

EARLDOM AND KINGDOM: ORKNEY IN THE REALM OF NORWAY 1195-1379¹

Steinar Imsen

The years 1195 and 1379 are regarded as milestones in the political history of Orkney. Historians seem to agree that Earl Harold Maddadson's surrender to King Sverre in 1195 was the starting point for Orkney's incorporation into the Norwegian state.² The ambition of the earls of Orkney to build a Norse principality controlling Northern Scotland and parts of the Irish Sea was crushed by the end of the 12th century, when the old earldom was squeezed between the expanding kingdoms of Scotland and Norway.

Just as the year 1195 marks the subordination of the Northern Isles to the realm of Norway, the installation of Henry Sinclair as earl of Orkney in 1379, at least in Norwegian historiography, signals the coming transition of Orkney from Norwegian to Scottish sovereignty in 1468. The Sinclair earls were the last Norwegian earls, though of Scottish descent, and they contributed heavily to turning Orkney away from Scandinavia and anchoring the islands in the politics of northern Scotland. Even before their time, however, segments of Orcadian society were being scotticised, especially the church and the local clergy. In 1369 relations between the Norwegian king and the bishop of Orkney reached a critical juncture. A settlement that year stated that the Norwegian king thereafter in all matters of importance to the Orcadians should act in accordance with 'counsel from the bishop and the richest men of Orkney and Shetland'. Thus relations between the Norwegian king and Orkney had developed a new dimension since 1195: the richest or best men of the country, which should be understood as representatives of the Orcadian community (in contemporary Latin 'communitas Orcadensis'). When analysing the status of Orkney within the realm of Norway we therefore have to take community as well as earldom into consideration.

However, the starting point for such an analysis must be the relationship between the earls of Orkney and the kings of Norway. The question is how the earldom of Orkney is to be understood in a political, institutional, and legal sense after 1195, and to what degree the Norwegian 'state-formation process' in

1. This is a revised version of a paper published in 2000 in *Historisk Tidsskrift*, 79.

2. Barbara Crawford says that 'the events of 1195 went far towards incorporating the Earldom of Orkney into the administrative system of Norway' (Crawford, B. E., 1971: 'The Earls of Orkney and Caithness and their relations with Scotland and Norway'. Unpublished Ph.D. thesis, University of St Andrews, 144). I am very grateful to Barbara Crawford for providing me with a copy of her thesis.

the central Middle Ages affected Orkney. This chapter will be divided into two parts. In the first part I shall discuss the legal basis of dominion in and over Orkney, which has two aspects, one internal and the other external.³ The internal aspect, which will be dealt with first, and which I regard as crucial, is about the nexus between earl and king within the framework of a Norwegian political organisation. The external aspect concerns dominion over the archipelago, and the relations between Norway and other ‘states’, to use a somewhat anachronistic concept. In the second part I shall discuss aspects of the ‘state-building process’ in Orkney — provincial administration, finances and material resources — and finally the organisation of the emergent provincial commune, after 1300.

Legal basis of dominion: internal

Sverre’s saga tells us that after the defeat of the so-called ‘øyskjegger’ — the men from Orkney and Shetland who had tried to depose king Sverre, in the battle of Florvåg outside Bergen — Sverre planned a punitive expedition. Hearing about this, Earl Harold Maddadson decided to go to see the king. Together with the bishop and the best men of Orkney, Harold arrived in Bergen in the summer of 1195, where King Sverre had assembled all the bishops and magnates of the realm. There king and earl sued each other, and court was summoned. All the royal hird, i.e. the body of royal liegemen, were present. As Harold failed to defend himself against accusations of treason, he surrendered unconditionally. He begged the king for peace and mercy, which Sverre hesitantly granted. Then Sverre wrote down the settlement: he registered all land and property, which had been confiscated from the Orcadians and Shetlanders who had been killed at Florvåg. Shetland, which had been part of the earldom of Orkney, was put directly under royal rule, with all taxes (‘skats’) and dues. Harold was reinstalled as earl over Orkney, but from now on, the settlement prescribed, he had to govern Orkney on behalf of the king. Moreover, he was obliged to pay half of all penal fines to the king, and he had to accept the presence of royal bailiffs (‘sysselmenn’).⁴

-
3. I prefer dominion (Lat. *dominium*) to the modern concept sovereignty; partly because *dominium* was known and used by contemporary scholars, and partly because it had a meaning more appropriate for our task: namely, the power or right of governing and controlling, inclusive of the complete power to dispose of property at will (*Lexikon des Mittelalters* III, col. 1223, München and Zürich 1995).
 4. Hødnebo, Finn and Magerøy, Hallvard, 1979: *Norges Kongesagaer*, III. Oslo, 184ff. *Orkneyinga saga* (OS) tells us that in the 1195 settlement ‘Jarl gaf sik í vald Sverris konungs ok lét hann einn skera ok skapa í milli þeira. Þá gerði Sverrir konungr Hjaltland allt af Haraldí jarli með skottum ok skyldum, ok hafa Orkneyjarlar ekki þat haft síðan’ (Guðmundsson, Finnboi (ed.), 1965: *Orkneyinga saga. Íslensk fornrit*, XXXIV. Reykjavík, 297).

The 1195 settlement became the legal basis for the relations between king and earl for centuries to come. It was renewed under Harold's sons John and David in 1210, and again in 1267. Chapter 15 in Magnus the Lawmender's hird-code (the Hirdskrå), which is about earls in the tributary provinces (skatland), states that the king when appointing earls in Orkney should observe: '... the conditions which appear from the letter of conciliation between king Sverre and earl Harold, together with the additional provisions in the agreement between king Magnus Håkonsson and earl Magnus Gilbertson, who were reconciled in Bergen in the year 1267 after the birth of Jesus Christ'. The chapter ends by referring to the following two chapters, nos. 16 and 17, which deal with earls in general, their appointment and their honours and privileges. It is evident that these general provisions and principles were meant for all earls: mainland earls as well as skatland earls. It is a pity that the letter of settlement from 1195, which still existed in 1267, has been lost. We are almost totally dependent upon the account in Sverre's saga, which poses more questions than it can answer.

Even though the 1195 arrangement is referred to as a 'sætt'⁵, which means reconciliation or agreement, it was in fact not so. The court that was assembled at the Christchurch churchyard in Bergen was not an ordinary 'þing', but rather a 'hirðstefna', i.e. an assembly of liegemen. As far I can see no ordinary legal actions were taken against Earl Harold. True enough, Sverre's saga relates that both Sverre and Harold sued each other, but nobody was appointed to negotiate or decide their cases. King Sverre was both party and judge. Harold's unconditional surrender was an unequivocal acceptance of royal superiority. A similar unconditional surrender took place in 1210. After 1195 the earls of Orkney were degraded from being dependent princes paying a tribute and some lip service to their Norwegian suzerain, and became royal liegemen and governors.

It is also fairly certain that King Sverre in 1195 confiscated all land and property ('iarþir oc eignir') belonging to those Orcadians and Shetlanders who had died at Florvåg. Barbara Crawford is probably right when she maintains that those who survived lost their properties as well.⁶ We can assume that much, probably most, of the so-called kingsland in Shetland and Orkney in the Middle Ages originates from the 1195 settlement.⁷ Finally we can be sure that Shetland, with all its dues and taxes, was handed over to the king, and that it did not afterwards — at least until the 15th century — form part of the earldom of Orkney.⁸

5. Indrebø, G., 1920: *Sverris saga etter Cod. A.M. 327*. Kristiania, 132.

6. *Op. cit.*, 1971: 148, note 7.

7. *Ibid.*, 150, note 1. In the case of Shetland this original kingsland must have been much larger than the land that according to the rentals belonged to this category c.1500.

8. *Ibid.*, 155, note 1. Cf. Crawford, B., 1967-8: 'The Earldom of Orkney and Lordship of Shetland. A Reinterpretation of their Pledging to Scotland 1468-70'. In: *Saga-Book XVII*: 2-3, London, 157.

Legal basis of dominion: external

Since neither Sverre's saga nor *Orkneyinga Saga* gives a satisfactory account of the 1195 settlement, we have to rely on later sources. In our case this means the general provisions about earls in the hird-code from the 1270s, and some 14th-century charters. Chapters 16 and 17 in the Hirdskrá have so far not been considered in connection with the earls of Orkney, though by definition they are highly relevant. We do not know the exact age of these provisions. The Hirdskrá is a compilation of old and new hird custom and byelaws. Some of them may date back to king Sverre's reign. Most probably the regulations concerning earls and the other dignitaries of the hird — the so-called hirdleaders (hirðstjórnar) — are from the end of the 12th or the beginning of the 13th centuries.

From 1195 onwards the Orkney earls belonged to the royal hird. According to the Hirdskrá they were next in rank to dukes. Any idea of independent earl-power or earl-authority is totally absent from the hird-code. All political power in the realm, which of course was limited by law, is said to rest with the king, who was expected to administer it through liegemen and officers. This point is stressed in the investiture ceremony following the king's appointment of the earl. The investiture consists of two elements: sword and standard. The king presents the new earl with a sword:

‘to make it publicly known that he (the earl) holds this earldom from the kingdom and is his (the king's) swordkeeper, to uphold justice, to punish injustice, to support and aid and loyal council for the king, to the honour of the realm, and to the protection and dignity (of the kingdom), by all his means and men.’

And by presenting the new earl with a standard:

‘the king obliges him and everybody who shall show him obedience, and whom the king places under his rule, on all matters which are being publicly known by the earls reception of sword, and in everything support his earldom by their best means and proper obedience.’

After being invested with sword and standard the earl had to swear the following oath:

‘As I lay my hand on these holy reliquaries I place it under God that I will be to my lord N, king of Norway, obedient and faithful, secretly as well as publicly. The parts of his country that he turns over to me will I faithfully keep in correspondence with the conditions he makes. All obedience, which a good duke, or earl, owes a good king, will I render him. I will also observe all the oaths he has sworn to the people of the land with my best wits that my God has given me. God's mercy upon me if I speak truly, his wrath if I am lying.’ (Hirdskrá, chapter 7)

In other words, the king entrusted to the earl a time-limited and legally regulated territorial dominion. The subjects, whom the king placed under the earl's rule, were obliged to do the earl the obedience due to law. Two

main responsibilities, which also correspond with the king's public functions, can be deduced from this: defence and the maintenance of justice. On these conditions an earl could execute full royal authority within the earldom, which he held as a royal fief. There can be little doubt that the Orkney earls, as rulers of the islands according to law, only exerted delegated authority and that their earldom was regarded as a fief (lén).

Chapter 17 of the Hirdskrá makes concrete all duties and privileges being bestowed upon the earl by the royal appointment. Firstly, it is asserted that the earl should have a right to govern freely the part of the country which the king assigns to him. He can collect all penal fines, but only through law and with mercy. This may be understood as a delegation of the king's prosecuting authority and executive power. Moreover, the earl obtained the right to depose of all income from royal land and property, though he did not get any ownership of it. Thus he could not alienate royal property by selling it or giving it away. Chapter 17 does not mention other royal incomes, such as taxes and dues, so probably they were reserved for the king himself. The earl could also have his own hird, i.e. armed retainers, but the king alone could decide the number of hirdmen. It was regarded as treason if the earl enlarged his hird on his own. It was likewise an act of treason if the earl made settlements with foreign powers or made alliances with the king's enemies. If necessary, earl and king should render each other mutual military support. When the earl's men went to war together with the king's men they should all be regarded as members of the same warband, and the earl's men should enjoy the same duties and privileges as the king's. In general the king and his men should always be first, on land as well as at sea. And if an earl was suspected of treason he, like all other members of the royal hird, could claim to have his case treated by peers (*judicium parium*), unless the treason was notorious, or he had failed to observe the legal procedures in such cases, as for instance giving security by hostages.

In principle there was no difference between the earls of Orkney and other earls with respect to their relationship to the king, and the authority they exerted on his behalf. However, there was a difference due to the written settlements conveyed in the royal diktat of 1195, and the agreement of 1267. And of course there was a difference based on history, which made the Orkney earls a category on their own. This was probably the reason why Håkon V in 1308 made an exception for the earls of Orkney, and for royal princes, when he abolished the dignity of earl.⁹ Also, the families of the Orkney earls claimed a hereditary right to the earldom. After 1195 this right of inheritance was understood as a title to become earl, though not automatically or unconditionally. It was royal appointment alone which made the pretender an earl and bestowed upon him a right to govern. Certainly this right could be taken back if the earl failed to fulfil his

9. Bagge, Sverre *et al.* (eds), 1973: *Norske middelalderdokumenter (NMD)*. Bergen-Oslo-Tromsø, 248.

conditions: this is evident from the written obligation given by Henry Sinclair at his installation in 1379.

We must therefore take it for granted that Harold Maddadson in 1195, in return for his unconditional surrender, was granted a temporary right of disposal to the land belonging to the earldom, probably a share of the taxes as well, and (as related in Sverre's saga) half of the punitive fines. However, Harold was not sole ruler in the islands. He had to share responsibility with another royal officer, a so-called 'sysselman'. We should interpret Harold's murder of King Sverre's sysselman, Arne Lørja, after 1202 as a desperate attempt not only to get rid of a troublesome competitor for power at home, but also to regain independence. Barbara Crawford, like P. A. Munch, has interpreted the 1267 settlement as part of a similar political process to that of 1195. In 1267 it was King Magnus who wanted to punish a vassal who had not fulfilled his duties. Maybe they are right, though I doubt it. The sources do not mention any punitive action taken by the king against a treacherous vassal after the campaign in 1263. There is no mention at all of animosity or discord between the king and his earl in 1267. The new settlement, therefore, is likely to be understood as a consequence of the Treaty of Perth in 1266. After this clarification of territorial sovereignty between Scotland and Norway it was time to scrutinise the internal relationship between kingdom and earldom, and eventually revise former settlements. And, after the cession of the Hebrides and Man, it must have been extraordinarily important for the Norwegian king to secure his grip over Orkney.

As we do not know of confirmations and renewals of the 1195 settlement other than those in 1210 and 1267, we must conclude that the 1267 agreement, together with the provisions in the Hirdskrå, constituted the legal basis for the Orkney earls during the 14th century. The conditions, which Henry Sinclair had to accept by his appointment in 1379, are thus in accordance with the provisions in the hird-code. In the written obligation he had to give by his appointment, dated 2 August that year, we find that Håkon VI 'by his royal grace had made him governor over the king's land Orkney and with title of earl over the said land and islands.'¹⁰ On the same occasion Henry was made royal liegeman, and he swore an oath of fealty to king Håkon and his successors. In return for his appointment and royal grants Henry took an obligation to serve the king with a hundred armed men in war for three months, within the country as well as in foreign parts, and in defensive as well as offensive warfare. Moreover, the earl was made especially responsible for the defence of Orkney and Shetland, and he was forbidden to build any castles or fortifications without royal consent. Henry

10. 'nos de sui gracia terris suis et insulis Orhadensibus prefecerat ac in statum comitis super predictas terras et insulas sublimerat.' *Diplomatarium Norvegicum* (DN) II: 459; cf. *Record of the Earldom of Orkney* (REO) no. xi; cf. DN II: 460, *Regesta Norvegica* (RN), VII: 820, 874.

was also forbidden to pledge or in any way alienate any of the lands or islands belonging to the earldom without consent from the king or the king's successors. And after the death of the earl, the installation stipulated the earldom with all its lands and islands would revert to the king. However, one of the sons of the earl could ask the king's permission to succeed his father. All this confirms our assumption that the hereditary rights of the Orkney earls did not imply automatic or unconditional succession to the earldom for members of the dynasty. In addition to military service Henry Sinclair was obliged to pay once and for all a fee of one thousand English nobles to the king for his appointment, and guarantee that everybody else who might have a hereditary claim on the earldom would renounce their rights, so that the king and the kingdom would not suffer any disadvantage. If the conditions accepted for appointment were not being fulfilled, the earl, or his successors, should immediately depart from the earldom.

What happened in 1379 cannot be characterised as steps towards a restoration of the 'old' earldom. The conditions accepted by Henry Sinclair were based upon law and custom since 1195. They were also in accordance with the new system of local government in Norway, called 'lenvesen' by Scandinavian historians, which was introduced after 1350, and which was to become the core of the political system of the Kalmarunion in the 15th century. Henry Sinclair's position in Orkney can be characterised as that of a royal lenslord, though with the honourable title of earl. From now on he would keep Orkney for life in return for military service and a fee. However, it was stressed that the earldom, understood both as territory and dominion, belonged to the king and the kingdom alone. The difference between the earl of Orkney and other royal officers, as for instance the sysselmen or their late medieval successors the lenslords, was in degree rather than essence. This can be demonstrated by comparing Henry's letter of obligation with documents from the appointment of Alexander le Ard as 'sysselman and governor' ('verum et potentem procuratorem capitaneum et custodum') of Orkney in 1375. Alexander was the oldest grandchild of the former Earl Malise (c.1336-c.1353). He was Henry's cousin, and Alexander himself had put forward a claim to be appointed earl. The most significant differences between the conditions which Henry and Alexander had to accept were: firstly that Alexander should govern for a said period of one year (Henry got his office for his lifetime); and secondly that Alexander was only granted the half of the earldom's income. The rest was to be shipped to Bergen. We must assume that Alexander's accounts were to be controlled by the royal officer at Bergenhus castle.¹¹

We have two interesting royal charters concerning Alexander's appointment. The one in Latin is Alexander's patent; the other in Norwegian is addressed

11. *RN* VII: 494; cf. 495.

to king Håkon's Orcadian subjects.¹² It gives supplementary information to the otherwise brief and concise letter of appointment. The king says that he has 'appointed and transferred (skipat ok j hender fenget) to the said Alexander our land including you (land wart her med yder) unlimitedly (j minna lut)'. And he orders the Orcadians to show obedience to Alexander and his ombudsmen in everything that is due to the monarchy, in accordance with law and ancient custom. Violation of this command would be regarded as treason. This statement is in complete harmony with chapter 16 of the Hirdskrå. In case of unrest or war the king orders the people (allmuen) to remain obedient. The bishop and 'all the other king's men' (ollum adrom warom mannum) are asked to support Alexander. This special address to the bishop and the royal liegemen is due to the agreement already mentioned from 1369. There is also a very peculiar clause in the disposition-clause of the charter, ordering Alexander and his men to maintain law and order (tala lagh ok rettynde til hwers manz). It is peculiar because the letter is addressed to the people of Orkney. Thus the people of Orkney, who by contemporary Orcadians as well as Norwegian authorities were understood to be *communitas Orcadensis*,¹³ were asked to see to it that the law was not violated, and that the judicial system was not neglected. Moreover the king underlines that dominion in the islands belongs to him and the royal house only, and that it is undivided. All income derived from his dominium is property of the Crown. It is interesting to observe that the king in 1375 still had his own (liege) men in the islands. Neither they nor the lawman were subordinated to Alexander, but were asked to support him. The letter also leaves us with the impression that the lawman, who was a royal judge, had a special relationship with the community of Orkney. Alexander's duty to maintain law and order, which corresponds to the regulations in the Hirdskrå, was probably restricted to prosecuting authority and police. The authority to judge certainly rested with the lawman and the lay judges in the court jointly.

To sum up: the documents from the 1370s confirm and complement laws and settlements from the 13th century. The Norwegian kings had undivided dominion over Orkney, which was an earldom. Members of the old earldom family had an inherited claim to be appointed earls. However there was no automatic hereditary succession. The king alone could make earls, and he could freely dictate the conditions which an earl had to accept in return for appointment. The authority of the earl was a delegated authority, and had to be exerted within the framework of Norwegian law. Abroad as well, Orkney was looked upon as part of the Norwegian monarchy. Since 1152 ecclesiastical authorities had accepted Orkney as part of the province of Nidaros (Trondheim), and in general there seems to have been an understanding in Europe of some kind of

12. *DN* II: 437; cf. *REO*, IX; *DN*, II: 438.

13. *DN* II: 276.

Norwegian supremacy over the archipelagos. But prior to 1200 there did not exist a clear concept of territorial sovereignty. Such a concept had to wait until the latter part of the 13th century, and it was developed as a result of state-formation processes during that century. In the Treaty of Perth, however, territorial sovereignty was the central issue. Thus the treaty aimed at drawing borders, dividing land and people and defining dominion. In the treaty, the kingdom of Scotland recognised unlimited and undivided Norwegian sovereignty over Orkney and Shetland, which was defined as undivided royal dominion over people, land, service and economic resources.¹⁴ There is no mention of an earl in the treaty. The position of the Orkney earls was an internal Norwegian matter.¹⁵

Aspects of the ‘state-building process’ in Orkney

As already hinted, the problem of Orkney’s position within the realm of Norway was not only a question about the relations between earls and kings. Documents from the late 13th century and the 14th and 15th centuries often refer to the laws of the land, to the people of Orkney as subjects under the Norwegian crown, to their duties and rights, and to their own community (in Latin called ‘*communitas Orcadensis*’), to the limits and legal framework of royal power, and to public functions and institutions. The incorporation of Orkney into the kingdom of Norway after 1195 meant that the feudal nexus between the king and his earl was supplemented with impersonal, legal, and as time went on even bureaucratic ties between Orcadian society and the lord of the land. A very important step towards political integration was the introduction of Norwegian law, which at the latest might have happened during the reign of Magnus the Lawmender. Magnus’s Landlaw was in force until 1611, and some paragraphs of this law-code are in fact still valid. The Landlaw was a common law for the whole realm, and as a result a social order of Norwegian type was developed not only in Orkney but in all the skatlands, with a lawthing (*lagting*), a lawman (*lagman*), and

14. ‘... cum dominiis, homagiis, et redditibus, serviciis et omnibus juribus et pertinentiis suis infra easdem continguis dominio suo.’ *NMD* 112; cf. N. Bjørgo *et al.* (eds), 1995: *Selvstendighet og union, Norsk utenrikspolitisk historie*. Oslo, 80.

15. Cf. the marriage-treaty of 1468 between James III and Margaret, daughter of Christian I, which states that the islands are being pawned ‘with all and sundry rights, services and their just pertinents lawfully belonging to us and our predecessors, the kings of Norway, or which by any manner or way may be held to belong thereto: to be had and held all the whole our lands in the Islands of Orkney foresaid, together with all and sundry customs, profits, liberties, commodities and other their just whatsoever, as well named as not named, belonging to the foresaid land of Orkney, or which may justly be held to belong thereto by any manner of way in time coming . . .’ *REO*, 56; cf. *Norges gamle Love (NgL)*, 2nd ser. vol. II, 115, 116, and addenda no. 2.

lawrightmen (lagrettemen), and with royal liegemen and royal officers.

Norwegian historians tend to teach about things which they regard as peculiar to Norwegian society, at all periods in the history of the country, and consequently they also tend either to exaggerate these peculiarities or to overlook things that were in harmony with a common 'European standard'. One of their doctrines is that feudal institutions played a very modest role in Norwegian society, which is only partly right. Even though Norwegian society was not permeated by feudal institutions, political structures at 'state level' were absolutely feudal. Only after 1250 did bureaucracy and non-personal legal arrangements become a challenge and gradually supplementary to vassalage and 'hird' rule. As I have already said, the hird was the body of the royal liegemen. It was organised as a brotherhood or guild with the king as its patron, and it formed the basis for royal government, local as well as central. All royal offices and positions were reserved for the king's liegemen, who made up a political network, which covered all the country. The tributary provinces were anchored in this system as well.

The earls of Orkney too had hirdmen and liegemen. The earl's hird and the earl's men are often mentioned in *Orkneyinga Saga*. I suspect that the author of the saga used Håkon Håkonsson's hird as a model when picturing the Orcadian hird-system of earlier times.¹⁶ The local aristocracy in Orkney was called 'gødinger'. *Orkneyinga Saga* often refers to the earls' 'gødinger',¹⁷ through whom the earls ruled the earldom, and who after 1195 still helped the earls to rule the islands on behalf of the king. Thus, the old earldom had a feudal political system closely related to that of Norway, which survived the first generations after 1195.

We do not know for certain how long this system of local aristocracy, connected to the earls by vassalage, existed. The 'gøding system' was obviously still an important factor in Orcadian society in the 1230s. At the same time we can observe that the king was establishing his own network of vassals in Orkney. The royal sysselman, Hanev Unge, was surrounded by a group of royal 'hirdmen', who stirred up trouble with the earl and his men. Hanev himself, being a royal officer and vassal, belonged to the local aristocracy, who by tradition had been recruited to the earl's hird.¹⁸ During Håkon Håkonson's reign (1217-63) royal service and membership of the royal hird became attractive to the local élite. There is reason to believe that the connection to the king was more important than the traditional ties to the earl among the best men of Orkney. Unfortunately we do not know much about the development of the Orcadian élite in the 13th century. According to Storer Clouston all so-called 'goodmen' of

16. E.g. *OS*, chapters lxvi, lxviii, xciv.

17. E.g. *OS*, 119-22.

18. Crawford, *op. cit.* 1971: 158, note 3.

the country, who are called 'hirdmen' as well, had become the king's men after 1300,¹⁹ which means that by the end of the central Middle Ages important socio-political ties had been developed between the Norwegian monarchy and Orcadian society. The traditional nexus between the earls and the Orcadians was probably weakened throughout the 13th century, partly as a consequence of the earls spending most of their time on the Scottish mainland after 1231. Also, after 1300 the islands were without earls for longer periods or had only minor earls. During these periods the king ruled directly through officers, who were probably assisted by local hirdmen like Thorvald Thoresson in Shetland.²⁰

What we can observe in Orkney is characteristic of what I prefer to call a political 'skatland system'. Norwegian kings of the 13th century increasingly made people belonging to the local élite in Iceland, Shetland, Faeroe and the eastern border province of Jemtland, their clients. Thus the royal hird became the most important common institution of the realm of Norway, connecting skatland élites to the Norwegian aristocracy, and binding all of them to the king. In fact, the royal hird in the tributary provinces outlived that of mainland Norway in the late Middle Ages, and thus contributed to the survival of a Norse tradition in a period when ties with the mother country were being weakened.

In addition to a feudal system of earls and *gødinger*, royal rule by so-called *sysselmen* was introduced after 1195. Except for a parochial system there was hardly any official local rule in the islands prior to that date. In Norway too the office of *sysselman* was relatively new. Historians have discussed whether it was introduced during the reign of Magnus Erlingsson (1161-84) or Sverre (1177-1202). In any case it was not older than the 1160s or 1170s. The office of *sysselman* represented a first step away from a feudally conceived system of local rule towards a local administration in Norway. The *sysselman's* service, and district — called *sysla* — were not a fief but an office. *Sysselmen* could be removed from office. They were regularly moved around from one part of the country to another, and were put under central control. For instance, they had to account for their collection of royal income. On the other hand, only members of the hird were appointed *sysselmen*. Thus there was all the time an unresolved tension between officialdom and feudalism in the governmental system of Norway. A *sysselman* would collect royal income in his district, he was responsible for organising defence, and he was both prosecuting and executive authority.

Sources are scanty for the study of *sysselmen* in Orkney. We know only

19. Clouston, Storer, 1924; cf. Imsen, S., 1999: 'Public Life in Shetland and Orkney c.1300-1550'. *New Orkney Antiquarian Journal* I, 57.

20. Crawford, Barbara E., 1992: In: *Kongsmenn og krossmenn. Festskrift til Grethe Authen Blom*, Trondheim; cf. Imsen, S., forthcoming: 'Tingvall and Local Community Power in Shetland during the Reign of Håkon Magnusson, Duke and King'. In: Crawford, B. E. (ed.), 2002: *Shetland and 1299*. *Collegium Mediaevale*, vol. XV, Oslo.

two by name before 1300: Arne Lørja who was murdered by Harold Maddadson after 1202, and Hanev Unge who was decapitated by Håkon Håkonsson's order in 1231. Information is even scarcer from the period between 1231 and the early 1260s. This lack of evidence is the reason why Barbara Crawford concludes that there probably were no sysselmen in the islands during those years. She maintains that the earls alone ruled the islands, and that personal relations between king and earls were cordial. On the other hand, she contends that the main problem is to know 'to what extent the earls were responsible for royal authority in the islands after 1195.'²¹ Moreover, she assumes that when sysselmen reappear in the 14th century it is a consequence of long periods with minor earls.²²

Perhaps Barbara Crawford is right. On the other hand, information about rule by earls is scanty as well. We do not even have information about local rule in Orkney from the account of King Håkon's stay in the islands in 1263. We should be careful not to draw binding conclusions *ex silentio*. However, Håkon Håkonson's saga tells us about regular contact between Orkney and Norway during his reign; and between the archbishops of Trondheim and the Orcadian church connections must have been close. Evidently the kings of Norway kept a firm grip on the islands. Since the earls for longer and longer periods of time preferred to stay in their mainland fiefs they must either have had ombudsmen in the islands, who managed royal authority and interests satisfactorily; or the king himself might have had his own officers there. Perhaps king and earl both had island officials. In Shetland there must have been royal sysselmen all the time, although we know only two of them by name.²³ Moreover, Norwegian law was introduced in this period, and finally the islands got a royal judge, the lawman. We meet an Orcadian lawman called Ravn as early as Harold Maddadson's time.²⁴ Lawmen certainly had regular contacts with Norway; some of them might even have been of Norwegian ancestry.²⁵

The whole system of lawmen was probably strengthened during the reign of Magnus the Lawmender. However, information about the administration of Orkney is meagre even from his reign. Relations between Norway and the islands seem to have been especially close during the years 1281-1320, partly as a result of Norwegian-Scottish relations and an active Norwegian foreign policy towards the British Isles. After 1300 we can — as already mentioned — observe ordinary sysselmen (in Latin called *ballivi*) at work together with subordinate royal officers (in Latin called *ministri*).²⁶ The ecclesiastical connection was close

21. *Op. cit.* 1971: 195.

22. *Ibid.*, 166-70, 171-73, 176.

23. Gregorius, Kik, 1992: *Norges kongesagaer*, IV, 91, and Thorvald Thoresson c. 1300. In: B. E. Crawford, 1992.

24. *OS*, 294.

25. *DN XII*, 67, 68, 88.

as well until c.1350.²⁷ The year 1369 marks a turning point. Håkon Jonsson, belonging to the royal bastard-line of Sudrheim, was then sysselman and governor in Orkney. He would be the last 'Norwegian' sysselman in the archipelago. Alexander le Ard, who succeeded in 1375, was a Scot (though not the first Scot in that position), and he was even a claimant to the earldom. Chapter 29 in *Orkneyinga Saga* starts by telling about Earl Ragnvald sitting in Kirkwall and commanding his hirdmen to go into the countryside and get what was needed of drink and foodstuffs for Christmas. This snapshot demonstrates the true nature of the old earldom and its economic foundations. Exacting provisions by coercion was probably part of the system. (By the way, this scene from chapter 29 could have been taken from the sagas of the first Norwegian kings as well.) Certainly a system of contributions from the peasants, like the Norwegian *veizla*, was one of the financial pillars of the old earldom. The other one was probably the rents of the earldom estate. The economic system of the old earldom looks like a miniature of that of the early Norwegian kingdom as described in the sagas. As time went by *veizla* and rents were supplemented by other incomes, such as taxes called 'skat', and penal fines.

The 'skat' of the tributary provinces, from which their collective name 'skatlands' is derived, is a key problem in Orcadian history and historiography. According to tradition, as recorded in the saga, Harold Fairhair, the first Norwegian king, punished the Orcadians by levying a tax, which the earl paid on their behalf. In return he acquired their so-called 'odel'. We do not know the exact significance of this passage, but perhaps the earl by paying the tax acquired a right to rents from the peasants. According to tradition the earls restored the *odel* to the peasants later.

We should be very sceptical about these saga tales. However, it is noticeable that Harold's tax is referred to as 'gjald', not 'skat', in *Orkneyinga Saga*. The same text tells us that some 150 years later earl Thorfinn sent his foster-son to the islands to collect taxes, and in 1195 earl Harold was forced to cede all 'skats' and 'skylds' from Shetland to king Sverre.²⁸ Since 'skat' according to the Norwegian law historian Ebbe Herzberg means regular public contributions, the 'gjald' levied by King Harold might have been something else.²⁹ Probably the author by using the word 'gjald' meant that it was a singular collective payment, which marked the tributary subordination of the islands under the king of Norway, and which the earl took on as the immediate lord of the Orcadians. In my opinion the

26. E.g. *RN* II, 602, 603, 611, 619, 630, 631, 632, 877, 878. We should add that some of these sysselmen were of Scottish descent.

27. *RN* IV, 54, 55, 56, 60, 61, 63, 126, 130, 131, 148, 150, 151, 288, 289, 455, 457, 482, 529, 531, 532, 533, 561, 649, 916, 988, V 272, 339, 639, 886, 889 etc.

28. *OS*, chapters vii, xv, xvii, cxii.

29. *NgL* V, 563.

‘skat’, which marked the subordinate status of the earldom of Orkney, must originally have been the tribute that the earls had to render their liegeland, probably only once in their lifetime. We should be careful therefore not to confuse this ‘tributary’ tax with regular contributions Orcadians and Shetlanders paid to their earl, and which after 1195 were ceded to the king.³⁰ These so-called ‘skats’ and ‘skylds’ were mostly paid in kind — butter, skin, malt etc. We have already mentioned the ‘veizla’, which probably was the original contribution of provision to the earl, the ‘protoskat’ so to say, which under the name of ‘wattle’ still existed in the 1490s.³¹

The age of the Orcadian system of skats is a much-debated question. The relatively advanced system of land assessment based on so-called eyrisland and penningland, known from later sources, and probably used for fiscal purposes, must have been introduced at a relatively late stage in the tax-history of Orkney and Shetland. Per Sveaas Andersen is probably right when he says that it is not likely that a primitive governmental system like the old earldom could have developed such a complex and sophisticated system of assessment and collecting of taxes. Besides, there is no reason to believe that the earldom of Orkney, in a fiscal sense, could have been ahead of the rest of Northern Europe before 1200.³² On the other hand the development towards a more advanced tax-system may well have started before 1195. I imagine that Earl Ragnvald might have instigated such a development. *Orkneyinga Saga* tells about relatively frequent talks between earl and peasants on financial matters during Ragnvald’s reign. The building of the cathedral in Kirkwall too is a witness to better-organised public finances around 1150.³³

As the development of an advanced tax-system should be seen as a consequence of state-formation in the 13th century, penal fines too must be understood as a function of a new political order. We should notice that penal fines, as a category of public income, are not mentioned in *Orkneyinga Saga*. They required a ‘public’ system of justice and authorities with judicial or punitive powers and legally accepted jurisdictional and fiscal rights. In Norway too such a system was still only in the making in the middle of the 12th century. But during the 13th century penal fines were an expanding category of public income. At the same time such fines not only signal ‘state-growth’, but also the development of functional and structural ties between authorities and subjects. I therefore think that the penal fines were introduced after 1195, when earl Harold was granted the right to dispose of one half of them.

The agreement between the royal governor Håkon Jonsson and bishop

30. According to Herzberg ‘skylder’ means all kinds of contributions (utredslar og prestasjoner) to the state.

31. Thomson, 1996: xvf.

32. Andersen, Sveaas, 1991: *Scandinavian Journal of History (SJH)* XVI.

33. Imsen, S., 1994: 258, note 8. *OS*, 174.

William from 1369 states that the bishop and the richest men in Orkneys and Shetland hereafter should be consulted in all matters that concerned the kingdom, the church, and common people, according to law and ancient custom.³⁴ Håkon VI's address to the people of Orkney in 1375, and especially his appeal to the bishop and 'all other of our men', can be understood as a concession to the principles laid down in the 1369 settlement. For the rest of the Middle Ages, until the first decades of the 16th century, we find 'the best men of the land' — most often documents refer to 'the 24 best men' — managing public matters, often in co-operation with the lawman. Lawmen combined the roles of royal judge and representative of the provincial commune. In the late Middle Ages lawmen were normally being recruited from among the Orcadian élite. The lawthing, which was the most important forum of the lawman and the 24 best men, was both court and provincial assembly, and thus the central public institution of the islands. It took care of judicial as well as political functions.

After 1300 Orkney emerges as a provincial commune. This turnover from feudalism to communalism was certainly promoted by central authorities in Norway. Thus the king entrusted the new 'communitas Orcadensis' with its own 'sigillum communitatis Orcadie', and power to act on its own in all relevant matters.³⁵ Around 1300 the realm of Norway appears as a bundle of provincial communes. We should notice that many of 'the best men of the country', who were entrusted with public responsibility for running the commune, also were royal liegemen, and that was still the case in the first half of the 15th century. As late as in the beginning of the 16th century one of the two annual sessions of the lawthing is referred to as 'hirdmanstein', which means 'hirdman-meeting'.

Through their provincial commune the Orcadians were connected immediately to king and kingdom. At the end of the 13th century the earls were no longer the sole, or for that matter the most important nexus between Orkney and Norway. For longer and longer periods in the 14th century public life in the islands functioned well without earls. Very often they were absent, living in the Scottish mainland, and taking care of their duties in Orkney by means of ombudsmen, many of whom might have been rich Orcadians. I imagine that the best men of the country, who in growing numbers were tied to the Norwegian kings, substituted for the old *gødinge*-aristocracy during the 13th century. In return they were granted communal and provincial self-rule. And in the 15th century they took over the islands and carried on the Norse tradition, after the Norwegian kingdom and the old Norwegian earldom abandoned Orkney.

34 *DN* I, 508; ii, 276.

35 Imsen, S., 1999: 61.

Bibliography

- Andersen, Per Sveaas, 1991: 'When was Regular, Annual Taxation Introduced in the Norse Islands of Britain? A Comparative Study of Assessment Systems in North-Western Europe'. *Scandinavian Journal of History*, vol. XVI: 2, Oslo-Stockholm, 73-83.
- Bagge, Sverre *et al.* (eds), 1973: *Norske middelalderdokumenter*. Oslo-Bergen-Tromsø.
- Bjørge, Narve, 1995: 'Selvstendighet og union'. *Norsk utenrikspolitisk historie*, Oslo, 47-96.
- Clouston, J. Storer (ed.), 1914: *Records of the Earldom of Orkney (REO)*. Edinburgh.
- Clouston, J. Storer, 1917: 'The Lawrikemen of Orkney'. *The Scottish Historical Review*, vol. XVII, Glasgow, 49-59.
- Clouston, J. Storer, 1924-25: 'The 'goodmen' and the 'hirdmen' of Orkney'. *Proceedings of the Orkney Antiquarian Society* III, Kirkwall, 9-20.
- Clouston, J. Storer, 1932: *A History of Orkney*. Kirkwall.
- Crawford, Barbara, 1967-8: 'The Earldom of Orkney and Lordship of Shetland. A Reinterpretation of their Pledging to Scotland 1468-70'. *Saga-Book* XVII: 2-3, London, 156-176.
- Crawford, Barbara, 1971: 'The Earls of Orkney and Caithness and their relations with Scotland and Norway'. Unpublished Ph.D. thesis, University of St Andrews.
- Crawford, Barbara, 1992: 'Thorvald Thoresson, Duke Håkon and Shetland'. In: *Kongsmenn og Krossmenn. Festskrift til Grethe Authen Blom*, Trondheim, 69-89.
- Crawford, Barbara and Ballin Smith, Beverley, 1999: *The Biggings Papa Stour Shetland, the History and Archeology of a Royal Norwegian farm*. Edinburgh.
- Diplomatarium Norvegicum (DN)*, 1849-: Vol. I-XXII, Kristiania-Oslo.
- Guðmundsson, Finnbogí (ed.), 1965: *Orkneyinga saga. Íslenzk fornrit XXXIV*, Reykjavík.
- Herzberg, Ebbe, 1895: *Glossarium. Norges gamle Love (NgL)*, vol. V. Christiania (Oslo).
- Hødnebø, Finn and Magerøy, Hallvard (eds.), 1979: *Norges Kongesagaer*, vols III-IV. Oslo.
- Imsen, Steinar, 1999: 'Public Life in Shetland and Orkney c.1300-1550'. *New Orkney Antiquarian Journal*, Kirkwall, 53-65.
- Imsen, Steinar, forthcoming 2002: 'Tingwall and Local Community Power in Shetland during the Reign of Håkon Magnússon, Duke and King'. In: Barbara Crawford (ed.), *Shetland and 1299*, Collegium Medievale, vol. XV.
- Indrebø, G., 1920: *Sverris saga etter Cod. A.M. 327*. Kristiania (Oslo).
- Johnsen, O. A. *et al.* (eds), 1934: *Norges gamle Love (NgL)*, 2nd ser., vol. II. Oslo.
- Gunnæs, Erik *et al.* (eds), 1989- : *Regesta Norvegica (RN)*, I-VI. Oslo.
- Thomson, William P. L., 1987: *History of Orkney*. Edinburgh.