aut quacumque die vel nocte, momentis aut horis, mihi quesieris per te ipsum vel per tuos missos vel missum potestatem de prenominato castello de Sono et illius fortitudinibus, absque mora et ulla dilacione, eum et eas deliberabo tibi et tuis quibus jusseris vel volueris.

Barcelona, Arxiu de la Corona d'Aragó, Liber Feudorum Cerritanie, n°107, fol. 27v

I, Raimond Arnaud, son of the woman Clemencia, declare in every way and swear to you, Count Guilhem, my lord, who was son of Countess Adala, this oath and sureties and faith and all that is written in this *sacramentalis* [written oath] and all that I swore in my young days when I acquired from you the *castellum* of Usson, and in the manner that my ancestors swore to you and to yours, and the custom and law of oath-swearing among the princes of Cerdania. Given that they said to me that I was a child then and I did not know what I did, I recognize and knowingly acknowledge that I did wrong and that I seriously »unswore« [i.e., went against my oath, perjured myself], because I asked you for a delay of 30 days to give you back the power over this *castellum* and its fortifications. And I acknowledge that I offended you seriously concerning many other things. [...] As your faithful *miles* and as a good and perfect man, full of faith and good reputation, as it is said above, swearing on the altar of Saint Raphael which is located and consecrated in the church of Saint Mary of Corneilla, having touched the wood of the Lord's Cross and the innumerable relics of this same church, and all the merits of the saints [likely also relics], I swear that I shall be henceforth your faithful without deceit, as a faithful man has to be towards God and towards the lord that he loves. And as many times, and whatever day or night, moment or hour, you will request from me either by yourself, or by your envoys or by your envoy, the power over the said *castellum* of Usson and its fortifications, without delay and without deferral, I shall deliver it and them [the fortifications] to you and those of your people that you will order or want [to receive it].

23) 1142: *Treaty between Alfonse Jourdain Count of Toulouse and Roger, Viscount of Carcassonne*

De composicione. [rubric]

Hec sunt capitula de ipsis placitis et assecuramentis que debent fieri inter comitem Ildefonsum et Rogerium de Biterris. In primis ipse comes debet reddere Narbonam domine Ermengarde et debet solvere ipsa sacramenta que homines Narbone et Narbonensis ei fecerint de Narbona et de ipsis honoribus qui ad Narbonam pertinent vel pertinere debent, et debet reddere sacramentalia que de eis habet. [...] Ipse comes faciat jurare Isarnum castellum de Gravoletto predicto Rogerio et faciat ei solvere ac diffinire ipsas fidancias et sacramenta quod ipse Isarnus habet accepta de senioribus et militibus castri quod vocatur Penna [...]

CT 380, fol. 138; *HGL*, V, n° 556, I, col. 1069-1071.

About an agreement. [rubric]

Here are the stipulations of the conventions and securities that must be made between Count Alfonse and Roger of Béziers. First, the count must return Narbonne to Lady Ermengard and must dissolve those oaths that the men of Narbonne and the Narbonnaise made to him concerning Narbonne and those honors that are attached to Narbonne or should be attached to it. And he must return the written oaths that he has concerning them. [...] The count must make Isarn swear the *castellum* of Graulhet to the aforesaid Roger and make him [Isarn] dissolve and put an end to those warranties and oaths that he, Isarn, received from the lords and the knights of the *castrum* called Penne.

24) 1149 [1150 n.st.], 8th of January: *Judgment of the probi homines of a castrum against an oath taken to the viscount*

Notum sit omnibus hominibus quod Gautbertus de Podio Laurentii juravit castrum de Podio Laurentii Roggerio de Beders nesciente Poncio de Doria. Quod ut audivit Poncius, conquestus est de Gauberto et de Roggerio et propter predictum juramentum vocavit Gautbertum in causa et guerivit Poncius ante predictum Gautbertum justo iudicio proborum hominum

predicti castri, videlicet [11 names]. Justo iudicio istorum, ut predicimus, guerivit Poncius quatinus Gautbertus hoc sacramentum, quod injuste fecerat, absolvere sibi fecisset et sacramentale reddere. Sicque factum est quod Roggerius absolvit sacramentum predicti castri Gautberto jamdicto et reddidit illi sacramentale et Gautbertus iudicio justo predictorum iudicum reddidit hoc sacramentale Poncio de Doria et Isarno filio suo eorumque participibus. Quod sacramentale, istis iudicibus videntibus, igni combustum fuit VI idus januarii in domo Isarni de Foissag. Hujus rei sunt testes qui et iudices. Hoc memoriale fuit scriptum a Guillelmo anno ab incarnatione Domini M^oC^oXL^oVIII^o, VI idus januarii, luna VI, Lodoico regnante.

Paris, Archives Nationales, J 321, 2.

Let it be known to all men that Gauzbert of Puylaurens swore the *castrum* of Puylaurens to Roger of Béziers without the knowledge of Pons of Dourgne. When Pons heard this, he complained of Gauzbert and Roger, and called Gauzbert to judgement owing to the aforesaid oath, and Pons ensured before the aforesaid Gauzbert by the just judgement of honest men from the said *castrum*, that is [11 names listed]. By the just judgement of these men, as we said, Pons demanded that Gauzbert would be freed from the oath that he had made against right, and get the written oath returned. Thus it happened that Roger dissolved for the said Gauzbert the oath for the aforesaid *castrum* and returned to him the written oath, and Gauzbert by the just judgment of the aforesaid judges returned this written oath to Pons of Dourgne and his son Isarn and their associates in lordship. On the sixth of the Ides of January [8th of January] in the house of Isarn de Foissag, this written oath was reduced to ashes by fire in the sight of those judges. Witnesses to this fact are the same judges. This memento was written by Guilhem in the year 1149 of the Lord's Incarnation, on the sixth of the Ides of January [8th of January], 6th moon, under the reign of Louis [VII of France].

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Abbreviations

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List of Figures and Tables

Figure 1: Languedoc at the end of the 12th century

Figure 2: Castles, ninth-tenth century

Figure 3: Castles, eleventh-twelfth century

Figure 4: Oath to Viscountess Ermengard

Table 1: Number of oaths and »securities« in the feudal documentation

Oaths and Socio-political Hierarchies in the Urban »Sworn Society«: South-west Germany in the Late Middle Ages

Olivier Richard*

Since the nineteenth century, historians have fundamentally considered the medieval town as a *conjuratio*, a sworn association of free and equal burghers. The oath does indeed appear to have been a crucial instrument capable of inspiring confidence in social relationships and of binding people to the city government. However, the analysis of oath practices actually highlights more than the cohesion of the political community: it reveals internal divisions and hierarchies. The first part of this article examines which oaths foreigners, burghers, clerics, noblemen, women or Jews had, or were allowed, to swear. The second part deals with the differences between the oath rituals in which these various socio-political groupings took part, in terms of gestures, wording or frequency. Finally, the article suggests the factors that made for the efficiency of the oath as a technique of government: its simplicity and adaptability to the progress of literacy.

Keywords: Oath, urban society, citizenship, Holy Roman Empire

The Italian historian Paolo Prodi invented a powerful image when he presented the late medieval city as a »sworn society«, *società giurata*. Prodi considers the multiplicity of oaths sworn by the town dwellers – from the judicial oath or the new burgher’s individual oath to the spectacular swearing-in ceremony of the city council – as forming a continuum. Thanks to their being a ritual, all these oaths together create the image of a society built on contractual relations. This idea of a continuum between different oaths is essential to his thesis of the European medieval contract-based society. Of course, Prodi acknowledges the differences between an oath of homage, a judicial oath or an oath of office, but to him they all have in common the notion of a contract between the person or institution receiving the oath and the oath-taker. Thus, Prodi abandons the traditional distinction between promissory oath – committing to behave in a certain manner in the future – and assertory oath – basically swearing to tell the truth – as actually minor. He uses instead the more encompassing category of the »political oath.«¹

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1 Prodi, *Sacramento del potere*. Prodi’s book has been translated only into German: *Das Sakrament der Herrschaft*.

Furthermore, historians have fundamentally described the medieval town as a *conjuratio*, that is – following the Weberian archetype – as a sworn association of free and equal burghers.² From the early north-Italian communes or the urban upheavals against the town lord in order to obtain a communal status in late eleventh-century northern France and Germany to the late medieval civic oath (*Bürgereid*), one easily gets the impression of a society with flat hierarchies.³ In his book *Il sacramento del potere*, which was deeply influenced by German scholarship in medieval history and legal history, Prodi explicitly rejects the classical opposition between *Herrschaft* (lordship) and *Genossenschaft* (fellowship).⁴ The urban society appears as a *società giurata*, a sworn society where the town dweller is entwined in a »network of oaths« that he swears.⁵ Now Prodi was well aware that this image should not be idealized and he urges us to consider the balances of power at work in any given case.⁶ Yet as his book deals with political theory and not with urban or social history, he does not give any example of what such an urban »sworn society« might look like.

As a matter of fact, the literature on medieval oaths has not neglected hierarchies. The very active research on symbolic communication has been addressing questions of power in rituals.⁷ The studies in this field regard the city as the stage on which the authorities used rituals of power in order to demonstrate their dominion over the population. Furthermore, scholars like André Holenstein have shown that, for lack of other means before the establishment of the »modern state«, oaths were used to impose power, but also more generally to impose norms and behaviors.⁸

Indeed, medieval urban society was characterized by power relations, strategies of distinction and hierarchies and is extremely unequal. This is particularly obvious in the practices of swearing-in. Far from being an association of equal members, the urban *conjuratio* of the Late Middle Ages was extremely hierarchical. Thus, the denizens of a town, depending on whether they were men or women, members of the social elite or simple craftsmen, burghers or »foreigners,« Christians or Jews, did not swear in the same circumstances, or with the same words or gestures, or as often as others. It is these differences that I want to focus on in the following pages, in order to try to see what they tell us about both the quality of the urban *conjuratio* and the significance of the oath in this sworn society.

2 Weber, *Stadt*. Max Weber was following Gierke on this point, see Gierke, *Rechtsgeschichte*, 249-284 (excerpts in English in *idem*, *Community in Historical Perspective*, 32-45).

3 On the myth of the early Italian communes as a new political vision, see Scott, *City-State*, 18-22; Isenmann, Norms and values, 193-196 (conjuratio) and 205-208 (equality of the citizens); Dilcher, *Bürgerrecht*

4 Gierke, *Rechtsgeschichte*. Excerpts in English in *idem*, *Community in Historical Perspective*.

5 Prodi, *Sacramento del potere*, 199.

6 Prodi, *Sacramento del potere*, 199: *Questo non vuol dire trasformare tutta la storia costituzionale di questo periodo in una melassa dolciastra indifferenziata: le situazioni e le posizioni di forza che nel giuramento politico si rispecchiano (oggetto è sempre il potere con il suo volto crudele) sono estremamente differenziate nelle varie realtà europee* (»This does not mean turning the entire constitutional history of this period into an undifferentiated sweet molasses: the situations and positions of power reflected in the political oath [the object is always power with its cruel face] are extremely differentiated in the various European realities«).

7 Among many other publications, see Van Leeuwen, *Symbolic Communication*; Stollberg-Rilinger, *Spektakel der Macht*. Stollberg-Rilinger's concepts are accessible in English in *eadem*, *Emperor's Old Clothes*.

8 Holenstein, *Huldigung*; *idem*, *Seelenheil*, 14-32.

The region I shall examine is the Upper Rhine valley in a broad sense, on both sides of the river, from Constance to Strasbourg in the Late Middle Ages. The choice of a limited area and period should facilitate comparison with the Japanese cases presented in this issue. This area corresponds to the present-day Swiss Plateau, including cities such as Bern, Fribourg and Zurich, to the German Baden with Freiburg im Breisgau, and to the French Alsace with Strasbourg and Colmar (*Figure 1*). In the Late Middle Ages, this space belonged to the Holy Roman Empire; it was densely urbanized, due to the intense trade along the River Rhine, with many towns enjoying imperial immediacy (meaning, that they were immediately under the theoretical authority of the Emperor, with no other lord), being free cities (Basel and Strasbourg, »freed« from their prince-bishop) or imperial cities (Sélestat/Schlettstadt, Mulhouse/Mülhausen, Zurich, etc.), that is, those that were directly subordinate to the king or emperor.⁹ Others, which modern historians call territorial towns, belonged to local lords or princes, e.g., the Habsburgs (Freiburg im Breisgau, Laufenburg, etc.). Regardless of their political status, many towns in this space enjoyed broad political autonomy and had very close relationships with one another.¹⁰ Add a very strong written culture – it is no coincidence that both great councils of the first half of the fifteenth century took place in Constance (1414-1418) and Basel (1431-1449) – and one has a region characterized by a well-grounded »associative political culture« and a fertile field for the study of the oath.¹¹

9 On this distinction, see Isenmann, *Deutsche Stadt*, 281-285.

10 Scott, *City-State*, 148-192.

11 Hardy, *Associative Political Culture*.

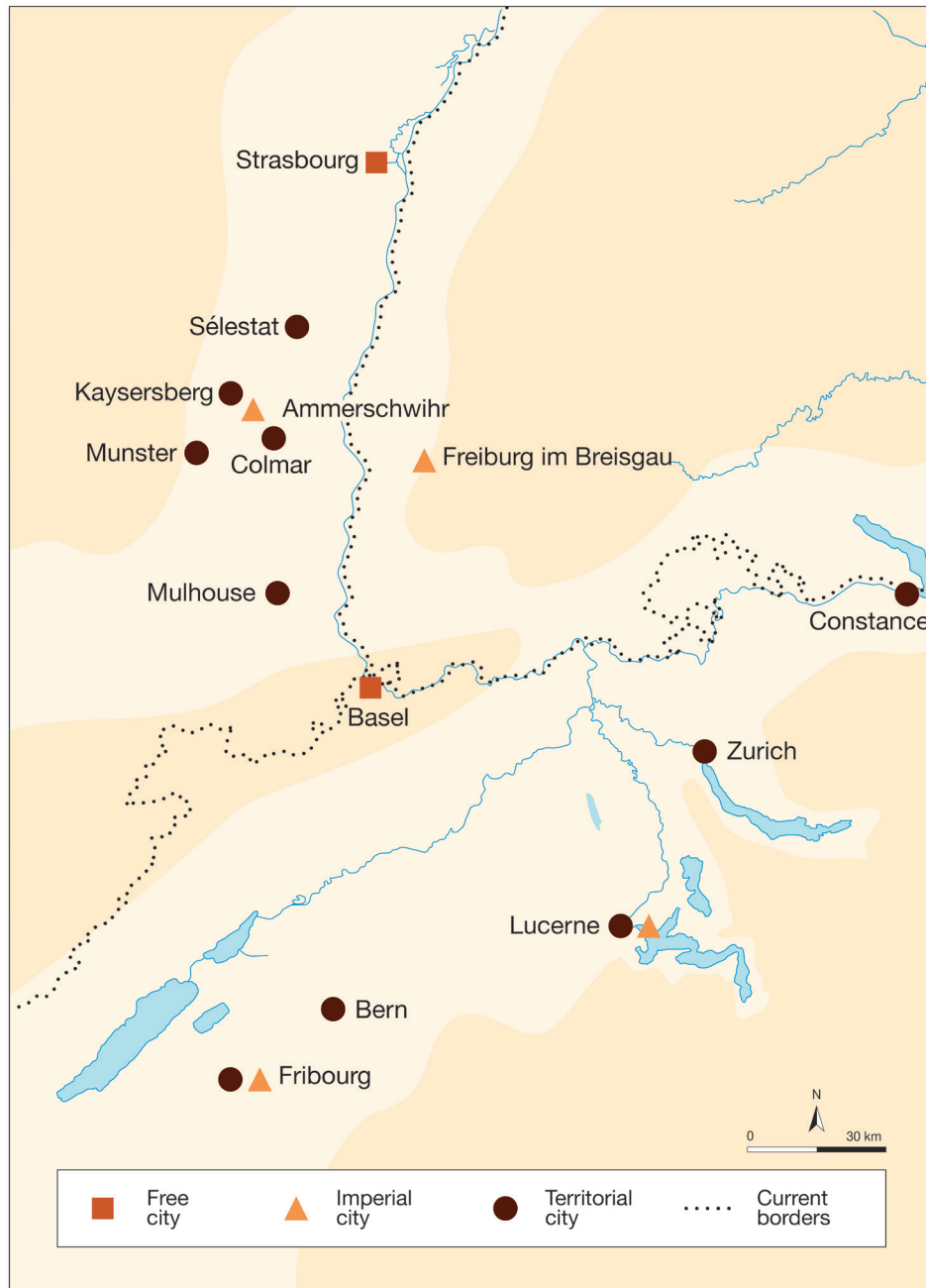


Figure 1: Map of the Upper Rhine region

This paper is set out in three parts. First, I shall examine which different groups swore what sort of oaths. Then I shall look at the differences between the gestures and the procedures of oath-taking according to these socio-political delineations, before, third and finally, I shall analyze the factors that made the oath so important in this hierarchical society.

1. Who Swears What?

Foreigners, Burghers, Clerics and Noblemen: Power and Honor

The studies on oaths in urban society usually focus on the burghers or the citizens, that is, on the one very important group building the *conjuratio*.¹² But this was by no means the only group that would take a civic oath. It is true that citizens played the main role in the annual civic swearing-in in south-German towns, the so-called *Schwörtage* (days of oath-taking),¹³ but the end of the Middle Ages was characterized by the process of territorialization, when power over certain groups of persons – serfs, foreigners, burghers, and so on – evolved and came to constitute a kind of domination over every person in a given territory, regardless of their status. Just as princes tried to submit their subjects to a more powerful grip, so did urban governments endeavor to bind everybody and therefore swear in everybody – clerics and noblemen as much as citizen craftsmen. Even servants and other non-citizen inhabitants (especially the *söldner*, *seldener*) belonging to low social groups took part in the *Schwörtag* in some towns, such as Sélestat.¹⁴

This means that the urban *conjuratio* is not very different from a group homage, as the spectacular staging of the annual or semi-annual civic swearing-in suggests, which was supposed to reenact the citizens' *conjuratio*: the mayor and the aldermen stood on a platform above the crowd pledging allegiance to them. Swearing this oath therefore indicated submitting to these men, which clerics were not supposed to do – it was forbidden by canon law – and which noblemen were not keen to do, because it offended against their aristocratic honor. For instance, the knight Hans von Hirtzbach refused to swear an oath of allegiance to the town of Mulhouse where he lived (as an inhabitant [*inwoner*], not as a citizen). Even the intervention of the Emperor's representative in Alsace (the *Unterlandvogt*, bailiff-lieutenant) to settle the conflict between Mulhouse and Hirtzbach could not persuade him to give in. The bailiff-lieutenant stated in a letter to Hirtzbach that the oath was »appropriate and not iniquitous,« but Hirtzbach preferred to leave the town rather than take it.¹⁵ Thirty years

12 Prak, *Citizens*, 30-33.

13 May, *Schwörtage*; see the English counterpart in Liddy, *Contesting*, 25-30.

14 *Schlettstadter Stadtrechte*, vol. 1, ed. Gény, 376 (in a letter written in 1458 the former deputy town clerk describes the *Schwörtag*, saying »every burgher, resident or inhabitant swears« (*ein yeglich burger, soldner oder inwoner swert*). A *soldner* or *seldner*, here approximately translated as »resident«, enjoyed the protection of the city but not full burgher rights.

15 Mulhouse, Archives Municipales, p.i. 1068: *doch zymlich und nit unbillich*, Johann Wildgraf zu Daun to Hans von Hirtzbach, 13.06.1465.

later, the nobleman Wilhelm von Liechtenfels also refused to swear an oath to his town of residence, this time Freiburg in Breisgau; the city chancellor Ulrich Zasius wrote indignantly that Liechtenfels wanted to go on living in the city, but without being bound in any way to the authorities.¹⁶ Some noblemen justified their reluctance to swear by referring to the homage they had already given to their lord, and when Freiburg decided to introduce a fiscal oath even for noblemen, the Duke of Austria – as a town lord – decided this was incompatible with the honor of the nobility.¹⁷ »It is because his word is sufficient that the nobleman does not have to take an oath.«¹⁸

On the contrary, craft guild members not only took their oaths at the Schwörtag, but also within their guilds. Then guilds had their own oaths, binding their members not only to their craft, but also to the town (since craft guilds took part in government in many Upper Rhine towns).¹⁹ In fact, the craft guilds were pillars of the *società giurata*: the trade community was also a *conjuratio*, and was inextricably linked to the civic community, to the extent that some historians consider guilds – not just craft guilds – to be at the origin of the civic community.²⁰ Moreover, in a 1436 text common to Basel, Colmar, Strasbourg and other towns, when a master hired a new journeyman from outside, he had to make him swear within eight days an oath of loyalty to the town.²¹

Not Able, Not Responsible: Children and Women

The power of the oath explains that not everybody was permitted to swear: women and children were usually exempted from swearing. The reluctance for children to swear oaths is easy to understand: their souls should not be endangered by commitments the youngsters could not fulfil.²² So children (under fourteen or eighteen years of age) were not made to swear on the *Schwörtag* or at trials; they were exempted from swearing, even when their entire family was subjected to it. For instance, the adult children and employees of the millers of Basel had to swear an oath by which they committed themselves to the urban community, but their children under the age of fourteen were exempt.²³

16 Ulrich Zasius, »Geschichtbuch«, ed. Schadek, 75-76: *Wie gar all edellút, die hie sitzen wellen, eim bürgermeister den zimlichen gwonlichen eid der edellúten gesworn haben, so hatt doch er eim burgermeister nit sweren wöllen und dennoch vermeindt in der stat ze sin; [Liechtenfels wished] in einr stat wonen unnd dennoch der oberkeit nichts verpünden sin* (»Whereas all noblemen who wish to stay here and swore the adequate and usual oath of the noblemen to the burgomaster, he refused to swear to the burgomaster, although he meant to reside in the town; [Liechtenfels wished] to live in the town without being in any way linked to the authorities.«).

17 Scott, *Freiburger Enquete*, XXVII.

18 Buchholzer-Remy and Lachaud, *Le serment dans les villes*, 23 n. 63.

19 See e.g. Strasbourg, Archives de la Ville et de l'Eurométropole de Strasbourg XI 71, fol. 22v (drapers' oath in the book of the craft guild).

20 On the correspondence and the relationship between guild and citizen community, see Oexle, *Gilde und Kommune*.

21 On this text, Debus-Kehr, *Travailler, prier, se révolter*, 319-327.

22 Leveleux-Teixeira, *Sacramenta puberum*, 98.

23 Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1, fol. 27r: *Müller eide, wib, kinde, knecht und gesinde, daz so vil alters hat, daz es in eid ze nemende ist* (»The oath of the millers, their wives, children, laborers and servants who are old enough to swear«).

Far more sensitive was the question of oath-taking by women, as adult women had somehow to be bound in social, economic and even political collective actions. Women did not as a rule swear promissory oaths or take part in the civic swearing-in. The only exception to that rule was Freiburg im Breisgau, where women attended the Schwörtag and were expected to promise (*geloben*), while men swore.²⁴ This distinction appears throughout the evidence and is substantial. Whereas *schwören* (swearing) meant putting your soul at stake (»conditional self-damnation«), *geloben* (promise) only endangered your honor. The latter – lighter – form of commitment apparently seemed more suitable to women, who were considered morally and intellectually weaker and therefore less trustworthy than men. This gender distinction applies to various oaths of office throughout the region. In the small Alsatian town of Ammerschwihl/ Ammerschweier, masters and servants had to swear to the saints, whereas their women had to »promise on their [Christian] faith«.²⁵ In the town of Kaysersberg, very close to Ammerschwihl, the city council servant had to swear fealty, but his wife only promised as much; the millers and their male servants swore to maintain proper behavior, whereas their wives, again, promised.²⁶

These were not only legal norms that were easy to adapt, but actual procedures. The proceedings of the Basel city council (so-called *Öffnungsbücher*) list all new citizens who paid for citizenship and swore the civic oath – the great majority being men. But then with Ennelin (=Anna) Nechin, a woman from the neighbouring Reinach, the scribe started to write down the usual formula »Item on Tuesday, the vigil of the apostle Matthew [September 20] anno domini 1440, Ennelin Nechin von Rinach bought the right to citizenship and swore as it is the custom«, but then corrected to »promised instead of an oath.«²⁷

Even assertory oaths by women were open to exemption. They were frequent in trials, as at the Basel *Schultheissengericht* (municipal low justice court), for example. But pregnancy or confinement after childbirth obviously changed the situation, as women were allowed to promise: a woman called Enelyn testified after [promising] »on her faith instead of swearing, because she is pregnant.«²⁸ The reason why she was exempted from taking a formal oath was that she would not only have put her own soul at stake, but also that of her unborn baby.

24 Freiburg i.B., Stadtarchiv, B 3 Ordnungen no. 3, fol. 1v: *Ein man swert aber ein frow glop* (»a man swears, but a woman promises«).

25 *Premier livre de statuts et de serments*, ed. Richard, fol. 35v: *das söllend meister und knecht zû den heiligen sweren und die frowen das by iren truwen geloben*.

26 Kaysersberg, Archives Municipales, BB 1 fol. 42 and 46v. In the millers' case the vocabulary shifts somewhat: *das sollen die meister und knecht alle jor globen und sweren und der muller frowen globen und versprechen* (»masters and servants must pledge and swear this each year and the millers' wives pledge and promise it«).

27 Basel, Staatsarchiv des Kantons Basel-Stadt, Öffnungsbücher 1, p. 82: *Item tercia vigilia Mathei apostoli emit anno etc. XLmo emit civilegium Ennelin Nechin von Rinach et juravit ut mo promisit loco iuramenti ut moris est*. On p. 86, the next woman is said to have »promised as usual« (*hat glopt als gewonlich ist*).

28 Basel, Staatsarchiv des Kantons Basel-Stadt Gerichtsarchiv, Schultheissengericht Grossbasel, Kundschaften D 18, fol. 120v (March 15, 1501): *bij truwen an eideß statt, als sij schwanger ist*; see Sieber-Lehmann, *Eidgenössisches Basel*, 11, for more examples.

Some evidence, however, does document female swearing, even promissory, as, for instance, when Strassburger women swore the goldsmiths' oath.²⁹ This may have particularly applied to independent women, who were not under a husband's or a father's rule, such as widows, who would commit themselves not as women, but as heads of a family or of a business.³⁰ Here again the importance of swearing within the crafts guilds comes to the fore. And exceptions do exist, where unmarried young women or even wives swore »like men,« especially when they held a public position like that of midwife.³¹

Jews and Oaths

Jews represent the other group for which the oath was a problem *per se*. Jewish communities, which were ancient and numerous in the Upper Rhine valley (until a series of expulsions took place, from the Black Plague to the end of the Middle Ages), took oaths, both assertory and promissory, within their own group. Swearing in relation to Christians, however, was something completely different, as the oath was a fundamental element of the civic community, to which Jews did not fully belong: they could not hold public office and did not participate in the *Schwörtag*. A variety of evidence shows that Jews could become citizens of their town, and also that they swore allegiance – as in Fribourg in Üchtland 1381 or Zurich 1383. But in the Upper Rhine region, they never appear in the *Bürgerbücher*, the registers of new burghers.³²

The spectacular oath formulae that are preserved in Christian town records – not only in the Upper Rhine valley – are almost always assertory oaths, comparable to those that were sworn at trials: Jews had to swear oaths in order for their Christian neighbors or partners to have confidence in a social or economic relationship with them, so in Constance in the fifteenth century: »The Jew's oath. You must tell the truth in this matter, as your honor and your oath urge you to and as God and the holy commandments, which God gave Moses on Mount Sinai, help you to do.«³³

To sum up this first part of the article, we can argue that there is a distinction between people who can swear, those who do not deign to swear and finally those who are either not entitled to swear at all or cannot swear together with different persons or groups. I would like now to discuss the ways in which the various groups swore their oaths and what this says about the significance of the oath in late medieval urban society.

29 Heusinger, *Zunft*, 80, for the example of the Strasbourger goldsmiths.

30 Reyerson, *Urban economies*, 301-302.

31 Freiburg i.B., Stadtarchiv, B 3 Ordnungen no. 4, fol. 26r-27v (list of sworn midwives, some of whom were married, such as »Sigmund Steinmetzen frowen«, 1514).

32 Gilomen, *Städtische Sondergruppen*, 139-140. For examples of Jewish burghers, see also *Listes ... de Colmar*, ed. Sittler, 17; Hörburger, *Judenvertreibungen*, 70.

33 *Vom Richtebrief zum Roten Buch*, ed. Feger, 2: *Der juden aide. Also du solt ain warhait in der sach sagen, als dich din ere und din aid wist, als dir got helf und dú hailig ê und dú gebot, dú got Moysen gab uff dem berg Sinay.*

2. Who Swears How?

Gestures, Objects and Words

Oaths are basically an association of words and gestures, involving various people, objects places and times.

As for the gestures, one should consider first of all the objects on which the male oath-taker placed his right hand: at first, in the Early Middle Ages, weapons, then, for some centuries, mostly relics, or, slightly later, the Gospel.³⁴ This can still be seen in the illustrations of oath-taking in the manuscripts of the *Sachsenspiegel* (Saxon Mirror), such as the one in Heidelberg, which dates from the fourteenth century, the text being a century older: the hands are always placed on reliquaries or point toward them.³⁵ However, in the fourteenth and fifteenth centuries, in the Upper Rhine region, the gesture found everywhere is the right hand raised towards heaven, with the thumb, index finger and most often also the middle finger in the air. In the fifteenth century, a text copied throughout present-day Switzerland explains that the three fingers raised represent the Father, Son and Holy Spirit, and the two folded back the soul and body of the oath-taker: the gesture thus recalls the oath's importance, since eternal life is at stake.³⁶

However, there are differences between categories: clerics swear not by raising their hands, but by placing one hand, or crossing both hands, on their chest.³⁷ This gesture has been interpreted as an »internalized form of the sacred,« which would no longer need the intermediary of a sacred object, weapon, relics or Gospel book.³⁸ The Golden Bull of 1356, which regulates the election of the King of the Romans by the prince-electors, specifies that the lay princes touch the Gospel, while the ecclesiastics put their hands on their chest.³⁹ A woodcut illustrating a Strasbourg edition of the text (1485) in German translation does indeed show these different gestures for ecclesiastics and laymen.⁴⁰

34 Kolmer, *Promissorische Eide*, 233-241.

35 Heidelberg, University Library, Cod. Pal. Germ. 164, fol. 29r, digitized at doi.org/10.11588/diglit.85#0072.

36 Richard, *Citoyen assermenté*, 103-104.

37 See, for example, the Bishop of Basel swearing to observe the liberty charter of the city (*Handfeste*), in *Monuments*, ed. Trouillat, vol. 3, no. 288: *mit uffgelegter hand uff siner brust* (»with his hand placed on his chest«), or the Abbot of Neuwiller in northern Alsace, *mit uffgeleiter hant uff unser hertze* (»with the hand placed on our heart«), Strasbourg, Archives de la Ville et de l'Eurométropole de Strasbourg, 1 MR 20, 20.

38 Jacob, *Images*, 82-83.

39 *Dokumente zur Geschichte des Deutschen Reiches*, ed. Fritz, 576: *ubi principes electores ecclesiastici coram ewangelio beati Iohannis »In principio erat verbum«, quod illic ante ipsos poni dedebit, manus suas pectori cum reverantia superponant, seculares vero principes electores dictum ewangelium corporaliter manibus suis tangant* (»let the ecclesiastical prince-electors place their hands with reverence on their chest, this before the Gospel of saint John, »In the beginning was the Word«, which must be put in front of them, but let the lay prince-electors physically touch the said Gospel with their hands«).

40 Die güldin bulle. vnd küniglich reformacion, Strasbourg, Johannes Prüss, 1485, fol. 5r, digitized at daten.digitale-sammlungen.de/bsb00029630/image_14.

Several sources suggest that women were also supposed to swear with their hand on their chest.⁴¹ However, practice looks different, as most judicial sources do not mention this gesture,⁴² and as all pictures from the Upper Rhine valley show women swearing by raising the right hand.⁴³

The Jewish oath represents a well-known case of a ritual adopting a different form. Exceptionally, a manuscript of the famous south German law-code *Schwabenspiegel* from the middle of the fifteenth century, coming from Haguenau in Alsace, shows a Jew swearing with his feet placed on a pigskin, an impure animal in Judaism (see Figure 2). Here, the discriminatory intention is obvious. However, it is highly questionable that the image reflects some reality for Jewish oath-taking, for the oath is intended to establish confidence in the given word, so it would have been absurd to place the swearer in a situation where his sincerity was impossible. Thus, the swearing texts for Jews that one finds in the Christian documentation from the Upper Rhine towns of Colmar, Sélestat and Basel never mention a pigskin. On the other hand, these sources insist that special, Jewish-oriented texts be used. The swearer lays his hand not on the Gospel but on the Torah, as in Fribourg (in Üchtland) in 1381 (*nach judenischen sitten und gewonheit und uff Moyses buch*).⁴⁴ This ensured the truth of his word. It is not clear whether there was physical contact between swearer and the sacred scroll – which would be unusual; the Christian iconography, such as the illumination from Haguenau, rather features a codex, probably because of the parallels to Christian rituals.⁴⁵

41 Olberg, Nasteid.

42 Kolmer, *Promissorische Eide*, 249, wonders if this particular form of oath was really practiced. I only found one single example in Basel, from the beginning of the fifteenth century, where a woman swears »on her chest« that she had been made pregnant by a man named Kölner, Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv A 3, fol. 15r (1401).

43 E.g., both Dames of Bubenberg swearing at a trial in Berne (ca. 1485, Diebold Schilling, *Amtliche Berner Chronik*, vol. 3, 100, Berne, Burgerbibliothek Mss. H.h.I.3, digitized at www.e-codices.unifr.ch/en/bbb/Mss-hh-10003/100).

44 *Recueil diplomatique*, ed. Werro, vol. 4, 150-158, here 155. Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher A 1, p. 377; Colmar, Archives Municipales, BB 44, p. 494-496; *Schlettstadter Stadtrechte*, ed. Gény, vol. 2, 728.

45 On the Jewry oath, see Lehnertz, Erfurt Judeneid, 17; *idem*, The Jewry oath (Judeneid).



Figure 2: Jewish oath (*Diß seit uns von dem juden eyde wi sū sweren sūllent*), *Der künige buch – Schwabenspiegel*, c. 1430, Brussels, KBR, Ms. 14689-91, fol. 204r.

Noblemen did not use different gestures or words when they swore. Nor could they always simply give a promise instead of an oath, which they preferred (as we have seen earlier). They did try to express their distinction, though, by adopting a different setting or modifying the sequence of the ritual. The individual, civic oath of a nobleman in Sélestat had to be performed before not only the municipal secretary, but the entire city council; it is unclear whether this requirement was imposed by the noblemen or the city authorities.⁴⁶

46 On this topic, see Richard, *Adel und Bürgereid*.

During the annual civic swearing-in, when the town lord confirmed the town's liberties and the citizens took their oath of allegiance to him, the order of the various oaths was of utmost importance: the town lord or his representative tried not to take his oath first, *before* the citizens' oath of allegiance, but only *after* they had pledged fealty to him, in order not to appear subject to their good will.⁴⁷ In Kaysersberg, if the imperial bailiff in Alsace (*Reichslandvogt*) was of princely rank, he was exempted from the oath-taking and only promised »on his princely honor«.⁴⁸

Frequency of Oath-Taking as a Mark of Distinction

This last example shows that swearing or not swearing was a mark of distinction (as we also see in the twelfth-century Languedoc, discussed by H el ene D ebax in this volume). But the number of oaths a person had to swear also played a role. Erasmus of Rotterdam wrote in 1520 that »today, among Christians, the oath is so common that almost nothing is considered valid unless it has been sworn«.⁴⁹ In fact, oaths were considered so serious that the town authorities were reluctant to multiply them; members of the city council often were exempted from oath-taking because their oath when they became councilors was supposed to be sufficient to ensure proper behavior. In a trial in Basel at the beginning of the sixteenth century, six witnesses out of fourteen who were civil servants – four city councilors, the head city servant (*oberster Stadtknecht*), and the *Schultheiss* of Kleinbasel – gave their testimony on the basis of the oath of office they had already taken.⁵⁰

In Lucerne, in 1439, when someone was ready to testify under oath, he could be excused by finding »two honorable men, whose oath and honor [were] trustworthy« to vouch for him.⁵¹ As noted above, oath-taking by clerics and noblemen was problematic. But even within the group of citizens, the insistence with which oaths were demanded depended on the individual's personal status. Thus, it was not only members of the council or holders of important offices, but also their wives, who, in certain cases, did not have to swear before the court of the Basel judge (*Schultheiss*). And among the group of craftsmen, masters were required to swear less systematically than journeymen.⁵²

47 So in Freiburg im Breisgau in 1502, Freiburg i.B., Stadtarchiv, B 3 no. 3, fol. 2ar.

48 Kaysersberg, Archives Municipales, BB 1, fol. 10v: *Doch wurde ein f urste unser lantvogt, der swert uns nyt, denn er glopt uns solliches als vorgeschriben st at ze haltende by sinen f urstlichen ern.* (»Yet if a prince is to be our bailiff, he will not swear to us, for he promises us to hold what is written above on his princely honor«).

49 Erasmus of Rotterdam, *Responsio*, 88: (...) *hodie inter Christianos adeo receptum sit iusiurandum, vt nihil habeatur fere ratum, nisi intercesserit iusiurandum.*

50 Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv Kundschaften D 19, 1504-1505, fol. 64r.

51 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 2, 258, no. 291: (...) *mit zwein gel obsamem mannen, denen eides und eren ze getr uwen ist.*

52 Sieber-Lehmann, *Eidgen ossisches Basel*, 12.

To conclude, there was a notable contradiction between the theoretical equality between all members of the *conjuratio* and their unequal submission to the power of the city authorities: the status of a man, or his *fama*, could be assessed by the number of oaths he had to take. What better proof of the significance, or the seriousness of the oath in late medieval urban society?

3. The Power of the Oath in a Hierarchical Society

An Indispensable Tool for the Town Government

The insistence of the authorities on swearing inhabitants and officials in, and even that of the swearers to specify the conditions they thought fitting for them to take the oath, shows how much it continued to play a crucial role in civic government. Even though discourses regretting its omnipresence, or condemning the lack of consideration that contemporaries allegedly had for it, proliferated in the Late Middle Ages, it remained an effective means of guaranteeing social life.⁵³ The oath was nothing more than a language of a particular type, but one that allowed the greatest number of people to be included in the urban community.

Let me give three examples.

The first is the brothel keeper. Late medieval cities maintained municipal brothels, which were entrusted by the authorities to a man or a woman – in southwest Germany, mostly to a man – on condition that he/she would provide the male inhabitants with healthy prostitutes while avoiding the public disquiet that unregulated prostitution tended to cause. We have here the theory of the lesser of two evils (better hire prostitutes than endanger honorable women). These brothel keepers were considered disreputable, and their word at law worthless. For example, they could not become citizens and the law of Freiburg im Breisgau, codified in 1520, forbade them to testify in court.⁵⁴ However, in Constance, Lucerne, Colmar, Kaysersberg and Sélestat/Schlettstadt, these people who were normally not oath-worthy had to take an oath of office, by which they swore to contribute to the common good of the city, to promote its honor, and to help in case of fire.⁵⁵

Midwives provide a second example. Wherever midwives were officially recognized during the fifteenth century, they were sworn in. The oath formula is included in the collection of municipal oaths of office – theirs being the only female oath of office, and a rare case in which women had routinely to swear, and not only promise.⁵⁶ Their function as midwives, which could not be entrusted to men (who were kept away from childbirth) clearly carried more weight than their otherwise untrustworthy gender.

53 In Boccaccio's *Decameron* (first day, novel 1), Cepparello/Ciappelletto wins all his trials because he does not shy away from false swearing, Accessed on 17 October 2023: www.brown.edu/Departments/Italian_Studies/dweb/texts/DecShowText.php?lang=eng&myID=nov0101.

54 Schuster, *Das Frauenhaus*, 102-105.

55 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 3, 432-433; Colmar, Archives Municipales, BB 51/1, p. 152; Kaysersberg, Archives Municipales, BB 1, fol. 50r; *Schlettstadter Stadtrechte*, ed. Gény, vol. 2, 569-70.

56 E. g. Kaysersberg, Archives Municipales, BB 1 fol. 44v; *Das Rote Buch*, ed. Feger, 131-132 (addition from 1501); Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1, fol. 49v.

The last example is that of the perjurers. The books of proscriptions (*Achtbücher, Leistungsbücher*) are full of the names of men and women who had been banished from their city for various offenses or crimes. Before they were expelled, they were made to swear not to return to the city. Some of these people were banished for having violated an oath, so how could the authorities be sure that they would respect banishment and not return to the city? They clearly did not have many options and so they made them ... take an oath! It seems the oath was even used as a coercive measure for perjurers.

Thus, the oath was an institution that constructed the urban community, well beyond its regular citizenry. Arguably, the oath-swearing ritual was so widely accepted, and it was so flexible, that there was simply no better way to integrate someone into a group, and to bind him or her to that group. Thus, even a brothel keeper, whose word normally had no value, was made to swear, and even perjurers, who were infamous precisely because they had broken an oath.

Oath-Taking and Literacy

Oath-taking thus continued, at the end of the Middle Ages, to play an essential role in the organization of collective life. However, fifteenth-century oaths no longer resembled those of the early Middle Ages: their gestures and objects had changed (the *elevata manu* oath largely replacing the oath on relics or on the Gospels). Above all, the oath was increasingly integrated into the literacy-led government that characterized the cities.

Oaths were in fact now closely linked to the ordinance or regulation that they were meant to enforce. The pictorial representations of the great collective civic swearing-in show this clearly, as, for instance, in the illustrated chronicle of Diebold Schilling the Younger from Lucerne (1513), in which the burghers of Zurich take an oath before the charter with its seals (see Figure 3).⁵⁷

57 On the relationship between written document and ritual, see Rauschert, *Herrschaft und Schrift*; Rohrbach, *Aura*.



Figure 3: Zurich entering the Confederation with an oath taken before the delegates of the Waldstätten, Diebold Schilling the Young, 1513.

In the territory of the same city of Lucerne, in 1430, some burghers complained that they were sworn in by having the text read from a paper copy, and not from the original sealed charter on parchment,⁵⁸ for, in the fifteenth century, it was no longer enough to refer vaguely to an ordinance: the text to be sworn had to be read. If it was too long, as was the case with the Strasburg »oath charter« (*Schwörbrief*), which was sworn every year by all the burghers at the beginning of January in front of the cathedral, it was read to the members of each craft guild a few days beforehand. They all had to know what they were committing themselves to.⁵⁹ According to the first book of oaths of Sélestat (1498), the bakers of the city went each year before the council to attend the reading of their statute.⁶⁰ In the middle of the sixteenth century, when this development was well established, a Zurich butcher was convicted of perjury because he had gambled, which was forbidden by the trade's ordinance. However, he appealed on the grounds that he had not been read the ordinance he had sworn to abide by, and so was unaware of this prohibition, and his appeal was successful.⁶¹ The Bern chancery copied many oaths, such as those of the bailiffs of the city's rural territory, to distribute to the officers at the time of their swearing-in.⁶²

Finally, in the course of the fifteenth century, many urban chanceries in the south-west of the Empire made »oath books« (*Eidbücher*), i.e., registers in which all the oaths important for governance were copied: oaths of the elected officials such as the burgomaster and the city councilors, oaths of the officers – from the controller of the quality of meat, to the city clerk, to the brothel keeper – and oaths of the various trades and guilds.⁶³ These books are somewhat akin to the statute books known throughout Europe since the thirteenth century. The oldest of them were indeed collections of oath formulae.⁶⁴ Thus they give us a schema of the town administration from top to bottom. But the form that was chosen placed the oath at the core of the municipal government: every text begins with »You will swear to ...«

58 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 2, 179, no. 206.

59 See also the obligation to read before the council the oath formulae of each officer of the city: *Verfassungs-, Verwaltungs- und Wirtschaftsgeschichte*, ed. Eheberg, no. 104, 297.

60 Sélestat, Archives Municipales, BB 4, p. 169: *Der brotbecker ordnung so man inen alle jar vor rat vorlisett* (»The bakers' statute, that is read to them every year in front of the Town Council«).

61 *Quellen zur Zürcher Zunftgeschichte*, ed. Schnyder, vol. 1, 264, no. 360: *diewyl Anthoni Notzen syner meisteren brief unnd ordnung des spilens halb nit vorgeläsenn, darumb dann er darvon nützitt gewüßst (...)*. (»Anthoni Notz had not been read his masters' ordinance on gambling, so that he was unaware of it«)

62 Berne, Staatsarchiv, A I 802, p. 101 (1485, account book of the town chancellor): *Item eins vogts von Murten eyd in der stattbüch geschriben und des dem vogt ein abschrift geben v ß* (»Item I have written in the town records (stattbüch) the bailiff's oath of Murten and gave him a copy of it, 5 s.«)

63 Buchholzer-Remy and Richard, *Villes médiévales et serment*, 73-81.

64 Busch, *Einleitung*.

Conclusion

Misguided by late medieval or early modern authors such as Boccaccio or Erasmus of Rotterdam, who asserted that oaths were so widespread that no one could take them seriously any longer, or even that they were broken as often as they were sworn, in short, that oath-taking had become a meaningless routine, late twentieth-century medievalists have tended to consider that by the end of the Middle Ages, the oath was a declining, even fossilized, ritual.⁶⁵

Nothing could be more wrong: as in the late Medieval Japan of Horikawa Yasufumi, where no secularization or crisis of belief had occurred,⁶⁶ the oath was, as a technique for government, more necessary than ever. In fact, the late medieval city had not been able to invent a better tool to bind its inhabitants than by swearing them in. At the end of the Middle Ages, not only the burghers, but also the other inhabitants, foreigners or journeymen, were compelled to swear fealty to the city authorities. Even more strikingly, there was no suitable alternative solution for exercising control over those infamous people who, normally, should not have sworn because their word was worthless.

Oaths were taken so seriously that medieval town dwellers refused to take too many of them, or too frequently. The oath is an »organizational principle coupled with an identity marker«. ⁶⁷ In the Late Middle Ages, the civic community was also a religious community, and that feature is what made the bond between its members so strong. But one can examine urban society »through the lenses of the oath«, as it were, distinguishing layers of honorability that correspond to different forms of oath-taking and different frequencies of swearing. Paolo Prodi's »*società giurata*« was in fact extremely hierarchical. In the late Middle Ages at least, it no longer had much to do with the urban *conjuratio* that the historians of the nineteenth and the first half of the twentieth century idealized as an association of equal members.

On the other hand, oaths underwent a profound change in the way they were used in the city government, inasmuch as they became increasingly integrated into the realm of pragmatic literacy. This evolution strengthened social hierarchies in the city even more: it benefited those with literacy skills.

65 Guenée, *Non perjurabis*, 256: »Cette fréquence ne faisait que souligner leur impuissance (Their frequency only underlined their ineffectiveness)«. On the alleged decreasing amount of ritual in the early modern period, Fantoni, *Symbols and rituals*, 23; Holenstein, *Seelenheil*, 13, considers that the decline of the political oath began in the seventeenth-eighteenth centuries.

66 In this volume, doi.org/10.1553/medievalworlds_no19_2023s87.

67 Leveleux-Teixeira, *Sacramenta puberum*, 91.

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Abbreviations

MGH Monumenta Germaniae Historica

Manuscripts / Unedited archive entries

Berne, Staatsarchiv, A I 802

Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv A 3

Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv Kundschaften D 19, 1504-1505

Basel, Staatsarchiv des Kantons Basel-Stadt Gerichtsarchiv, Schultheissengericht Grossbasel, Kundschaften D 18

Basel, Staatsarchiv des Kantons Basel-Stadt, Öffnungsbücher 1

Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher A 1

Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1

Colmar, Archives Municipales, BB 44

Freiburg i.B., Stadtarchiv, B 3 Ordnungen no 3

Freiburg i.B., Stadtarchiv, B 3 Ordnungen no 4

Die güldin bulle. vnd künigclich reformacion, Strasbourg, Johannes Prüss, München, Bayerische Staatsbibliothek, 2 Inc.c.a. 1567.

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List of Figures

Figure 1: Map of the Upper Rhine region

Figure 2: Jewish oath (*Diß seit uns von dem juden eyde wi sū sweren sūllent*), *Der künige buch – Schwabenspiegel*, c. 1430, Brussels, KBR, Ms. 14689-91, fol. 204r.

Figure 3: Zurich entering the Confederation with an oath taken before the delegates of the *Waldstätten*, Diebold Schilling the Young, 1513 (www.e-codices.unifr.ch/en/kol/S0023-2//25)

A Piece without a Puzzle? A Fragment of *Nikuláss saga erkibiskups* in Oslo, NRA 69 – Text, Translation and Commentary

Elliot Worrall, Rutger Kramer and Tom Grant*

In this article, we present a new edition, normalization and translation of a fragment of an otherwise unknown *Nikuláss saga erkibiskups* (Saga of Bishop Nicholas) transmitted in the manuscript *Norrøne Membranfragmenter* NRA 69. Written in Iceland in the early fourteenth century, this fragment appears to present a »missing link« between various Nicholas narratives that circulated in the medieval West, and the idiosyncratic spin given to those stories in the North Atlantic world. Moreover, the story presented in this particular fragment, which details the interaction between a Jewish moneylender and a local trader, provides several invaluable clues about the dynamics of trade and money as well as the interaction between Self and Other in the region.

Keywords: Hagiography, Saint Nicholas, saints' cults, Old Norse, Scandinavia, Jews and Christians, Othering, Trade

At some point in the year 1623, a clerk in the region of Nordfjord (Norway) set about taking apart a codex. Ever since it was created in Iceland in the early fourteenth century, the manuscript had served as a legendary of sorts, containing the stories of the most important saints in the region, retold in the vernacular. Now, its services were no longer needed, and so it was reused as bindings – presumably in the account books of the local bailiff, to whose administrative zeal we probably owe the note giving us the place and time when the book was taken apart.¹ Eventually, the fragments that made it through the centuries

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1 *Jóns Saga Hólabyskups*, ed. Foote, 54-55.

were rediscovered and found their way to the Norwegian state archives in Oslo, where they currently reside in the collection *Norrøne Membranfragmenter*, under the shelfmarks 57, 69 and 80.² The first of these contains part of the Old Norse saga of Saint Jón of Hólar (*Jóns saga Hólabyskups ens helga*) and the opening lines to *Sæmundar þáttr*, an abbreviated version of a story about the Icelandic scholar and folk hero Sæmundr fróði.³ The last one, written in the same hand, gives us part of a Saga of the Apostle Paul (*Páls saga postola II*).⁴ The middle one, NRA 69, is a fragment from an otherwise unknown saga of Saint Nicholas of Myra.⁵

This fragment of *Nikuláss saga erkibiskups* will be the focus of this article. It narrates a story in which the saint posthumously interferes in a conflict between a Christian trader and a Jewish moneylender, with the moneylender proving to be the »good guy« in the story. This particular episode thus appears to provide a counterpoint to the common anti-Jewish stereotypes prevalent in medieval narrative and pictorial traditions, even if it is certainly not the only story offering a nuanced picture of the interaction between Christians and Jews in the European urban landscape.⁶ As we will see, this episode is fairly well attested in the hagiographical cycle surrounding Nicholas, where it is often paired with another story involving a Jew who is altogether more hostile to the saint – which, in the more complete versions of the story, adds further nuance to the Jewish character presented here. Due to the fragmentary nature of the text in NRA 69, however, it is not clear whether this manuscript also contained that second story.

Although the text of this fragment has been edited in the massive collection of saints' sagas by C. R. Unger, and the fragments are made available through the website of the *Riksarkivet*, it has thus far escaped most scholarly attention.⁷ This is a shame, as the particulars of this specific fragment are not to be found in any of the more widespread stories about the saint, whether Icelandic, Latin, Greek, or any other. As such, unlocking this fragment may shed further light on the way the cult of this ubiquitous saint spread across medieval Scandinavia – which in turn will add to our understanding of the way the North Atlantic world was connected to the rest of Europe and indeed the Mediterranean.

2 NRA Bestand 69, accessed on 13 November 2023: media.digitalarkivet.no/view/58519/33.

3 All three known editions: *Jóns Saga Hólabyskups*, ed. Foote, 1-170; for the *Sæmundar þáttr*, see *Biskupa sögur I*, ed. Sigurgeir Steingrímsson, *et al.*, 337-343. Both texts are also translated in *The Saga of St. Jón of Hólar*, trans. Cormack.

4 *Postola sögur*, ed. Unger, 236-283.

5 Jónas Kristjánsson, *Skrá um íslenzk handrit í Nóregi*, 28-29, gives the following description: NRA69: »Two connected fragments. One folio cut lengthways across the middle. 1: 10.4 x 16.4cm. 2: 10.3 x 16.6cm. Single-column text, truncated at the lower margin. Written in the first part of the fourteenth century. Icelandic scribe, the same as NRA57 and 80« (2 brot samstæð, 1 bl. skorið sundur í miðju um þvert. 1: 10.4 x 16.04 sm. 2: 10.3 x 16.6 sm. Lesmál eindálkað skert a neðra jaðri. Skr. á fyrra hluta 14. aldar. Íslenzk hönd, hin samma sem á NRA 57 og 80).

6 See, for instance, Notker Balbulus, *Gesta Caroli*, c. 16 trans. Noble, 71-72, in which Charlemagne is depicted as working together with a Jew to uncover a bishop's greedy nature, or Caesarius of Heisterbach, *Dialogus Miraculorum*, 2,25, trans. Bartelink, 118-121, in which the daughter of a Jew wishes to convert to Christianity due to the frequent visits of a priest to her household – and in which her father works together with the local duke and bishop to prevent this from happening; while this latter story is rather ambiguous about the Jews as a whole, it definitely implies that the lives of members of the different communities were closely intertwined.

7 *Nikuláss saga erkibiskups*, ed. Unger, 46-49.

At the core of this article stands our rendition of this version of the *Nikuláss saga erkibiskups* in normalized Old Norse, together with a commented translation into modern English. This translation will be preceded by a brief overview of the cult of Saint Nicholas in medieval Europe, as well as a commentary on the story and the *dramatis personae* in their broader literary context. While this story in general tells us much about the relations between the Christian normative community and the »religious Other« in the later Middle Ages, this specific version also sheds an interesting light on the mechanics of trade in the North Atlantic – something that also comes to the fore in the vocabulary employed by the author. Additionally, the text presents us with an important link in the spread of the cult of Nicholas in Europe: its place in the textual tradition/transmission seems to position it between the more well-known Continental versions and the most extensive Icelandic retelling of the Saga of Nicholas by the Icelandic abbot and hagiographer Bergr Sökkason. After this, we will discuss how the text and translation of the Nicholas fragment has been prepared for the present article. This will include some commentary on the language of the text, including a case study of the author's treatment of words relating to money and commerce.

The authors would like to stress at the outset that the goal of this translation and commentary is not to provide an exhaustive treatment of all aspects of *Nikuláss saga erkibiskups* as copied in NRA 69. This would require a much longer and more detailed study than could be published here. Broader questions such as the place of our fragment within the pan-European Saint Nicholas tradition and its specific relationship to other Scandinavian versions will thus not be tackled in full, and neither will the full implications of this story for our understanding of the Christian/Jewish discourse at the time, or how it affects our knowledge of trading practices in the Baltic and North Atlantic regions. Our purpose, instead, is to make this text available to a wider public, and hope it encourages people to make their own comparisons and follow their own curiosity in answering the questions raised by this text. Our main conclusions will therefore appear as questions rather than answers, to serve as a departure point for further research or, more generally, broaden our understanding of the place of Saint Nicholas in European culture. In the course of the discussion we pose some of these questions ourselves, chiefly relating to points of comparative interest between the NRA 69 fragment and other versions of the Saint Nicholas story. These should be taken as invitations to explore these matters further.

Saint Nicholas in Scandinavia

Background

Saint Nicholas is one of the most ubiquitous saints of the medieval period and beyond. His story begins in the eastern Mediterranean in Late Antiquity, where he acted as bishop of Myra (present-day Demre in Antalya province in Turkey) in the late third and early fourth centuries.⁸ There is every indication that a cult formed around his memory relatively soon after his death, and from there his fame gradually spread across western Europe, where he appears in liturgical texts from the early ninth century onwards.⁹ The favoured position he

8 Blom, *Nicolaas van Myra*; Jones, *Saint Nicholas of Myra, Bari, and Manhattan*.

9 See Garipzanov, *Cult of St Nicholas*, 229–246, or, more generally, Vellekoop, *Sint Nicolaas*. The most comprehensive study of Nicholas as a pan-European phenomenon remains Meisen, *Nikolauskult und Nikolausbrauchtum im Abendlande* – although it is, admittedly, due for an upgrade.

held within the Ottonian court in the late tenth century,¹⁰ his appearance in the English ecclesiastical discourse,¹¹ and the translation of his relics from Myra to Norman-occupied Bari in 1087,¹² evidence his cult's popularity in the High Middle Ages.¹³ Additionally, the saint had become part and parcel of the religious fabric of the Kievan Rus' as well, with cult centres appearing in the regions around Kiev and Novgorod in the course of the eleventh and twelfth centuries.¹⁴ By the time our manuscript was written in around 1330, Nicholas' cult had spread all over Europe, from modern-day Ukraine to Britain and from Italy to Iceland. Within Iceland, he appears to have been particularly popular, perhaps owing to his reputation as a patron of sailors and traders: he was venerated in no less than 42 of the 330 parish churches on the island.¹⁵

Accompanying this spread is a bewildering number of extant *vitae*, *translationes*, sermons, plays, poems and even sagas in languages ranging from Greek and Latin to Old English and Old Norse. Most of these narratives, it seems, go back to a »common core« of early *vitae* originating from the eastern Mediterranean. Originally these were different narrative traditions, and not all of them actually referred to the bishop of Myra – there is, for instance, a persistent strand dealing with Abbot Nicholas of Sion running parallel to the earliest spread of the cult of Nicholas.¹⁶ All these various traditions were consolidated by the Byzantine hagiographer Michael the Archimandrite, who in the early ninth century composed the first complete narrative of Saint Nicholas as we know him today.¹⁷ Over the centuries, various hagiographers used this archetype to compose their own narratives that catered to their own audiences. The flexibility of the saint made him a worthwhile vessel for local priorities. From the start, his portfolio included tensions between local and supra-regional authorities, as well as issues dealing with trade, childhood and the Other: all subjects that continued to be central to the development of regional identities as the centuries progressed. Earlier researchers have thus far mostly treated these different narratives as offshoots of a shared, singular tradition, but scholars are gradually becoming increasingly sensitive to the idea that each individual story of Saint Nicholas, as indeed every hagiographical narrative, represents an adaptation of universal ideals to local circumstances.¹⁸ Each text, in other words, needs to be understood on its own terms before becoming part of a larger Nicholas discourse.

10 Wolf, *Kaiserin Theophanu*, 27-38.

11 Treharne, *Old English life*, 34-42.

12 Cioffari, *Saint Nicholas*.

13 Philippart and Trogalet, *L'hagiographie latine*.

14 On the way Nicholas connected Eastern and Western forms of Christendom, and the possible role of the Ottonians in the spread of his cult in eastern Europe, see Raffensperger, *Reimagining Europe: Kievan Rus' in the Medieval World*, 64-65, 171-175 and 182; Senyk, *History of the Church in Ukraine*, vol. 1, 366-367; and Pac, *Kult świętych*.

15 Jón Viðar Sigurðsson, *Bergr Sökkason*, 143.

16 Saradi, *Christianization of pagan temples*, 129-130

17 Michael the Archimandrite, *Vita Per Michaëlem*, ed. Anrich; Grünbart, *Der heilige Nikolaus*.

18 Jaspert, *On entangled hagiographies*. For recent examples embracing this trend, see, among many others, Van Raaij, *Infiltrating the local past; the cases presented in Sanok, New Legends of England*; or the contributions to the special issue on *Medieval Biographical Collections: Perspectives from Buddhist, Christian and Islamic Worlds*, in *Medieval Worlds* 15*si*, accessed on 13 November 2023: doi.org/10.1553/medievalworlds_no15si_2022.

This is especially true for the fragment at the heart of this article. While it is unclear when exactly it was written, the dating of the manuscript and its relation to the other sagas of Nicholas circulating in the region indicate that this particular copy was produced at a time when Christianity was firmly established in Scandinavia, and the cult of Saint Nicholas had become an integral part of the fabric of the Baltic and North Atlantic worlds – and indeed helped to connect those regions into a more general idea of »Europe«. ¹⁹ The reconfiguration of the social and political makeup of the region itself caused by the introduction of Christianity had also become normalized to an extent: for all intents and purposes, people were comfortable living with the particular modes of centralization and institutionalization that came with the spread of a powerful and self-assured Church. ²⁰ Rulers and other authority figures had quickly adopted the hierarchical systems that came with this Roman model, and the written word became one of the main weapons in their arsenal to consolidate these ideals and spread them among the populace. ²¹

Although it is tempting to see this as a form of oppression of a native culture, it is equally important to note that these ideas and ideals would find broad acceptance among the population as well. Christianization was always both a top-down initiative *and* a grassroots movement, and the identity shifts that came with the introduction of this »new« religion left a footprint in the way people would make sense of the world around them. ²² Saints' lives played a special role in this process. Hagiographical narratives, with their focus on the exemplary behaviour of exceptional individuals, had always been a vehicle to consolidate existing social structures, distinguish the Self from the Other, and describe normative behaviour by imagining divine responses to acceptable behaviour. ²³ Given the place of storytelling in the formation of cultural memory in Scandinavian societies, it is no surprise that hagiographical tropes and narratives would also be subsumed into existing vernacular traditions, leading to such hybrid genres as the so-called *heilagramannasögur* (»saints' sagas«). ²⁴ We see a great number of these appear in the wake of the arrival of Christianity on Scandinavian shores. ²⁵ Some of these present the lives of »native« saints, but the majority of the over 100 saints' sagas actually adapt existing hagiographies to the lived experience of people in Iceland, Norway, Sweden or Denmark.

19 On the integration between Scandinavia and the rest of Europe, see Winroth, *Conversion of Scandinavia*.

20 This appears to be a main difference between the spread of Christianity in Scandinavia and, say, the Frankish world: whereas the Frankish rulers from Clovis to Charlemagne dealt with a barely institutionalized Church whose prelates were still trying to find their footing, authority figures in Scandinavia were confronted with a reformed and organized institution whose advocates were eager to extend its influence further across the continent. See Hreinsson, *Force of Words*; see also DuBois, Introduction.

21 See Hreinsson, *Force of Words*, 106, for an example of how Saint Nicholas also played a part in this strategy.

22 Bagge, *Cross & Scepter*, 60-85. For other approaches to the process of Christianization and the way it impacted local or regional identities, see, for instance, Wellendorf, *Gods and Humans*; Rembold, *Conquest and Christianization*; or Ristuccia, *Christianization and Commonwealth*, who places a lot of emphasis on the implementation of liturgy and ritual (in his case, Rogationtide), but makes a compelling case for the influence of ritual in the creation of communities.

23 Isaïa, *L'hagiographie, source des normes médiévales*.

24 See, for instance, Wellendorf, *Attraction*; the methodological remarks by Byock, *Social memory and the sagas*; and Bryan, *Icelandic Folklore*, 1-21; the case studies by Egilsdóttir, Hrafn Sveinbjarnarson; and Antonsson, *Two twelfth-century martyrs*, both appearing in Williams and Bibire (eds.), *Sagas, Saints and Settlements*.

25 Wolf, *Medieval Icelandic hagiography*; generally, see also Wolf, *Legends*.

Adding Scandinavia to a larger Christian discourse community required more than simply translating pre-existing narratives.²⁶ Their authors went to great lengths to also »localize« these stories and make sure the hagiographical corpus fitted the overarching requirements of Christendom while also catering to the preconceived notions, the world and the world-view of their intended audience.²⁷ More extensive research is needed to comprehensively compare different local stories about Saint Nicholas so as to gain a clearer understanding of how exactly this functioned for this particular narrative tradition. We catch a glimpse of this process, however, when we look at the very lengthy first section of Bergr Sökkason's adaption of the Life of Nicholas, which devotes particular attention to placing the story in the eastern Mediterranean, the political and geographical landscapes of which he indeed describes in great detail.²⁸ In doing so, the author made sure that the audience understood the Otherness of the protagonist, while also ensuring that readers became aware of Nicholas' genealogy and his Roman roots. By embedding Nicholas between Otherness and Romanness, but doing so in familiar terms, he would have added to the saint's universal appeal: someone who truly represented the Church as a whole. As an introduction, it stands in contrast to the opening to the oldest complete Greek version by Michael the Archimandrite, which adds theological rather than geographical details.²⁹ Conversely, both Bergr Sökkason and, as we will see, the author of the fragment in NRA 69 add a number of incidental details (especially about the trader) that make more sense to an audience accustomed to trading practices and networks in northern Europe. In such a manner, those who took it upon themselves to adapt these stories to new audiences made old Christian »memories« accessible to people who had, mere generations earlier, essentially been outsiders to the discourse community.³⁰

Versions

Our fragment of *Nikuláss saga erkibiskups* should be read against that background. In it, we learn of a peculiar interaction between a Christian trader and a Jewish moneylender. The Christian has fallen on hard times and wishes to borrow money to get back on his feet. Not having any sort of collateral, he offers an oath on the relics of Saint Nicholas instead, which the Jew accepts as valid due to the saint's reputation as a righteous and trustworthy man. The Christian, however, abuses that trust. Despite the fact that the Christian man continuously delays his repayment under false pretenses, the Jew's trust in Saint Nicholas remains unshaken. The author then praises the «faithfulness and justice» shown by the »circumcised Jew« before ominously declaring that both men would «get what they deserved». The text in NRA 69 then breaks off.

26 On the way we would apply the concept of the »discourse community«, see Kramer, *Rethinking Authority*, 43-49; Wuthnow, *Communities of Discourse*, 9-19.

27 Grønlie, *Saint and the Saga Hero*, 79-110 and 209-256; on the author-audience interaction, see Kramer and Novokhatko, *Dead authors and living saints*.

28 Bergr Sökkason, *Nikuláss saga erkibyskups*, cc. 1-11, ed. Unger, 53-60.

29 Theological explanations are given for most of the deeds of Nicholas in the narrative by Michael the Archimandrite, *Vita per Michaëlem*, trans. Quinn and Sewell, accessed 13 November 2023: www.stnicholascenter.org/who-is-st-nicholas/stories-legends/classic-sources/michael-the-archimandrite.

30 On the perpetual tensions between the ideals of Christianity that are thought to be universal on the one hand, and the imprint of those ideals on regional, local and individual micro-Christendoms, see Choy, *Ancestral Feeling*.

However, we know how the story concludes, because it occurs in many other version of the saint's hagiographical cycle.³¹ First, the Christian attempts to cheat the Jew out of his repayment using a dastardly scheme involving a hollowed-out staff filled with gold and a bit of trickery and manipulation. Having successfully fooled everyone, the trader then walks back home, but falls asleep on the road and gets run over by a cart. The Jew thereupon begs for forgiveness on the Christian's behalf, and promises to convert to Christianity if the man is brought back to life – and so it happens, thanks to the intervention of Saint Nicholas, in whose name all this played out.³²

Counting backwards from the early fourteenth century, we find a similar story in a late thirteenth-century Middle English version copied into MS Laud 108;³³ in the *Legenda Aurea* by Jacobus de Voragine (written in the 1260s);³⁴ in the Anglo-Norman poem *De Sancto Nicholao* by Wace, composed around 1150;³⁵ in a sermon *De Sancto Nicolao* from around 1140 by Honorius of Arles, as well as another anonymous sermon from around the same time;³⁶ and in a *Vita metrica sancti Nicholai*, which was added in the early twelfth century to a computistical and geographical manuscript – currently Cotton MS Tiberius B V/1 – originally composed in Battle Abbey in the mid-eleventh century.³⁷ Apart from another eleventh-century manuscript from Chartres that was lost during the bombing of 1944, that seems to be the earliest recorded version of this story. Therefore, it is not part of the earliest versions of the life of Nicholas and appears to have originated in north-western Europe, either in France, Normandy or England, before spreading across Europe. The many depictions of this miracle in wall paintings and stained glass – among which feature some very vivid depictions from Chartres, dating to the early thirteenth century – further attest to its popularity in the West.³⁸ And given the links between western Europe and Scandinavia, it stands to reason that Saint Nicholas would soon make his appearance there as well.³⁹

31 Harris, Performative terms, 122-129.

32 Adams, *Jews in East Norse Literature*, 407-409.

33 *Early South-English Legendary*, ed. Horstmann, 240-255. On the links between this legendary and the *Legenda Aurea*, see Jankofsky, *Legenda aurea* materials.

34 Jacobus de Voragine, *Legenda Aurea*, ed. and trans. Ryan.

35 Wace, *De Sancto Nicholao*, ed. and trans. Blacker, 276-345.

36 Honorius of Autun, *Sermo De Sancto Nicolao*; the anonymous sermon can be found in *Analecta Bollandiana*, 2, ed. De Smedt *et al.*, 153-156. On Honorius of Autun's general attitude towards the Jews, see Cohen, *Synagoga conversa*: Honorius Augustodunensis.

37 De Gray Birch, *Legendary life of St. Nicholas*.

38 In addition to the article by Harris cited above, Lipton, *Dark Mirror*, 253-258, also presents us with a »reading« of these windows.

39 Jesch, *Vikings on the European continent*.

In the Scandinavian world, a version of this story appears in all extant sagas of Saint Nicholas.⁴⁰ It is described in both anonymous versions of the *Nikuláss saga erkibiskups*, as well as the massive *Nikuláss saga erkibiskups II* by the prolific hagiographer Bergr Sökkason, abbot of the Icelandic monastery of Munkaþverá from 1325 to 1345/50.⁴¹ The direct sources for these versions, as well as the relation between the texts, is still a lacuna in current scholarship. Given that the earliest manuscript with an Old Norse saga of Nicholas dates from the early 1200s, and Bergr Sökkason most probably wrote his saga in the second quarter of the fourteenth century, it is tempting to think that the fragment contained in NRA 69 presents something akin to a »missing link« between the first arrival of Nicholas in Iceland and the widely read version by Bergr Sökkason, although the current state of research cannot definitively support this conclusion. If the legendary that contained the lives of NRA 57, 69 and 80 was indeed first composed in the 1330s, it could well post-date the version by Bergr Sökkason. It does seem clear at this point that the early fourteenth century was a period of heightened interest in the story of Nicholas; more research is needed, however, to figure out how the manuscript matrix around Nicholas fits into this observation.⁴²

Dramatis Personae

The Saint Nicholas fragment preserved in NRA 69 is unique in that it does not wholly follow any of the other versions listed above. The basic narrative elements are the same every time, but there are subtle differences from one version to the next – most of which have to do with the level of incidental detail given in the framing of the anecdote.

Most obviously, the majority of the other versions do not give the villainous Christian a backstory: he is simply poor and wants to be rich (again). This version, as indeed the longer one by Bergr Sökkason, fleshes out the Christian's character. Here, he is a trader who was dealt a bad hand with the investments he made, and is determined to change his lot. Rather than make him more sympathetic, however, this framing actually adds to the moral of the story. Whereas the point of this miracle tends to be to demonstrate Nicholas' power from beyond the grave and the perils of swearing false oaths on the altar of the saint, the Icelandic versions add to this a warning against greed and overweening pride. We see this, for instance, in the moralizing interjections and biblical citations made by the author, who accuses the Christian of »serving two masters« and worshipping »Mammon« (invoking Matt 6.24 and Luke 16.9-13), while reminding the audience, using the words of Solomon the Wise, that greed will never be satisfied (an oft-recurring theme in many biblical wisdom books, eg. Prov. 27.20 or Eccl. 5.10). Rather than make either the Jew or Saint Nicholas into *exempla* to be followed, this author thus explicitly turns the Christian into a negative role model – a mirror to the audience, perhaps?

40 For a complete overview and bibliography of the sagas of Nicholas, see Wolf, *Legends of the Saints*, 262-272. In addition to the known ones listed by Wolf, Margaret Cormack, *Saints in Iceland*, 137, identified another thirteen mentions of copies of a life of Nicholas in various cartularies from the early fourteenth century.

41 The »minor« Nicholas sagas that have been edited can be found in Unger's *Heilagra manna sögur* (see also n. 39 above); the same goes for the long version by Bergr Sökkason, *Nikuláss saga erkibiskups II*; a facsimile of the most famous manuscript of that latter source can be found in *Helgastaðabók*, ed. Selma Jónsdóttir *et al.*. On the author, see also Musset, *La Saga de Saint-Michel par Bergr Sökkason*.

42 Similar to the exemplary study into the Saga of St. Mary by Najork, *Reading the Old Norse-Icelandic Mariú Saga*.

In addition to such explicit biblical citations, the episode as a whole also echoes the Book of Job, in that the trader did not take his misfortune lying down, as indeed he should have done. The Christian was not content to interpret his lot as the will of God. Instead, he borrows money from a (religious) outsider, and tries to make his own fate. But rather than doing this honestly, he insists on having it all and ultimately takes recourse to subterfuge, which leads to his downfall. It would be interesting to see how the other versions of this miracle portray the evil-doer and his motivations: what kind of behaviour is the audience warned against? Is it just the duplicity of the trader, or did his problems run deeper? As discussed below, the description we get gives us a fascinating insight into the mechanics of trade, money, investments and usury in the late medieval North Atlantic and the Hanseatic world – as well as the religious component that would continue to underpin these mechanics.⁴³

The figure of the Christian trader would have been familiar and relatable to a fourteenth-century Icelandic audience. Earlier vernacular saga tradition is replete with references to sea-borne trade, and Icelanders were dependent on such trade for many of the resources on which they subsisted.⁴⁴ This relatability is not as obvious for the other protagonist, who must have been quite unfamiliar to most. Jews were known to people in the north, but they were hardly present in Iceland at the time of writing.⁴⁵ At the most basic level, his function is perhaps to underline the exotic nature of the story as a whole: as much as hagiographies tend to be »localized«, the story of Saint Nicholas is, after all, explicitly set in the eastern Mediterranean. By virtue of the strong Varangian presence there, this was not a wholly unknown region of course – but it would nonetheless mostly be known through stories and sagas where the heroes travel to Byzantium to make their fortune.⁴⁶ It was, in short, not part of the popular imagination as a place to encounter the »religious Other« – and neither were the familiar places closer to home, where Jews only existed as a Christian rhetorical construct.⁴⁷

Instead, we are dealing with what Jeremy Cohen has dubbed a »hermeneutical Jew«: a Jew »as constructed in the discourse of Christian theology«.⁴⁸ The Jewish character is inserted into a story to represent the Other, but not someone the audience was likely to actually encounter. Thus, he operates outside of time and space,⁴⁹ acting as a counterpoint to the negative role model represented by the Christian character to an audience that might find its preconceived notions cleverly subverted by the author – if they had a notion of Jewishness beyond such literary tropes to begin with. Initially, the Jew is introduced according to the stereotype of the »Jewish miser« or the »Jewish moneylender«, whose main role in the story is to enable the greed of the Christian by supplying him with the means to ply his

43 Kaelber, Max Weber and usury; Adamczyk, Money, gift or instrument of power?.

44 The classic study on this topic is Marcus, Norse traffic with Iceland

45 Hefß and Adams, Encounters and fantasies; and, in the same volume, Cole, *Kyn / Fólk / Þjóð / Ætt*, 264. It is noteworthy, in this regard, that the only physical difference between the Christian and the Jew in this story is the fact that the latter is described as »circumcised« (*umskurðr*).

46 Barraclough, *Beyond the Northlands*, 241-262; Kovalenko, Scandinavians in the East of Europe.

47 Friedman, Christian hatred of the Other, 187-201.

48 Cohen, *Living Letters of the Law*, 2-3.

49 Cf. Krummel, *Medieval Postcolonial Jew*, 1-33, esp. 9, n. 31.

trade.⁵⁰ His inclusion, and the stereotype, could thus even embody the concern that such outsiders might destabilize existing trade networks should they be given too much leverage.⁵¹ As Sarah Lipton points out in her *Dark Mirror: The Medieval Origins of Anti-Jewish Iconography*, the stereotype originally stemmed from a more theological concern according to which Jews simply came to represent the temptations of the material world.⁵² It is in the context of the commercial growth of the High Middle Ages, then, that they become more visible as players in these newly expanding trade networks: their status as outsiders turns into one of (potential) competition, while paradoxically also reminding their Christian trade partners of their own »indifference ... to the holiness of Church properties«. ⁵³ In that sense, the hierarchical bond created between lender and debtor in stories such as these came to exemplify the emotional response of Christians to the supposed control the Jews could exert over their well-being.⁵⁴ In short, the appearance of this particular (hermeneutic) Jew foreshadows the more explicit warnings against excessive greed later in the episode.

As we progress through the narrative, however, it turns out that the Jew ends up acting in more of a Christian manner than the trader.⁵⁵ They essentially trade places. Although our manuscript breaks off before the dénouement, it is to be assumed that here, as in Bergr Sökkason's *Nikuláss saga*, the Christian comes to a rather horrific end. This in turn leads to the conversion of the Jew to Christianity: he takes pity on the trader, and asks Nicholas to resurrect him – a miracle that will seal his faith in the Christian saint and the religion he represents, as is prefigured in the final sentence of the fragment, when the author confirmed that »the circumcised Jew should show faithfulness and justice, and the Christian man treachery and cunning«, thereby making their role reversal explicit.⁵⁶ This is the one point where Nicholas, in more complete versions of the story, takes on an active role – a *sanctus ex machina* to provide a stamp of approval for what has happened.⁵⁷

50 Adams, *Jews in East Norse Literature*, 406-407.

51 A point made about the image of Jews in the Grand Duchy of Lithuania by Šiaučiūnaitė-Verbickienė, *Image of the infidelis*, esp. 332-333. On the history and historiography surrounding the idea of Jews as particularly wealthy and usurious, see the overview by Mell, *Myth of the Medieval Jewish Moneylender*, esp. vol. 1, 29-151 and vol. 2, 175-197.

52 Lipton, *Dark Mirror*, 67-68.

53 Todeschini, *Christian perceptions of Jewish economic activity*, 15; Toch, *Economic activities of German Jews*.

54 Lipton, *Images of Intolerance*, 34-38.

55 Adams, *Jews in East Norse Literature*, 400-403. A potential point for further comparison can be found in the depiction of the »good« but »vaguely exotic« Jew in the *Kalanti Altarpiece*: Räsänen, *Advocating, converting, and torturing*, 295.

56 The version by Bergr Sökkason, c. 131, ed. Unger, 135-136, actually externalizes this remark by framing it as something he found in an older source, the *vita* of Nicholas by the enigmatic John of Bari: »I am greatly astonished, says Master John, »by the glorious faith of this Jew, who has not yet been baptized through water and the Holy Spirit into the Christian faith, and yet believes without doubt that the Lord God in the kingdom of heaven and His agent Nicholas can neither be deceived nor likewise misled by deceit or cunning.« (Ek undra miok, segir meistari Johannes, gofugliga tru gydinga þessa, er enn var eigi endrgetinn fyrir vatn ok helgan anda til kristiligrar truar, ok truir þó oifasamliga, at gud drottinn i himinriki ok hans virktavin Nicholaus mega eigi sviknir verða eda nockurskyns blektir fyrir þrett eda undirhyggiu). On the social logic behind the text by John of Bari, see Oldfield, *Sanctity and Pilgrimage*, 116-123; on its use by Bergr Sökkason, see Widding, *Kilderne til det norrøne Nicolaus Saga*.

57 Again, the longer version written by Bergr Sökkason, c. 136, ed. Unger, 139, makes this more explicit, »Therefore, praise and glory be to you, beloved Father Nicholas, who graciously opened your ear to the prayer of a Jew before he was cleansed from the deceit of Jewish error through the miracle of our Lord Jesus Christ's baptism« (Hvar fyrir þer se lof ok dyrd, ynniligr fadir Nicholae, er opit settir þitt eyra i mot bænarordum Judæi, fyrr en hann væri hreinsadr af gydinga villu fyrir skirnar stormerki vars lausnara Jesu Kristz).

Much like the backstory given to the trader, the role of the Jew in this fragment is worthy of a more thorough comparative analysis: why is he in this story, how does his characterization match up with that of the trader, and how does that compare to other instances of the same story? This is an especially worthwhile pursuit when looking at the other existing Nicholas narratives, both in the Norse tradition and more widely. For instance, the story is not in the oldest version, nor can it be found in the Old English adaptation. Jacobus de Voragine only gives us the bare bones of the story and shows the virtuousness of the Jew solely through his refusal to pick up the money after the cheating trader has died.⁵⁸ In the Anglo-Norman epic by Wace, the Jew is shown to blame Saint Nicholas for his initial misfortune: ›The Jew was upset and unhappy / He cursed Saint Nicholas greatly / He blamed him a great deal and proclaimed / That he was not such as he had been portrayed‹.⁵⁹ It is this disappointment, it seems, that spurs the saint into action – a motivation which is usually more visible in the other story involving the saint and a Jew, where a statue of Nicholas ends up being beaten for not preventing a robbery. Versions of this story have been the focus of several studies into medieval anti-Judaism.⁶⁰ Studying it in the context of the full late medieval Nicholas cycle will undoubtedly help us understand better the place of this saint and his highly influential cult in the consolidation of the Self and the image of the Other at various points in the medieval world – as well as development of what Robert Moore has (controversially) termed the »persecuting society«.⁶¹

Nicholas himself plays a rather passive role in this story, especially in the fragment transmitted in NRA 69. He is a witness to the events, and (in the missing part) acts as an intermediary between the Jew and God when the former asks to have the duplicitous trader brought back to life in exchange for his conversion. But his appearance still comes with comparative potential. The setting of the story and the place where the oath is taken vary slightly from one version to the next, as does the way the Jew addresses God. Taken together, these seemingly minute differences will help us understand better the place of a given saint's cult in a given community.

It is our hope that the following translation will encourage readers to take up these questions, or, better still, that it will help provide answers to questions we have not even considered yet.

58 Jacobus de Voragine, *Legenda Aurea*, c. 3, trans. Ryan, 25.

59 Wace, *De Sancto Nicholao*, ll. 769-772, ed. and trans. Wacker, 310: »Le judeu fu dolenz et laz / Asez maldit seint Nicholas / Mult le blamout et si criout / Qu'il n'ert pas tel cum hom contout«.

60 In addition to Adams, cited above, see also Harris, Performative terms; Lipton, *Dark Mirror*.

61 Moore, *Formation of a Persecuting Society*.

About the Text and Translation

As mentioned above, the fragment which is the topic of the present article has been edited in Carl Rikard Unger's *Heilagra manna sögur* (pp. 46-49). Unger's transcription is accurate, and he only amends the text in cases where it is clearly defective. As such, it was not judged necessary to produce a new edition. What is presented here is a normalization of Unger's text to fourteenth-century Icelandic, which includes some sound changes not present in the »classical« thirteenth-century standard adopted in text series such as *Íslenzk fornrit*. Additional punctuation has been provided to make the text more lucid and readable. Unger's emendations have been retained in round brackets to allow the reader to distinguish editorial additions from the original text. Any corrections and supplements to Unger's edition have been adopted in the text and mentioned in footnotes.

The translation provided here aims to mediate between accuracy and readability. It constitutes an attempt to represent faithfully the complex mercantile and legal transactions on which the narrative is based while also capturing the wit, irony, and didacticism of the text. This means that idiomatic English is sometimes preferred over a strict adherence to the original phrasing. As the author often favours the third-person personal pronoun (*hann*) over direct reference to the Jew (*gyðingr*) or Christian (*inn kristni maðr*), it is often difficult to tell who is being referred to. For clarity, this has been indicated in square brackets.

Language

The language of the text supports the consensus of a dating to the first part of the fourteenth century.⁶² Departures from »classical« Old Icelandic include the assimilation of *-rs-* to *-s(s)-*, as in *hvessvetna* < *hversvetna* and *fyst* < *fyrst*. Norwegian influence characteristic of the post-Commonwealth period is also in evidence in the fragment. Examples include the restoration of *v-* in *vorðinn* (earlier *orðinn*) and *vorðit* (earlier *orðit*), and the loss of initial *h-* in *lut* (earlier *hlut*).⁶³ The breaking of *e* to *ei*, a process which began to occur from 1300, does not occur in a sustained fashion in our text.⁶⁴ In the fragment it is only present in the emended form *ei(n)gis* (earlier *engis*). Other sound changes initiated in the fourteenth century which are *not* present in this text include the emergence of the epenthetic *-ur* ending in the nominative masculine singular and the lenition of *-t* to *-ð* or *-k* to *-g*.

Vocabulary

Though a brief text in its surviving form, the St Nicholas fragment exhibits a colourful range of terminology pertaining to trade and currency. This is not surprising, as the fragment is chiefly concerned with money flowing through – and principally out of – the hands of the Christian trader. Nevertheless, the variety of terms presents certain critical challenges: how should we understand these words, and how ought they to be translated?

62 Jónas Kristjánsson, *Skrá um íslenzk handrit í Nóregi*, 28.

63 See Haraldur Bernharðsson, *Icelandic: A Historical Linguistic Companion*, 393-396 and the references there.

64 See Stefán Karlsson, *Icelandic Language*, 14, and the references there.

The most common mercantile term to occur in the Nicholas fragment is *fé*. This word appears seventeen times across this short text, fifteen times as a simplex and twice as part of a compound. The semantic range of this term is wide. In its broadest sense *fé* refers to all kinds of moveable wealth or property, including livestock (cf. Dutch *vee*). In a narrower sense, *fé* refers to physical money.⁶⁵ Both applications of the term appear in the Nicholas fragment. The defective text opens mid-sentence with the words *at fé* – perhaps once the phrase *auðigr at fé* »wealthy« – and this is directly juxtaposed with the Christian man having *hvessvetna gnótt* »plenty of everything«. This instance of *fé* would seem to pertain to the broader meaning of the word as »wealth, property«. Compounds such as *félauss* »destitute« or *féleysi* »poverty« also capture this wider sense.

However, *fé* in the Nicholas fragment appears to apply overwhelmingly to physical money rather than to property in a general sense. This much is revealed by the words with which *fé* is juxtaposed. Upon agreeing his loan of *fé* from the Jew, the Christian agrees to repay every *penningr*. An early loan from Old English or Old Saxon, this word refers to a physical coin or »penny«. ⁶⁶ The implication is that the Jew had lent the Christian merchant an amount of currency rather than goods for trade. In the translation below, *fé* will therefore be rendered as »money« when relating to the deal between the Jewish lender and Christian trader.

The *Íslendingasögur* suggest that the Viking Age and medieval Icelandic economy was principally silver-based. This picture is also corroborated by the archaeological record.⁶⁷ However, the Nicholas fragment makes exclusive mention of gold, or *gull*, as a form of currency: »var síðan (ákveðit) hvé mikit gull inn kristni maðr skyldi gyðinginum gjalda« (»it was then (agreed) how much gold the Christian man would repay to the Jew«). It seems that the author of the fragment is reflecting the *Legenda Aurea* here, rather than basing his account on an Icelandic economic model. This is consistent with depictions of non-Icelandic locales in other saga genres, especially the *fornaldarsögur* and *riddarasögur*, in which gold is the dominant form of currency.

After his initial bankruptcy, and with the help of his lender, the Christian merchant becomes once again »gott til penningar« (»flush with cash«). However, our fragment is concerned not only with the handling of money, but with its acquisition. Three mentions are made of *kaupeyrir*, or »trade goods«. Ultimately from Latin *aureus* »gold coin«, this term evolved to refer to cargo bought and sold for money.⁶⁸ When the Christian man first finds himself destitute, his *kaupeyrir* are considered his *atvinna* or »means of subsistence«. Upon his recovery, we learn that he moves his trade goods on *kaupferðir*, or »trading expeditions«. It is tempting to view this vocabulary of commerce in light of the kind of trade described in the sagas which connected Iceland to the Scandinavian mainland. However, the Christian trader's business is conducted overland rather than by sea. This much is revealed by the fact that he pledges to the Jewish lender to *ríða stórum* »ride widely« in exchange for a further loan. This is consistent with Bergr Sökkason's *Nikuláss saga*, in which the Christian trader plies his trade by land from city to city.

65 Cleasby and Gudbrand Vigfusson, *An Icelandic-English Dictionary*, s.v. »fé«.

66 De Vries, *Wörterbuch*, 424.

67 Gullbekk, Money and its use in the saga society, 182-187.

68 De Vries, *Wörterbuch*, s.v. »eyrir«.

This short fragment is replete with terms relating to trade and exchange, spanning from more abstract ideas of wealth to physical coins and gold, and from moveable wares to trading journeys. It is remarkable in its attempt to present a realistic and decidedly non-Icelandic picture of trade relations in the time of St Nicholas.

The rich commentary on barter and exchange is just one of many avenues for future research which this fragment invites. It would also be fruitful to explore the author's sustained treatment of ideas such as holy pledges and their violability, as well as their intersection with the finer points of lending and collateral.

Translation

<i>Normalised Old Norse</i>	<i>English translation</i>
... At fé ok átti hann brátt hvesvetna gnótt.	... in property, and he soon owned plenty of everything.
En er svá var komit hans máli, at hann þóttist þá eigi meir fjár þurfa at afla, þá fekk hann þat sannreynt sem mælt er, at öngum er allz léð né allz varnat, því at þat var honum veitt at afla fjárins ok verða mikils eigandi, en hins var honum varnat at vel heldist á.	But when the time came that he thought he did not need to earn any more wealth, he received true proof of that which is said, that nobody is bestowed with nor granted everything; since he was allowed to acquire wealth and become the owner of a great deal, yet he was robbed of the ability to keep it.
Af því at þá var svá komit at honum þótti ei(n)gis gæta þurfa, þá lagðist hann í drykjur ok ógá, ok var þat eigi minnr frá hvé skjótt þá eyðist ok ferliga, en þat hvé skjótt ok kænliga hann hafði aflat.	Since it had come so far that he thought he needed to heed nothing, he sank himself into drink and carelessness, and no less quickly and monstrosly was everything reduced to nothing than as quickly and skilfully he had earned it.
Fann hann þá sjálfr svá fremi er hann var alsnauðr vorðinn, ok var engi kaupeyrir eptir, ok mjök þrotin atvinnan, ok hugði hann þá illa meðferðinni þeiri sem vorðit hafði, ok sannaðist þá þat með honum sem mælt er, at eptir koma ósvinnnum ráð í hug.	He discovered this only once he was destitute, and there were no wares left, and his means of sustenance had run out. He thought poorly of how things had been managed, and this affirmed to him that which is said: that good advice comes too late into the foolish one's mind.

<p>Sá hann sér þá⁶⁹ ekki annat fyrir liggja at svá búnu nema vá ok vesöld, ok kvíði hann því mjök, sem eigi var kynligt, þvíat hart er at hyggja til en verra at reyna.</p>	<p>As things stood, he saw nothing lying before him except woe and poverty. For this reason he felt great anxiety – as was not strange – because it is hard to countenance something like this, but even worse to experience it.</p>
<p>Leitaðisk hann um þá á marga vega, hvat fyrir mundi liggja, ok tók hann síðan ráð, at hann fór á fund gyðings eins, þess er var vel-lauðigr at fé, sem þeir váru jafnan gyðingar-nir, hvar landa sem þeir eru, ok bað, at hann mundi lána honum fé nökkut.</p>	<p>He then examined in many respects what options lay before him. He thereupon made a plan to visit a Jew who was immensely rich in property – as Jews always were, whichever land they were in – and he asked that he lend him some money.</p>
<p>En hann sagðisk vera kænnt við kaupeyri at fara ok kvað sér mundu verða mikit til snúðar, ef hann lánaði honum féit, ok kvazk honum einkar vel gjalda mundu.</p>	<p>He [the Christian] claimed that he was an expert in moving trade goods, and said he would make a great profit if he [the Jew] loaned wealth to him, and he [the Christian] said that he [the Jew] would be very well repaid.</p>
<p>En hann svarar gyðingrinn ok kvað ekki svá mikla trúleika vera á milli gyðinga ok kristinna manna, at hann mundi honum fé lána, nema hann fengi honum annathvært veð eða vörzlumann.</p>	<p>The Jew answered him and said that there was not such great faith between Jews and Christians and that he would not loan money to him, unless he should bring him either collateral or a guarantor.</p>
<p>Inn kristni maðr sagði: »ek má þér ekki veð fá, þár er ek em félauss at svá búnu, en vörzlumann mun ek fá þér svá góðan, at víst er, at því munt eigi þíns missa.«</p>	<p>The Christian man said: »I am not able to give you collateral, since I am destitute as matters stand, but I will get you such a good guarantor that you will certainly not be lacking.«</p>
<p>Ok bar svá raun á, at hann sagði sannara, en hann íhugaði. »Hverr er sá« sagði hann gyðingrinn, »er þú býðr fram til vörzlunnar?«</p>	<p>And it so happened that he spoke more truthfully than he realized. »Who is it« said the Jew, »that you offer as guarantor?«</p>

69 Unger gives »þa ser«, reversing the order of these words in the manuscript (p. 46, l. 24). This was likely in error.

<p>»Ek býð fram,« kvað hann, »inn helga Nikulás byskup, at hann skal í vörzlunni við þik.«</p>	<p>»I offer,« he said, »the holy Bishop Nicholas. He shall be your surety.«</p>
<p>Gyðingrinn sagði: »heyrð hefi ek hans getit, ok þó at við hafim eigi samtrúaðir verit, þá ifa ek hann eigi góðan mann vera, ok ek hefi heyrðar margar ok stórar hans jarteinir sagðar með sannindum.</p>	<p>The Jew said: »I have heard of him, and although we [i.e. Jews] may not have the same belief as him, I do not doubt that he is a righteous man. I have heard many great miracles of his truthfully reported.</p>
<p>Nú mun ek honum játa til vörzlunnar ok trúa því fastliga, at ek mun eigi míns missa, ef því sver mér þat undir hans trúnaði.«</p>	<p>Now I will agree to accept him as surety and firmly trust that I will not lose out, if you swear it to me under his good faith.«</p>
<p>Þeir keyptu nú saman, svá at þeir gengu til kirkju ok til altaris ins helga Nikulás, ok lagði inn kristni maðr hendr sínar á altarit ok mælti svá: »Þetta altari legg ek þér í veð í okkrum kaupum, en ek heit þér því undir trúnað ins helga Nikulás, at ek skal þér hvern penning gjalda eptir sannindum, þann sem þú átt at mér.«</p>	<p>They struck a bargain such that they went to church and to the altar of holy Nicholas, and the Christian man lay his hands upon the altar and spoke thus: »I pledge this altar to you in surety of our deal, and I promise you under the faith of holy Nicholas that I shall in good faith repay you every penny that you are owed from me.«</p>
<p>Ok er þeir höfðu þetta at sýst, þá fóru þeir heim til húsa gyðingsins, ok seldi hann honum slíkt fé at láni, sem hann beiddisk.</p>	<p>And when they had done that, then they went home to the Jew's lodgings, and he [the Jew] loaned him [the Christian] such money as he requested.</p>
<p>Var síðan (ákveðit), hvé mikit gull inn kristni maðr skyldi gyðinginum gjalda, ok skildusk þeir nú vinir, ok mælti hvárr vel fyrir öðrum. Ok fór inn kristni maðr heim til herbergis síns ok undi vel sínum lut.</p>	<p>It was then (agreed) how much gold the Christian man would repay to the Jew. They then parted as friends, and each wished the other well. And the Christian man went home to his lodgings and was well satisfied with his lot.</p>

<p>En er sá inn kristni maðr hafði fengit sér nökkurn kaupeyri, þótt heldr væri at láni en at eiginorði þá fyst, þá tekr hann ina sömu iðn, sem hafði vel hagnat fyrr, ok gafsk honum sem hverjum annarra, er á hittir á sín forlög, at þá hagnar.</p>	<p>When the Christian man had got himself some trade goods – though at first on loan rather than of his own possession – he took up the same trade which has profited him well before. It turned out for him, as for anyone else who follows their destiny, that it went well.</p>
<p>Réðst hann nú í kaupferðir, ok varð enn gott til penningar, ok tók skjótara vöxt féin en forsjá eða ráðvendi, því at þat þróaðisk seint með honum hvárrtveggja. Hafði hann ok í helzta lagi raun á því, sem dróttinn segir í guðspjallinu, at manngi má tveim dróttnum senn þjóna, ok verðr hann at hafna öðrum, ef hann sæmir við annan.</p>	<p>Then he set off on trade journeys, and he became rich once again, and he sooner chose the increase of wealth than prudence or honesty, since both of those grew slowly in him. He had the utmost proof of that which the Lord says in the Gospel: that no man can serve two masters, and that he abandons one if he honours the other.</p>
<p>Nú fór honum ok svá, at it fyrra sinn er hann fekk féit, þá eyddi hann því öllu í lífinu ...⁷⁰</p>	<p>Things went the same way as when he first came into money: that he squandered all of it on the flesh ...</p>
<p>... Borgunum um Abrahams daga Sodoma ok Gomorra ok morgum um Moyses daga, ok opt hafa síðan margir týnzt um þá ina sömu sök.</p>	<p>... the cities in the days of Abraham, Sodom and Gomorra, and many in the days of Moses and since then many have often perished of the same fault.</p>
<p>Nú þjónaði hann þá it fyrra sinnit, er hann fekk féit, eptir fyst sinni rangri, enn eigi lét hann hana þá dróttna sér. En dróttinn béið hann þolinmóðliga ok lét hann eitt í móti koma, sem jafnan er vant eptir vanstillit at koma, féleysi ok fátæki.</p>	<p>Now, he served them at first, once he acquired wealth following his first mistake, yet he did not let her reign over him.⁷¹ The Lord suffered him patiently and let that one thing befall him which always customarily comes after intemperance – destitution and poverty.</p>

70 The lower section of this folio has been trimmed, resulting in the loss of several lines of text. Unger ends his transcription at »þvi ollo«, but this is not the final word in the line. It is possible to make out »ilifinu« (í lífinu), which we have chosen to include here.

71 It is unclear to whom this sentence refers, but they are probably introduced in the text on the previous folio which is now lost. From the surviving context this appears to be a personification (or »master«) of greed, whom the Christian man at first manages to resist.

En it síðarra sinnit, er hann varð mikill fjarins eigandi, þá fór hann ekki þvera fæti at, ok þjónaði hann þá þeim, er drótinn kallar mammona í guðspjallinu, er ágirni djöfuls kallast; ok er þat sannligt, at ágirni merkir helvíti, því svá segir salomon inn spaki, at þat verður aldri fyrllt né augu ágjarns manns.

But at a later time, when he became the owner of great wealth, he did not drag his feet: he served the one whom the Lord calls Mammon in the Gospel, who is called »the devil's greed«; and it is true that greed spells hell, for so says Solomon the Wise, that it [greed] will never be satisfied, nor the gaze of greedy men.

En þenna glep lét sjá inn kristni maðr svá dróttna, sem heyra má í þeiri frasógn, er eptir ferr.

But the Christian man allowed this beguilement to dominate him, as one can hear in the tale which follows.

Nú kom at þeiri tíð, er gyðingrinn átti gjaldit mælt af inum kristna manni, ok kom þá at vitja gjaldsins ok heimti þá féit at honum.

The time then came when the Jew was to be repaid by the Christian. He went to fetch his repayment and demanded the money from him.

En hann svarar vel ok bað enn nokkura fresta um gjaldit ok kvazk síðarr mundi betr viðlatinn um gjöldin. Ok lét hann enn eptir því vera gyðingrinn, sem hann beiddi.

But he [the Christian] answered well and he asked for yet another delay concerning the payment. He claimed he would be better prepared for the repayment at a later time. And the Jew allowed things to be as he [the Christian] asked.

Ok enn í annat sinn bað hann fresta á ok kallaði sér þá mikli meira skipta, kvað þá stórum ríða mundi, ok var svá ok enn sjálfum honum til ófarnaðar ok aldrtila.

And yet again he [the Christian] asked him for a delay and he [the Christian] claimed that he would be much more involved in it this time. He said that he would travel widely [on trade journeys]. It was so, and yet again he was faced with misfortune and death.

Gyðingrinn lét en leiðast eptir hans vilja ok var þó nökkuru tregari til.

The Jew again let things go on according to his [the Christian's] will, but was nevertheless somewhat more reluctant.

En er þau stef váru liðin, er gjöldin vöru mælt, þá heimti gyðingrinn féit ok látizk þá hafa vilja. En inn kristni maðr brást ókunnr þá við um skyldina ok kallaðisk goldit hafa eptir maldogum, þá er hann hafði heimt at honum.

When the time that the payment was due had passed the Jew demanded the money and intimated that he wanted to have it. But the Christian man acted as though he was unaware of the debt and claimed that he had repaid it correctly before, when he [the Jew] had demanded it from him.

En gyðingrinn sagði, sem satt var, at hann hafði (engi) penning af goldit, ok hann hafði ávalt fresta á beitt um gjöldin þangat til, sem þá var komit.

But the Jew said, as was true, that he had (not) repaid a penny of it, and that he [the Christian] had always sought a delay on repayments whenever the time came.

Ok er þeir höfðu nökkura stund þrætt um þetta mál, en hvárgi hafði vitni til at sanna sitt mál, kæra nú þetta mál síðan fyrir fleirum mönnum, ok var borit fyrir ina vitrustu menn í borginni ok þá, er forstjórar váru ok dómárar.

When they had argued about this matter for some time, and neither had evidence to prove their case, they then argued that case before many people. It was brought before some of the wisest men in the city and those who were leaders and judges.

Segir gyðingrinn nú sína sögu sanna ok hvé vel hann hafði í mót raði(t) við inn kristna mann, lánat honum féit fyst, sem hann beiddi, en unnt honum ávalt síðan fresta um gjöldin þangat til, (er) hann hafði beðit, ok þóttisk hann af því ómakligr at missa.

The Jew then told his own true story and how well he had met the demands of the Christian man, lent him money in the first instance, as he requested, and always granted him a delay on the repayment for as long as he wished, and he [the Jew] thought that he did not deserve to lose out as a result.

Inn kristni maðr sagði ok sína sögu, þá sem hann hafði fyrir sér fest, ok kallaðisk goldit hafa hvern penning ok sagði þat at vitrir menn mætti þat at líkindum ráða, at hann mundi eigi allt saman hafa vilja teiti fjár ok mikla skuld.

The Christian man told his own story which he had adopted: he claimed to have repaid every penny and said that wise men would likely be able to guess that he would not have wanted the joy of wealth and great debt at once.

Ok er þeir höfðu á þá leið tjáð tveggja vegna, sem nú var frá sagt, þá sýndisk þat dómundum, at inn kristni maðr sannaði þat með eiðum ok vitnum, at hann hefði allt fé af hendi goldit, þat sem gyðingrinn átti at honum.

And when both sides had given evidence as just described, then it seemed to the judges that the Christian man ought to prove with oaths and witnesses that he had from his own hand repaid all the money which the Jew demanded of him.

Hann gyðingrinn mælti við mennina:

»Báðir munu(m) við, hvat við höfum við mælsk, þótt við séum nú eigi baðir réttorðir í frasögninni; þú lagðir mér í veð altari ins helga nikuláss byskups ok hézt yfir því altari undir hans trúnaðr at gjalda mér hvern penning míns fjár, svá at mér líkaði vel, en ek trúi honum svá fastliga Nikulás, at hann mun mik eigi svikja láta í þessu máli, er ek hefi allan trúnað við hann lagðan.

He, the Jew, spoke to the men:

»We must both do what we spoke of, even though both of our stories cannot be true. You pledged to me the altar of the holy bishop Nicholas in surety, and you promised above that altar under his trust to repay to me every penny of my money, so that it please me well. But I firmly believe that Nicholas would not let me be cheated in this dealing when I have placed all trust in him.

»Ef þu sverr eið yfir þessu sömu altari undir trúnaðr ins helga Nikuláss, ok sannar svá þína sögu, at þu hefir mér allt goldit fé, þat sem ek hefi at þér, þá skal ek at síðr heimta fé at þér þaðan ífrá, at ek skal eigi illa kunna eða við una, ef hann mun svá vera láta. En eigi trúi ek fyrr en fram kemr, at svá verði.«

»If you swear an oath over this same altar under the trust of the holy Nicholas, and thereby prove your account – that you have repaid me all the money which I lent you – then I will demand no money from you henceforth, so that I will not issue blame or be discontent if he [Nicholas] will let it to be so. But I will not believe it until it happens.«

Slíkt er aumligt at heyra ok hörmuligr, at gyðingrinn umskurðr skyldi sýna trúleik ok réttlæti, en kristinn maðr svik ok vélar, ok kom þat enn hvarum eptir, sem til verkaði ...

It is such a pitiful and distressing thing to hear that the circumcised Jew should show faithfulness and justice, and the Christian man treachery and cunning. And yet both got what they deserved ...⁷²

72 The final folio of this text has been trimmed. Of the last surviving line, it is only possible to make out »sem til verkadi«, as Unger transcribes. The last sentence of the surviving text suggests that the Jew's faith in Nicholas will be rewarded, and that the Christian's dishonesty will be punished. The ending of this text does not survive, although it is possible that the lost ending followed a similar series of events to other medieval versions of this story, as outlined above, on pp. 222.

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