Oral Tradition, Land Disputes, and the Noble Community in Galician Rus' from the 1440s to the 1460s

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For the year 1442, Jan Długosz drew up an account of the donation policy of Wladislas III in Galician Rus'[1] with a description of the consequences of this policy for the Ruthenian nobility:

> *Multiplicanter itaque Regno Poloniae mala, ut et hostibus premeretur, vastationibus et regalibus donationibus et obligationibus deflueret. Augebat etiam huiusmodi malum baronum Poloniae ambitio, qui a Rege donationibus oppidorum et villarum in terris Russiae et Podoliae impetratis, antiqua incolas et haeredes de illis excludebant, qui inopia et egestate pressi et quandum desperatione compulsi ad Tartaros confugiebant, illosque postmodum ad vastandum terras Russiae et possessiones, que quibus eiecti fuerant, inducebant.*[2]

Długosz's portays the fate of the Ruthenian nobles, deprived of their estates, fleeing to the Tatars, and then plundering their former native lands in revenge, His picture is complemented by the severe censure of the policy of Wladislas III and the deeds of the Polish magnates. This suggests that the alienation of the ancient estates of the Ruthenian nobles threatened the social position of the group of those *antiqui incolae et heredes.*[3]

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[1] The territory of Galician Rus', which consisted of the western part of today's Ukraine and some areas of south-eastern Poland, was included in the Polish Kingdom during the second half of the fourteenth century and after the introduction of the Polish legal and administrative system in the 1430s was also known as the Rus' palatinate. In my research, I will also make use of the term *Ruthenians* to delineate the local Ukrainian population living in Galicia. This term was in usage until the middle of the nineteenth century, when under the influence of the Ukrainian modern national revival it was substituted by today's name – *Ukrainians*.

[2] *Johannes Długosii seu Longini Canonici Cracoviensi Historiae Polonicae* (henceforth: Długosz), ed. Alexandr Przeździecki, vol. 4, (Cracow, 1877), p. 683. For commentary, see Andrzej Janaczek, "Polska ekspansja osadnicza w ziemi lwowskiej w XIV-XVI ww.," (Polish settlement expansion in the L'viv district in the fourteenth-sixteenth centuries), *Przegląd Historyczny* 69.4 (1978), p. 610; Mykhajlo Hrushevs'kyj, *Istoria Ukrainy - Rusy* (History of Ukraine-Rus'), vol. 5 (L'viv, 1905), p. 23.

[3] The donation policy of Wladislas III was not the only known attempt of the alienation of the estates belonging to the Ruthenian nobility. Almost a decade before the events described, under the year 1426, Długosz mentions that the Mazovian prince Siemovit IV initiated the policy aimed at confiscating the land property of the old Ruthenian nobility and redistributing it among Mazovian newcomers. There are some clues to suggest that such a policy was much more successful then the one of Wladislas III. In his investigation of the noble families of Belz

This process was a result of the widespread pledge distribution of royal estates, initiated by the Jagellonian kings during the first half of the fifteenth century. The institution of pledge became one of the chief sources of revenue for the royal court as well as one of the principal tools for governing the state. Investing in royal loans and receiving royal land in return resulted in a considerable change in the distribution of property and power in late medieval Poland, facilitating the upward mobility of nobles as well as the growth of the magnates' political predominance.[4]

The reign of Wladislas III (1434-1444) provides a particularly striking case in this history of pledging royal domains. It was exactly during his short rule that a large number of royal estates was pledged, becoming the main source of the capital that the young king required to cover the expenses of his continuous campaigns abroad and to reward the services of Polish nobility.[5] Suffice it to say that pledges compris approximately 60% of all known documents issued by king Wladislas III, which is especially noticeable in comparison with the number of pledge documents available from the reign of his father, which amounted to only 25%.[6] The territory of Galician Rus' became one of the main areas affected by the distribution of pledges during the reign of Wladislas III.

The only traces that we can follow in search of any new details to clarify Długosz's account are the surviving records of disputes over contested estates between old landowners and new recipients of royal pledges included in the court books of the Rus' palatinate, beginning with the reign of Wladislas III. The dis-

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region, Polish historian Andrzej Janeczek has recently discovered almost no traces of the presence of the nobles of Ruthenian origin and their property in Belz region. For details, see: Andrzej Janeczek, *Osadnictwo pogranicza polsko-ruskiego. Województwo belskie od schyłku XIV do początku XVII wieku* (The settlement of the Polish-Ruthenian borderland. The Belz voievodaship from the end of the fourteenth to the beginning of the seventeenth century) (Warsaw, 1993), pp.. 76-79.

[4] Some scholars consider the pledge holdings of royal domains as a decisive factor in the emergence of the group of "new" aristocratic families during the fifteenth century: Antoni Gąsiorowski, "Czynniki rozwarstwienia stanu szlacheckiego w średniowiecznej Polsce" (Factors of the differentiation of the noble estates in medieval Poland), in *Struktura feudalni společnosti na uzemi Československa a Polska do přelomu 15. a 16. století* (The structures of feudal society in the lands of Czechoslovakia and Poland on the eve of the fifteenth and the sixteenth centuries), eds. Ján Čierny, František Hejl, and Antonin Verbik (Prague, 1984), p. 82. For the general overview of the pledge policy in late medieval Poland, see Anna Sucheni-Grabowska, *Odbudowa domeny królewskiej w Polsce 1504-1548* (The rebuilding of the royal domain in Poland, 1504-48) (Wrocław, 1967), pp. 20-31.

[5] The history of the reign of Wladyslas III in Hungary is presented in detailed study of Jan Dąbrowski, *Władysław I Jagiellonczyk na Węgrzech (1440-1444)* (Wladislas I Jagiellonczyk in Hungary, 1440-44), (Warsaw, 1923). The author also briefly discussed the devastating effect that the policy of Wladislas III had for the royal finances: Jan Dąbrowski, *Władysław I Jagiellonczyk*, pp. 74, 78.

[6] Irena Sułkowska-Kurasiowa, *Dokumenty królewskie i ich funkcja w państwie Andagawenów i pierwszych Jagiellonów* (Royal documents of the state of Anjou and of the first Jagiellons), (Warsaw, 1977), pp. 45, 72.

tinctive feature of the status of the nobles who defended their rights to the estates was the lack of written confirmation of their estates. In the course of the disputes, they legitimized their claims to the contested estates by relying on the oral tradition of their rights, which was conveyed through the collective memory of the local noble community in the form of witnesses' testimonies.

Although some of these documents have been repeatedly mentioned by scholars, they have never previously been fully studied.[7] By concentrating on the ways in which the representatives of this group of Ruthenian nobility responded to the circumstances of the disputes, two principal problems will be examined. First, I intend to discuss the use of the witnesses' testimonies in dispute settlements by describing and analyzing the function of the witnesses in maintaining, transmitting, and manipulating the collective memory of the noble community. Second, by investigating the social bonds between the witnesses, I will try to reconstruct the network of nobles mobilized in the course of the disputes, and thus to define the effect of group solidarity and collective action on the legal process and noble's status in late medieval Galician Rus'.

The study of the disputes can be also set in the broader context of the social status and the property rights of the nobility of Ruthenian origin in the late medieval Kingdom of Poland. The establishment of Polish rule in Galician Rus' played a decisive role in the social development of the Galician nobility. During the period of the second half of the fourteenth and the early fifteenth centuries, their social status was defined by several features and peculiarities that set Galician noblemen apart from the rest of the nobility of other Polish lands. The essence of these differences was that the Galician nobility was excluded from the advantages of the series of corporate privileges won by Polish nobles from the second half of the fourteenth century onward. Limitations of the rights of Galician nobles were maintained and established mainly through the donation policy of the rulers, which imposed a set of particular obligations on the recipients of landed property in Galician Rus'.[8] There was also no clear distinction in social status between some

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[7] Hrushevs'kyj, *Istoria Ukrainy - Rusy*, 23; Ivan Linnichenko, *Cherty iz istorii soslovij v Juho-Zapadnoj (Halickoj) Rusi XIV -XV vv.* (The features of estates in South-western (Galician) Rus' in the fourteenth – fifteenth centuries) (Moscow, 1894), pp. 63-65; Antony Prochazka, "Konfederacja lwowska 1464 roku" (The L'viv confederation in 1464), *Kwartalnik historyczny* 6 (1892), pp. 743-744.

[8] For an analysis of the royal donation policy and the nature of the noble status and land ownership in Galician Rus', see Mykhailo Hrushevs'kyj, *Istorija Ukrainy-Rusy*, vol. 5, 75-6, 78, 80; Ivan Linnichenko, *Cherty iz istorii soslovij v Juho-Zapadnoj (Halickoj) Rusi XIV – XV vv.* (The features of estates in South-western (Galician) Rus' in the fourteenth – fifteenth centuries), (Moscow, 1894), pp. 34-38; Ludwik Wyrostek, *Rod Dragów- Sasów na Węgrzech i Rusi Halickiej* (The Drag -Sas clan in Hungary and Galician Rus'), (Cracow, 1932), pp. 138-141; Andrzej Janeczek, "Ekspansja osadnicza w ziemi lwowskiej w XIV – XVI ww." (Settlement exspansion in the Lviv district in the fourteenth – sixteenth centuries), *Przegląd Historyczny* 69.4 (1978), pp. 608-610; Stanislaw Gawęda, *Możnowladztwo malopolskie w XIV i w pierwszej polowie XV wieku* (The magnates of Little Poland in the fourteenth and the first half of the fifteenth century), (Cracow, 1966), pp. 61-62.

groups of the nobility and the upper strata of privileged populations, obliged to do military service. The latter groups, widely presented in the social structure of Galician society, gradually penetrated the ranks of nobility. This process took place as a result of high social mobility and blurring social barriers in late medieval society and contributed on a large scale to the imprecision of the definition of status and property rights of many Galician nobles. The widespread pledge distribution initiated by Wladislas III, and the following disputes revealed very well some of those features of the status of the Ruthenian nobles.

For this inquiry, I have identified twelve cases. The overwhelming majority of them come from the court registers of the L'viv district, were a large number of pledges were given by the king. The earliest one was recorded in a court book of the L'viv district under the date of September 5th, 1440.[9] The highest number of cases, that is seventeen, was recorded during the years 1442 and 1443. The period between 1445 and 1464, after the death of Wladislas III, supplies information about three cases.

The court books provide a range of records with varying levels of specificity dealing with disputes. They include rather sparse and overschematic pieces of evidence that indicate only one or two stages of the lawsuits. The most numerous type are the records produced by the court assembly or the royal *starosta* himself, which postpone the case to the next session, or pass the final judgment to the king or the following diet (*convencio, sejmik*) of the local nobility. Usually, we can also find accusations brought before the court by one party against his rivals, which arose because of their absence from court during the appointed session. Sometimes, the records are summons issued by the *starosta*, which order the nobles to come to the court to produce their privileges and titles to the contested property. This type of record seems to be the first stage, normally introducing the opening of the dispute. The outcomes of the lawsuits are richer in details but, unfortunately, their records are rarely available.

It seems to have been a general pattern for the defendants to base their claims to the land on the grounds of long possession.[10] Statements such as *...non habere aliqua munimenta super eadem villam, sed ipsam dixit habere ab ewo, ab avis et protawis,*[11] or *...eadem bona fore eius verum et legittimum patrimonium ab*

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[9] Ksawery Liske, ed., *Akta grodzkie i ziemskie z czasów Rzeczypospolitej Polskiej z Archiwum tak zwanego Bernardynskiego we Lwowie* (The land and castle records from the time of the Polish Commonwealth from the Bemardine archive in L'viv), (henceforth *AGZ*), vol. 14 (L'viv, 1874), no. 85.

[10] For the importance of the reference to the long possession in medieval land disputes, consider the work of Chris Wickham, "Land Disputes and Their Social Framework in Lombard-Carolingian Italy, 700-900," in *The Settlement of Dispute in Early Medieval Europe*, eds. Wendy Davies and Paul Fouracre (Cambridge, 1986), p. 110. About time prescription conceming different types of land possession in Polish customary law and legal practice, see: Grzegorz Mysliwski, "Between Memory and Anticipation. Temporal Consciousness of Mazovian Society in 12th – the mid 16th centuries," *Acta Poloniae Historica*, 82 (2000), pp. 10-17.

[11] *AGZ*, vol.14, no. 538.

antiquo et pervestuste tentem alias sterodawna[12] can be found in almost all lawsuits. The reference to the "antiquity" of their land holdings required support and reinforcement through testimony from suitable witnesses. Like everywhere in medieval Central Europe, this oral statement of the witnesses functioned as an institutionalized collective memory of a given community and played a crucial role in the settlement of land disputes.[13] The wide acceptance of such a way of proving the rights to land in the legal practice of late medieval Rus' seems to be best reflected in the notion of this type of dispute as *termini, qui habent agerum pro ipsorum bonis, que habent ab ewo, ab avis et prothavis et privilegia super ipsa non habent*.[14]

In three out of the thirteen known disputes, the old Ruthenian landowners failed to defend their rights to ancestral estates. Despite such a small number of cases, they should be examined more closely since they give important details surrounding their settlement. The most explicit account of a case with an outcome unfavorable for the old landowners is provided by two records of a lawsuit over the village of Velyky Lubin. The first record was written into the court book in 1450.[15] It starts with the summons of the *starosta* Peter Odrowąż who, following the mandate of the king, ordered the nobles Iwanko and Peter to produce the privileges on their parts of the landed property that they held in Velyky Lubin. The rights of Iwanko and Peter were challenged by the noble Christopher Italicus, at that time a L'viv customs officer and well-known moneylender to the king and to the *starosta* Odrowąż. Both the summons of the *starosta* and the royal instruction given to him (and included in the record under the title *sequitur littera regalis*) stipulated that producing proof of the privileges within the six week term was an indispensable condition for the nobles from Velyky Lubin to remain in possession of their estate. As the next stage of dispute shows, Iwanko and Peter did not follow the requirements of the *starosta*'s document, but tried to convince the court in another way. According to their recorded speech, they declared the contested estate to be their patrimony and pointed out the antiquity of their hereditary rights.

Unfortunately, the record tells us nothing about the witnesses of the nobles from Velyky Lubin. The speech of Nicolas of Stradow, *procurator* of Christopher, which followed immediately after the speech of the defendants, seems to give some explanation for the silence of the source concerning the witnesses. Nicolas of Stradow accused Peter and Iwanko of being ignoble by stating that they and their father were *servitores* of the former owners of Velyky Lubin. This is the last stage of dispute that our record contains. Presumably, the accused did not manage to prove their noble status, which would have required witnesses as well, since no

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[12] Ibid., no. 697.

[13] Erik Fugedi, "*Verba volant*... Oral Culture and Literacy among the Medieval Hungarian Nobility," in idem, *Kings. Bishops. Nobles and Burghers in Medieval Hungary* (London: Variorum, 1989), pp. 1-25; Piotr Gorecki, "Communities of Legal Memory in Medieval Poland, c.1200-1240," *Journal of Medieval History*, 24 (1998), pp. 127-154.

[14] *AGZ*, vol 14, no. 573.

[15] Ibid., no. 2245.

document of their compurgation is preserved in the court books. This fact obviously played a decisive role in their defeat, because from the second surviving record of the dispute, dated on December 1, 1452, the sentence passed by the castle court gave the contested estate into the hands of Christopher Italicus.[16]

The other two disputes where old landowners lost their patrimonies, also entail the questioning of their noble status. In the lawsuit over the village of Sukmaniv between Hlib of Stanymyr and Nicolas Gologorsky, the connection between the accusation of Hlib Stanymyrsky as being ignoble and his participation in this dispute cannot be established with certainty because the record of his compurgation precedes the first information about his litigation with Gologorsky. The time interval between the records of the compurgation and of the opening of the dispute comprises slightly more than two months. According to the court book, on July 15, 1440, Hlib Stanymyrsky *produxit testes pro honore suo*, who recognized him under oath to be noble and after that, by September 5, 1440, the first record appeared bringing the dispute over Sukmaniv to the court.[17] Although there is no evidence that proves these two records were interrelated, the fact that the noble status of one party was not quite clearly defined and thus needed to be proved had a great significance in itself. It certainly reduced the chances of Stanymyrsky mobilizing the resources and support of the local noble community to win the dispute, especially in comparison to his rival, who was known for his noticeable role in the local hierarchy of power.

The litigation over Sukmaniv was settled in an unusually short time. The opening stage of dispute, recorded on September 5, 1440, displays Nicolas Gologorsky coming to the court and showing the royal charter for the village. The same legal record also includes the decision of the jury, which ordered Hlib Stanymyrsky, who declared that Sukmaniv *ad ipsum pertineret ex avis et protavis*, to confirm his rights through the support of witnesses. The impression communicated by the record is that the witnesses were appointed by the jury, which is rather unusual for the procedure of producing witnesses in our group of disputes. By appointing certain witnesses, whom Stanymyrsky was obliged to present, the court's deputies specified further that *...si vero predictus Hleb tales testes producere non posset extunc villam predicto domino nostro Regi reddimus et eam predicto Gologorsky damus ad tenendum.*[18] The second and last time Gologorsky and Stanymyrsky appeared in court, was less than one week after the first introductory record, of September 9. This time the account relates that Hlib Stanymyrsky was not able to produce the first of the assigned witnesses and as a result the jurors adjudged Sukmaniv to Gologorsky. Stanymyrsky tried in vain to appeal against such a court decision, declaring that *...sine meo scitu scriptus est testis,* but his protest was unsuccessful.[19]

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[16] Ibid., vol. 14, no. 2730.
[17] Ibid., vol.14, no. 38; 85.
[18] Ibid., vol. 14, no.85.
[19] Ibid., vol. 14, no. 91.

On the one hand, the quite frequent use of the accusation of ignobility, invoked in the course of the disputes, could be interpreted as a deliberate strategy employed by one party, which through alleging some moral failings in the adversary and using defamation aimed to win a litigation.[20] On the other hand, while being initiated as court suits over property rights, these disputes also reveal some basic issues of the social status and structure of community.[21] In our cases, they point to the ambiguity of the social status of many nobles, which could be seen as evidence of high social mobility and of the absence of strictly defined borders between social groups and estates, a feature that is considered by scholars today to be fundamental for late medieval Polish society.[22]

The most illuminating example in this regard is the dispute over the village of Stronyatyn, brought by Andreas Malechovsky against Peter Hamladynowycz.[23] It is noteworthy that at the first trial, dated November 12, 1443, the *starosta* referred to Peter Hamladynowycz as *providus* (townsman) and *Armenus*.[24] At the same time, however, Hamladynowycz claimed that Stronyatyn belonged to him *ex succesione materna*, which infers his status of landowner and noble. These multiple and contradictory social identities of Hamladynowycz were deliberately used by Malechovsky, who did not miss an occasion to charge his adversary of being ignoble: *rursum Malechowsky sibi Petro Armeno crimen obiecit ignobilitatis, quod non esset de nobili genere procreatus.*[25] According to the same record, Mikolaj Gologorsky, who acted on behalf of Hamladynowycz as his *procurator* and *tutor*, objected to this statement and for defense were obliged to put Hamladynowycz to compurgation. As reported in the record from March 20, 1444, the compurgation was successfully undergone by Hamladynowycz, and Gologorsky brought to the court the letter confirming this fact.[26]

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[20] For example, note the article of Robert Schofield, "Peasants and Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century," *Past and Present*, 159 (1998), pp. 36-37.

[21] Patrick Geary, "Living with Conflict in Stateless France: A Typology of Conflict Management Mechanisms, 1050-1200," in idem, *Living with the Dead in the Middle Ages* (Ithaca: Cornell University Press, 1994), p. 136; Davies and Fouracre, eds., *The Settlement of Dispute*, p. 240.

[22] See, for example Henryk Samsonowycz, "Relacje międzystanowe w Polsce XV wieku" (Relations between estates in fifteenth-century Poland), *Spoleczeństwo Polski Sredniowiecznej*, 2 (1982), pp. 244-265.

[23] Recently, Adam Szweda in his article devoted to the history of the noble family of Jurkowsky in Galician Rus', wrote the biography of Andrzej Malechovsky and mentioned the dispute over Stronyatyn; see his "Jurkowscy herbu Grzymala. Przyczynek do dziejów osadnictwa polskiego na Rusi Czerwonej" (The Jurkowsky family of the Grzymala clan. From the history of Polish settlement in Red Rus'), in *Venerabiles, Nobiles et Honesti. Studia do dziejów spoleczenstwa Polski sredniowiecznej* (Venerabiles, Nobiles et Honesti. Studies of Polish medieval society) (Torun: Wydawnictwo Uniwersytetu im. Mikołaja Kopernika, 1997), pp. 283-287.

[24] *AGZ*, vol. 14, no. 894.

[25] Ibid.

[26] Ibid., no. 1034.

Perhaps by that time Stronyatyn was already in possession of Malechovsky, because in the plea of trespass brought by him against another noble, Jan Kulykovsky, and recorded on May 8, 1444, Stronyatyn was mentioned as a *tenuta* of Malechovsky.[27] During the following two years the sources remain silent about Stronyatyn and only on June 8, 1446, does the next record appear in the court register.[28] It contains the list of witnesses who agreed to make testimonies in support of Hamladynowycz and the text of their oath. This text of *rota iuramenti* deserves close attention since, as the opening record of the dispute, it provides valuable details on the history of the suit over Stronyatyn and helps to understand the way in which Hamladynowycz built up his argument in the dispute. In fact, these two pieces of evidence comprise a short piece of the history of the ownership of Stronyatyn, or in the term of Patrick Geary, a kind of "genealogy of land" based on the local knowledge, transmitted by oral depositions of witnesses.[29]

According to the text of the oath, the witnesses had to testify that Stronyatyn belonged to the father of Petrus Hamladynowycz and that after his death the village was commissioned (*fideiusserat*) to his mother. The *rota* goes on to point out that the estate had never been perambulated, neither acquired or confiscated violently by the king, but had always been *matrimonium (maczerzyszna)* of the said Hamladynowycz. A more detailed, but at the same time slightly different, picture of Hamladynowycz's succession to Stronyatyn was potrayed in the record of November 12, 1443.[30] This account, based on the interrogation of his representative, Mikolaj Gologorsky, relates that initially Stronyatyn was owned by a certain Kalenyk *Armenus*, brother of Hamladynowycz's mother. It specifies further the circumstances surrounding the transition of the village to Hamladynowycz. Asked about the descendants of the mentioned Kalenyk and their rights to Stronyatyn, Gologorsky reported that Stronyatyn had belonged to the sons of Kalenyk, Hrynko and Masko, who, after they were deprived of the village, had run away from the Kingdom. The record goes on to say that then Stronyatyn was escheated to the Crown. This account turns out to be interesting and important for several reasons. First, it corresponds at some point to the information written by Dhigosz concerning the *profugi* Ruthenian nobles. Second, the texts of the oath and the opening records contradict each other regarding the confiscation of Stronyatyn by

[27] Ibid., no. 1077. The trespass of Kulykovsky into Stronyatyn also demonstrates that when the rights of disputing parties to contested estates were challenged or remained dubious, this was often regarded by other nobles as a favourable occasion for seizing or intruding into another man's property. In his reply, written in the same record, Kulikowsky quite explicitly made use of Malechowsky's dispute with Hamladynowycz to question Malechovsky's rights to Stronyatyn and thus to legitimize his own act of trespass. Even more revealing in this regard is the case of Christopher Italicus and the village of Lubin. Throughout his dispute over Lubin, he made permanent complaints, accusing local nobles of attacking and trespassing his estate (Ibid., no. 2351, 2595, 2656, 2660).

[28] *AGZ*, vol.14, no. 1711.

[29] Patrick Geary, *Phantom of Remembrance: Memory and Oblivion at the End of the First Millenium* (Princeton, 1994), p. 78.

[30] *AGZ*, vol. 14, no. 894.

the king and the rights of Hamladynowycz's father to Stronyatyn. Though it could not be determined why Hamladynowycz and his oath-helpers tried to avoid these facts being mentioned in the oath, one suggestion can be made. It is likely that the oath presents an example of the selective memory of given nobles, deliberately constructed and manipulated to highlight the antiquity of Hamladynowycz's rights to Stronyatyn. Third, the confiscation of Stronyatyn from the hands of the Kalenyk family leads us to infer that the disputes over Stronyatyn had a much longer history than that which appeared in the court records. This suggestion could be further enhanced by information, drawn this time from the side of the Malechovsky family. In 1454, when the dispute was already over and Malechovsky owned Stronyatyn in peace, a review of the charters on Stronyatyn was made by order of the royal governor.[31] Iachna, then the widow of Andreas Malechovsky, produced two documents, the first of which, the pledge granted to Michael Malechovsky, extended back as early as the reign of Wladislas Jagiello, that is to the time before 1434. Unfortunately, the record does not specify the exact date of this document. Nevertheless, the sources point to a quite long, at least a two generations legal contest for the rights to Stronyatyn of both disputing families, which suggests the long-term persistence of litigation over Stronyatyn.

It was not until December 7, 1447, that a new stage of the dispute was opened, after the representative of Kalenyk family, a certain Iwaszko Kalenykowycz, launched the suit over Stronyatyn against Hamladynowycz.[32] In the court of February 13, 1448, Iwaszko Kalenykowycz claimed to be *propinquior* to former owners of Stronyatyn and charged Hamladynowycz that he held the patrimony of Kalenykowycz.

Claims of three or sometimes even more people to the same estates and the disputes that followed seem to be common for the situation in Galician Rus' of that time.[33] They were mainly invoked due to the chaotic distribution policy of Wladislas III, who issued the privileges to different persons, granting them the same royal estate in pledge. For example, in 1441, the same Stronyatyn was also given to a certain Alexander Wieprzyk with the revealing remark in the privilege: *quas sibi redimere indulsimus de manibus Malochowsky* [sic!] *ducentas marcas monete*.[34] Unfortunately, we can find no traces of further actions of Wieprzyk. Perhaps, he neither took any steps to redeem the village nor launched a suit against Malechovsky. Other cases demonstrate quite clearly a similar practice. In 1443, Peter and Nicolas of Bartoshov litigated simultaneously against two nobles, John Luczka and Nicolas Bieszkowsky, who claimed that each of them received Bartoshov in pledge.[35] Likewise, the rights of the noble family of Klus of Vyzhnyany to the villages of Zubra, Plekhiv, and Vodnyky, which they held in pledge, were challenged in turn by three people, who also claimed to have been granted the

[31] Ibid., no. 3223.
[32] Ibid., no. 1967.
[33] For short commentary, consider Andrzej Janaczek, "Polska ekspansja osadnicza," p. 610.
[34] *ZDM*, vol. 8, no. 2306.
[35] *AGZ*, vol. 14, no. 637, 930.

pledges on these estates by the king.[36] The most striking example of this is the case of the village Zolochiv. At least four people received the royal privileges on that village during the year 1442.[37]

After Iwaszko Kalenykowycz had sued his case against Hamladynowycz, there was no further trace of litigation between the latter and Malechowsky in the court records. The only mention that casts some light on the outcome of this dispute survived in the record of the lawsuit between Kalenykowycz and Hamladynowycz. The evidence is scarce but intriguing. In the hearings, recorded on April 8, 1448, when Peter Hamladynowycz was brought to respond to the claims of Iwaszko, he stated that *ista bona ego videlicet villam Stronyatyn a domino Andrea Malechowsky habeo et econtra sibi eadem bona resigno, restituo et demonstro.*[38] We do not know by what time exactly Malechovsky and Hamladynowycz reached this agreement and whether the interference of Kalenykowycz was the reason that forced the parties to settle the dispute. The point of great interest here is the fact that the final sentence of the dispute was not recorded in the court register, which suggests that the conflict was finally settled without taking it to the court, by means of arbitration and reconciliation procedures that were well known to medieval legal practice.[39]

Generally, the texts of the agreements settled out of court are rarely available in the group of examined records, and as the case of Stronyatyn demonstrates, the fact that the arbitration took place in the course of the dispute could be gauged only by obscure clues. The most reasonable explanation for the absence of the records of arbitration seems to be the practice that in the court register only those stages of disputes were recorded that one of the litigants wished to be registered as official, mainly with the aim of forcing the opposite party to settlement.

There are only three known records that speak directly about agreements reached out of court. All of them come from the same dispute over the village of Pohorci, pursued from the one side by a certain Nykel and his uncle Melchior and from the other side by *heredes* from Pohorci. They were recorded at short intervals, the first two on March 11 and the last on March 15, 1443.[40] In the court held on March 11, for example, the plaintiffs Nykel and Melchior, who presented the royal privilege for the whole village, agreed to recognize the rights of the brothers Chotko and Andreas from Pohorci on two demesne located in the village. After that, as the account relates, the court jurors imposed "eternal silence" on the mentioned

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[36] Ibid., no. 677, 3579..

[37] *ZDM* vol. 8, no. 2417; *AGZ*, vol. 14, no. 490, 530.

[38] *AGZ*, vol. 14, no. 2035.

[39] Susan Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford, 1984), p. 27; Davies and Fouracre eds., *The Settlement of Dispute*, pp. 236-237; Michael Clanchy, "Law and Love in the Middle Ages," in *Dispute and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge, 1983), pp. 47-67. For late medieval Galician Rus', see W. Domino, *Sądownictwo polubowne na Rusi w późnym średniowieczu* (The arbitration in Rus' in the late Middle Ages) (Warsaw, 1938).

[40] *AGZ*, vol. 14, no. 652, 662.

Nykel and Melchior in this matter and forbade them to question the rights of Chotko and Andreas in the future.[41] The case of March 15 is recorded along the same lines, which betrays the usage of a prescribed formula for an agreement of this type.

In six cases, the defendants won the dispute by producing reliable witnesses. According to the court records from November, 1442, and October, 1443, Jan Dmytrovsky won the dispute over the village Chyzhky, located in the L'viv district. His rights were challenged by Jan Rzeshovsky.[42] In 1443, the same Jan Rzeszovsky tried without success to get possession of another village, which belonged to a certain Pelka, and which also bore the name Chyzhky, but was situated in Przemysl district.[43]

In 1444, Jan Delanovsky filed a suit against Stanislas and Suprun, brothers from Ceperiv, questioning their rights to Ceperiv. At the trial recorded on January 28, 1444, the nobles from Ceperiv were summoned to the court of the royal governor to defend their rights to the estate.[44] Because the governor used the trial as an occasion for interrogating the defendants about their social status, coat of arms, and relatives among the nobility, the record provides kinds of details that are usually lacking in our disputes. From the inquest of the *starosta* it emerges that the Ceperovsky declared themselves to be *heredes et terrigenae ab antiquo Rutheni* who held Ceperiv as their patrimony. Their coat of arms, they related, was the same as that of Wincenty Szamotulsky, one of the previous *starosta* of Galician Rus'. Taking into account the fact that Szamotulsky was a Pole who came to Rus' from Great Poland and held one of the highest offices in the hierarchy of the Ruthenian palatinate, the possibility must be excluded that petty Ruthenian nobles from Ceperiv and the Polish magnate family of Szamotulsky belonged to one family clan. The presumption must be then of the adoption of the coat of arms of the royal governor by Ceperovsky and thus of the existence of a certain degree of servitude in the relationships between the two parties. This turns in to a more general conclusion, namely, that like the nobles of Velyky Lubin or of Stanymyr, the family of Ceperiv originated in serving nobility whose noble status as well as property rights were not strongly established.

However, the Ceperovsky were more successful in proving their rights. During the following two years, 1444-45, the only records available in the case of Ceperiv are the delays of the dispute from one court session to another.[45] This lasted until the court held on January 3, 1446, when Stanislas and Suprun of Ceperiv finally named the witnesses to their statement and so defended their rights to Ceperiv.[46]

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[41] Ibid., no. 652.
[42] Ibid., no 538, 847.
[43] Ibid., no. 657, 697.
[44] Ibid., no. 946.
[45] Ibid., no. 1194; 1242; 1250.
[46] Ibid., no. 1577.

Two other relevant cases that we know of took place during the reign of Casimir IV, Wladislas' brother and successor. For the year 1454, the beginning of the dispute over the village Leshchyn is recorded, conducted by the *starosta* Andreas Odrowąż against Hrynko of Leshchyn. The litigation for Leshchyn is perhaps the best surviving case in the series of disputes that were initiated by Odrowąż against the nobility of the L'viv and Zhydachiv districts. The claims of Odrowąż, based on his status as the supreme holder of these two districts, targeted mainly the estates that were held by nobles as royal pledges. This confrontation developed into a serious crisis facing Galician society around 1460 and has been discussed in more a detailed way by other historians.[47] Here, I would only like to add that in the conflict were also involved some of the Ruthenian nobles, who did not have written confirmations for their hereditary possessions and who were regarded for this reason by Odrowąż as pledge-holders.

This is exactly what the case of Leshchyn suggests. In the summons, from January 4, 1454, in which Andreas Odrowąż ordered Hrynko to show his privileges for Leshchyn, the royal governor called Hrynko a simple pledge holder (*tenutarius*) of Leshchyn, which implied the status of the village as a property of the king. Contrary to Odrowąż's statement, Hrynko maintained in the same record that Leshchyn was his hereditary estate and on these grounds, the court jury obliged him to produce witnesses and defined the terms for the witnesses' testimonies and oath in eighteenth weeks.[48] Five months later, on June 8, 1454, the parties again came to the court and this time the outcome of the trial was not successful for Hrynko. We do not know for what reason, but he did not produce witnesses, and the court deputies considered this fact to be sufficient to adjudge the estates to Odrowąż.[49] The opposition to the royal governor by that time, however, seems to have been already strong enough to make it possible for Hrynko to continue the dispute. The survival of the record from June 28, 1456, which, it is interesting to note, was not registered in the court books of the L'viv castle, controlled by Odrowąż, but in those of the landed nobles' court, illuminates the process of producing witnesses by Hrynko, and the decision of the court passed in his favour.[50] Probably, Hrynko did not feel himself secure, because of his mighty rival, and the following record, made in the same court register, shows the sale of Leshchyn to Iachko of Didushychi.[51]

The second dispute held after the death of Wladislas III, survived in only one record, registered on July 14, 1464. The account has it that Jan Jacymirsky brought suit against the heirs (*heredes*) to Chaykovychi, claiming his rights to Chaykovychi and showing before the court the royal privilege for this estate. The record enumerates the names of twenty of such heirs, who objected to the claims of

[47] For details, see Antony Prochazka, "Konfederacja lwowska 1464 roku".
[48] *AGZ*, vol. 14, no. 3814.
[49] Ibid., no. 3825.
[50] Ibid., vol. 19, no. 2765.
[51] Ibid., no. 2766.

Jacymirsky by stating the rights to the village as their hereditary estate.[52] This impressive number of nobles, who shared the rights to the same estate, illustrates very well how far the process of splitting up their property proceeded and suggests the increasing impoverishment of this noble family. This feature was common for many families of petty Ruthenian nobility, especially those who were numerously settled in the Sambir, Drohobych, Stryj and Zhydachiv districts at the foot of the Carpathian mountains. Furthermore, the pauperization of this group of nobility seems to have been a decisive factor that determined a certain ambiguity in their social status. This implication was used frequently by royal governors in their attempts to impose additional obligations, confiscate their property, and finally question their noble status. For instance, for the nobles of Chaykovychi the court register provides a case of the accusation of ignobility, brought against two representatives of this family by the royal *starosta* Andreas Odrowąż in 1457.[53] Nevertheless, these peculiarities of the social standing of the nobles of Chaykovychi did not impede them from proving successfully their rights to Chaykovychi in the outcome of the dispute with Jacymirsky.

In the records of two disputes, the resort to the witnesses' testimonies is lacking. In the first case the dispute was over the village of Vovkiv between prince Michael Olshansky and Jadwiga of Vovkiv, who acted on behalf of her sons, Andreas and Troyan. The text of the final judgment, recorded on March 20 1444, indicates that Jadwiga, to uphold and strengthen her rights to Vovkiv, referred to a previous settlement of this type of dispute, made in favour of old landowners as to the kind of legal precedent: *petens se remanere circa eadem bona, sicut et alios heredes manent circa ipsorum patrimonium.*[54] The case of the dispute over Ostalovychi is more shadowy, pursued by a certain Nicholas Milejowsky against nobles from Ostalovychi. The fact that the outcome of the dispute is missing suggests, though without complete assurance, that similar to the case of Stronyatyn, the Ostalovychi dispute was settled by arbitration without further intervention of the governor's court. In any case, either court judgment or arbitration, it must have favoured the brothers for Ostalovychi, since in the next decades one can find in the sources references to Ostalovychi as their estate.[55]

In one case the outcome of the dispute remains unknown. The suit was initiated again by Jan Rzeszovsky in 1443 against nobles of Vovchukhy. The litigation over Vovchukhy is unusual in our group of disputes for one specific point. Defending his rights to Vovchukhy, a certain Petrushko produced a charter which the court found to be *...insufficiens et falsum*[56] and gave it to the royal chancellery for further consideration. The chancellery confirmed that it had never issued the charter, and on thes grounds the court awarded the estate to Jan Rze-

[52] Ibid., vol. 15, no. 3281.
[53] Ibid., vol. 15, no. 111, 112.
[54] Ibid., vol. 14, no. 1032.
[55] Ibid., vol. 14, no. 693.
[56] Ibid., vol. 14, no. 675.

shovsky.[57] In the early fifties the dispute was renewed,[58] and later, in 1457, Petrushko and Wasko from Vovchukhy made an attempt to prove their rights to the estate by producing witnesses. At the trial, however, dated on February 23, 1457, witnesses, presented *ad audiendum probacionem alias dowodu*, could not testify because of the absence of Jan Rzeszovsky.[59] The last record, compiled on June 13, 1457, states that the case was submitted by the royal governor Andrzej Odrowaz for further consideration by the assembly of local nobility.[60]

Besides the case of Vovchukhy, bringing lawsuits to be held at noble diets could be traced for other disputes as well (Chyzhky, Ostalovychi, Ceperiv). The offer of the settlement of disputes by the governor's court to the noble assemblies aimed first of all to highlight the collective nature of the judgment in order to provide the decision with a sufficient level of legitimacy in such an essential matter for noble society as land conflicts.[61] Unfortunately, we cannot say how much such practice spread, though it is likely that the great number of noble assemblies held in Galician Rus' during the reign of Wladislas III was in connection with the rise of land disputes and their settlement at the same time.[62]

The examination of the given land disputes in Galician Rus' suggests that it was not the royal written documents, but the testimonies of the witnesses that had a greater significance for the local noble community and that determined the final decision of the court. In all known cases the defendants who managed to produce reliable witnesses won the dispute. This preference given by the court to the witnesses' depositions stays in accordance with the general perception of witnesses' oaths in medieval law as a kind of unilateral act, an appeal to the supernatural, which after having been done and accepted did not require any further examination.[63] This unilateral character of the oath was perhaps even more enhanced in case of the witnesses of Ruthenian origin, who were obliged to take the oath according to Ruthenian custom. The performance of the *Iuramentum more*

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[57] Ibid., no. 999.

[58] Ibid., no., 2578, 2697.

[59] Ibid., vol. 15, no. 64.

[60] Ibid., no. 109.

[61] About the idea of collective judgement as central for the understanding of the medieval legal process and norms of procedure, consider Davies and Fouracre eds., *The Settlement of Dispute*, pp. 216-217, 231-232; Reynolds, *Kingdoms and Communities*, pp. 23-34.

[62] The much greater number of noble diets in Galician Rus' in the middle of the fifteenth century in comparison with other lands of Kingdom has been recently emphasized by Anna Suchocka. The author is inclined to explain this phenomenon by the growth of political activity as well as by the remoteness of Rus' from Cracow, which, in my opinion, seems to be an anachronism for the Galician noble community of the fifteenth century. See: Anna Suchocka, "Zarząd ziemiami Rusi Czerwonej w połowie XV wieku" (The governance of the lands of Red Rus' in the middle of the fifteenth century), in *Central'na I Skhidna Evropa v XV-XVIII st.: pytannia social'no-ekonomichnoi i politychnoi istorii* (Central and East Europe in XVth-XVIIIth centuries: questions of social, economic, and political history), eds. Leonid Zashkilniak and Mykola Krykun (L'viv, 1998), pp. 100-101.

[63] See Reynolds, *Communities and Kingdoms*, p. 26; F.M. Maitland, *Forms of Action at Common Law. A Course of Lectures* (Cambridge, 1948), p. 15.

Ruthenicale, as it is usually called in the sources, displays the range of meanings and actions closely related to the traditional medieval ordeal.[64] An example to demonstrate these similarities here is the text of the oath of Andreas Dechatkovych, taken by him in one of his litigation, in 1462. The record spells out that with his left hand he held the door-handle of the church, with his right hand he crossed himself and then said the text of oath, the last part of which is particularly worth quoting:

> *...Et si per veritatem faciem (meam) consigno sancte crucis signo, remitte m(e swanthe) wyedenye ad meam domum et ad me(os) pueros. Item et si non per veritatem, extunc swanthe wyedene non remitte me a te.* [65]

The opposing party was bound to accept the decision. There were cases when such powerful persons as the Ruthenian *capitaneus* Andreas Odrowąż, while conducting a dispute with Hrynko from Leshchyn over the village of Leshchyn, had to recognize the rights of Hrynko:...*visa perduccione testium per ipsum Hrynkonem emisit.*[66]

The importance of the witnesses in lawsuits explains the active role which the plaintiffs tried to play in their selection. Though it was primarily the responsibility of the defendant, and to his advantage, to choose and submit the witnesses to the court, the sources reveal some cases when final approval of the witnesses belonged to the plaintiff. For instance, in 1442, Jan Rzeshovski, who questioned the rights of Jan Dmitrovsky to the village of Chyzhky, restricted the right to give testimony to four persons, those most convenient and most reliable from his point of view and whom he chose from a broader body of witnesses presented earlier to the court by Jan Dmitrovsky.[67] In the next year, 1443, the same Jan Rzeshovsky gave his consent to the deposition of testimonies of witnesses provided by a certain Pelka from Chyzhky under the condition that Pelka should present witnesses whom Jan Rzeshovsky would accept: ... *possunt* [sic!] *tales testes fieri, quod eos acceptabo.*[68] The initiative in the appointment of the witnesses could also come from the members of the court, which is illustrated in the case of the litigation between Hlib Stanymyrsky and Mikolaj Gologorsky over the village Sukmaniv. Appointing certain witnesses, whom Hlib from Stanymyr was obliged to present, the court's deputies pointed out that "...*Si vero predictus Hleb tales testes producere non posset extunc villam predicto domino nostro Regi reddimus et eam predicto Gologorsky damus ad tenendum.*"[69] Finally, being unable to produce the first among the assigned witnesses, he lost his rights to Sukmaniv.

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[64] Consider the study of Wojciech Hejnosz, "*Ius Ruthenicale* na Rusi Czerwonej pod koniec średniowiecza" (*Ius Ruthenicale* in Red Rus' in the end of Middle Ages), *Sprawozdania Towarzystwa naukowego we Lwowe*, 11.1 (1931), p. 14.

[65] *AGZ*, vol. 13, no. 5034.

[66] Ibid., vol. 19, no. 2765.

[67] Ibid., vol. 14, no. 847.

[68] Ibid., no. 697.

[69] Ibid., no.85.

The central role of the institution of witnesses in dispute settlements was by no means unique or restricted only to the given lawsuits. Despite the rapid increase in number of written charters issued by the royal chancellary, as well as the assimilation of writing in the local legal process during the first half of the fifteenth century, the interpretation of law and legal process still strongly depended on orality. The challenge of a written document as legal proof, even though its authenticity was usually confirmed by the court, and litigation that broke out as a result of completely opposite interpretations of the same condition of the transaction, which was written down in the court book, can be found regularly in the registers.[70] Usually such disputes ended with an appeal to the testimonies of the witnesses, thus turning the dispute from the principles of the written law to legal institutions based on orality. All this leaves us with an impression of noble culture still loosely affected by literacy, in which the circulation and function of the written word was frequently dominated and mediated by various forms of oral communication.[71]

The composition of the group of witnesses in those disputes where we have their list available (there are seven such cases), suggests the existence of strong social bonds within the group and their close connection with the person whose property rights they were going to confirm. This view seems to be supported by the fact that the same nobles, or representatives of the same noble families, were met as witnesses more than one time in a group of disputes. For example, nobles from Borshchiv figured as witnesses in four disputes (over Vowchukhy, Leshchyn, Chaykovychi, Ceperiv), and nobles from Malchyci and from Dobriany played this role in three lawsuits. Two times, the disputes were attended by the noblemen of Remeniv, Romaniv, Rytarovychi, Chaykovychi, Lahodiv, and Ostalovychi. It is also important to emphasize that often it was, in fact, the same representatives of the noble families who participated in the witnesses' deposition. For instance, three times Michno of Borshchiv and Vanko of Dobriany were called upon for witnessing, Andreas Dechatkovych twice. In addition, many of the noblemen mentioned as witnesses, also suffered the same kind of disputes, trying to assert their own property rights (for example, noble families from Chaykovychi, Lahodiv, Ostalovychi).

Concerning geographical distribution, two big noble "neighbourhoods" could be singled out among the witnesses. The first group consists of the nobles who came from the region nearby L'viv (Borshchiv, Remeniv, Romaniv, Lahodiv, Ostalovychi, Malchyci, Davydiv, Dmytrovychi); the second group was recruited from the eastern part of the Przemysl land, especially from Sambir district (Chajkovychi, Rytarovychi, Kornalovychi, Mykhajlovychi). These two networks

[70] Ibid., vol. 11, no. 35; vol. 13, no. 106, 3138, 3717, 4481; vol. 14. no. 785, 1406, 1409.

[71] On this aspect of the relationships between the written and the oral forms of communication in medieval culture, see for example: Brian Stock, *The Implication of Literacy. Written Language and Models of Interpretation in the XIth and XIIth Centuries* (Princeton, 1983), esp. pp. 3-15, 42-59; M. T. Clanchy, *From Memory to Written Record. England 1066-1307* (Oxford and Cambridge, 1993), esp. pp. 254-299; Geary, *Phantoms of Remembrance*, esp. pp. 12-15.

of persons and noble families, supplemented sometimes also by other persons, seems to have been quite frequently mobilized in the legal process either as a support group or as a community of legal knowledge. This view can be supported by two records of the compurgation, made correspondingly by Andreas Dechatkovych and Jan *iuvenus* Hermanovsky, before the Przemysl land court in 1437.[72] Both records present the list of witnesses who testified to the innocence of the said nobles, accused of thefts and of other dishonorable deeds. The list of the witnesses in support of Andreas Dechatkovych contains the names of the nobles with whom Dechatkovych acted together as witness in the disputes about Chyzhky and Vovchukhy (Ivan Rybotycky, Zanko Kornalovsky, Stanko Ryterovsky). The list of the witnesses who appeared in the case of Jan *iuvenus* Hermanovsky includes Mikolaj Davydovsky, Dmytro of Chastyn, and Mykhailo Remenivsky, the persons, who participated as the witnesses in the dispute about Ceperiv together with the father of the accused, Jan *antiquus* Hermanovsky. Moreover, the record also adds the two other important names, Stanislaw Ceperovsky and Jan Dmytrovsky, both of whom were supported by the testimony of Jan *antiquus* Hermanovsky in disputes over their patrimonies.

Taking into consideration the fact that the majority of the witnesses were Ruthenians by origin, it is interesting to try to trace the role that ties based on their common belonging to the same ethnic-confessional group played in mobilizing the relations among these witnesses. *Rutheni* seems to have been the permanent definition used in the legal records to describe the nobles, who preserved their Ruthenian identity, which could be defined in terms of their belonging to the same ethnic and confessional group.[73] The sources sometimes go further in revealing this kind of the identity. For instance, the record from September 12, 1466, conveys that Dmytro Lahodovsky, who appeared as the witness in the lawsuit over Vovchukhy and Ceperiv, pursued the suit against Jan Narajovsky, accusing him of rebaptism of his Ruthenian maidservant from the Orthodox into the Catholic confession.[74]

The case of Ceperiv can supply the most illuminating example of the solidarities of the witnesses grounded in their common Ruthenian origin. The record of the witnesses' testimonies and of the final sentence of this dispute presents the body of the witnesses divided into two groups. The first one, called *nobiles Lachos*, contain the names of Mikolaj of Romaniv, Mikolaj of Davydiv, Jan *antiquus* Hermanovskys and Stanislas of Khodoriv. The second one provides the witnesses *de Ruthenicale geneologia*, which includes Michael of Remeniv, Hlibko of Khylchychi, Fedorko Moshensky (of Malchyci), Dmytro of Lahodiv, Yurij of Lahodiv, Olechno of Borshchiv, Khodko of Stanymyr, and Dmytro of Chastyn.[75] This segregation is unique and never found again in the records. It

[72] *AGZ*, vol. 13, no. 457, 581.

[73] As *Ruthenus*, for example, very often figures in the records Yurij of Malchyci, the witness in the litigation over Vovchukhy, see *AGZ*, vol. 14, no. 2225.

[74] Ibid., vol. 15, no. 3372.

[75] Ibid., vol. 14, no. 1577.

seems insufficient to point out only their different ethnic and confessional belongings, for all noblemen, called *nobiles Lachos* were, in fact, not of Polish origin, but represented the second or even perhaps the first generation of the polonized Ruthenian noble families. As far as the sources make it possible to speculate, the division may have referred to the different ways of swearing the oath, by Polish land law or Ruthenian legal customs and thus was closely interconnected with the forms of collective actions, performed by two noble communities in the legal processes of late medieval Galician Rus'. This interpretation is supported by the record from the dispute about Ceperiv, which relates two distinct modes of performing the oath, one for the nobles in general and one for those of Ruthenian origin in particular, and notes also the wish of the Ruthenian witnesses to swear according to the land law: *recusabant ad Colcza ecclesiae Ruthenicalis iurare, sed voluerunt ad crucem sicut Christiani.*[76] The Ruthenian identity of the nobles is often revealed precisely by their taking the *Iuramentum Ruthenicale*. This suggests the importance of collective action in maintaining of the bonds of solidarity and the sense of coherence among the nobility of Ruthenian origin as a specific group within Galician noble community.[77]

The ties that bound the witnesses together become even more obvious if we take into account their interfamilial connections. As an example I chose the case of Ceperiv to illustrate the role of family relations in lawsuits. As we already know, in 1444, Stanislas and Suprun, brothers from Ceperiv, were summoned to the court of the *capitaneus* to respond to the claims of Jan Delianovsky, who questoned their rights to Ceperiv. There they underwent a kind of interrogation, made by the *starosta*, about their social status, coat of arm, and relatives among the Ruthenian nobility. Answering the last question they stated that "... *haberet* [sic!] *connatos dominos Rzemeniowsky et Lopatycz.*"[78] Later, Michael Remenivsky figured among witnesses, produced by Ceperovsky, swearing that Stanislaw and Suprun possessed Ceperiv as their ancestral patrimony.[79] Through the family of Remeniv, the Ceperovsky were connected with nobles from Stanymyr, who were compelled to prove their noble status and property rights as well.[80] Also Ostalovychi, the patrimony of Lopatky family, the other relatives of Ceperovsky, was threatened by similar challenges. Thus, the trials reveal the significant role of different kinds of solidarities (belongings to one kin group, similar social status) in the composition of the group of witnesses. Moreover, one can regard the disputes and the

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[76] Ibid., no. 1277.

[77] One more example can be provided by the case of Drobysh of Rytarovychi, the witness in the dispute of Chaykovychi. In his lawsuit with Albert of Jasceniv, held in 1468, the court jurors took for advice of the land judge to define the way of parties' swearing: ... *qualiter nobiles Rutheni debent iurare an circa synagogam ipsorum vel circa crucem more terrestri.* See ibid., vol. 13, no. 6899.

[78] *AGZ*, vol. 14, no. 946.

[79] Ibid., no. 1577.

[80] "*Michael Rzemeniowsky*" is mentioned as "*frater de parte matris*" of Hlib from Stanimyr, while the latter was proving his noble status: ibid., no. 38.

deposition of testimonies in particular as a good occasion for the manifestation of group solidarity, as is seen in case of the dispute over Chaykovychi, when witnesses quite clearly expressed their collective identity declaring themselves as "... *veri et perpetui terrarum Rusie heredes.*"[81]

The land disputes present themselves as a critical moment in reassessment or reaffirmation of the noble status of the Ruthenian owners. Many cases have shown that the challenge of the rights of the old owners to their estates was accompanied by the accusation of ignobility, utilizing the ambiguity of social status of these Ruthenian nobles. In this regard, it was the legal process and disputes themselves that created the norms of belonging to the nobility and defined the social boundaries of the noble estate.

Two basic and closely interconnected elements can be singled out in the strategies employed by the Ruthenian nobles to succeed in disputes and thus to reaffirm their noble status. First, it was the statement that the contested estates had belonged to them as their hereditary property for a long time. This emphasis on their age-old rights as a main legal argument in the dispute was usually supported by witnesses. Witnesses functioned in this context as a community of legal knowledge, whose testimonies, strengthened by oath, transmitted the local knowledge. For this reason, they were accepted by the courts as sufficient legal proof. We can also suggest that the disputes and the collective actions involved in their settlements strengthened and reaffirmed the solidarities of Ruthenian nobility as well as helped these nobles to perceive themselves as a distinct group within the noble community of Galician Rus'. The question, which is hard to answer with certainty in the present study, is whether the claims of some of these Ruthenian owners really reflect their belonging to the group of old Ruthenian nobility or whether their status of *antiqui incolae et heredes* of Galician Rus was intentionally constructed and promoted in the course of the disputes with the aim of defending their land property and entering the ranks of nobility. Nevertheless, some suggestions, supporting the hypothesis of the status of old Ruthenian landowners as an "invented tradition", can be made. First, during the fifteenth and the sixteenth centuries the same social milieu of the petty Ruthenian nobles participated actively in forging another kind of "invented tradition", so-called "charters of the prince Leo" (*hramoty kniazia Lva*).[82] Second, the crucial role of the institutions of oral memory in dispute settlement conforms very well to patterns of the transmission of knowledge in societies dominated by the oral culture. As we have seen, in Galician

[81] Ibid., vol.15, no. 3281.

[82] The discussion of the falsity and authenticity of the charters of prince Leo as well as their use by the Ruthenian nobles to defend the property rights one can find in Mykhajlo Hrushevs'kyj, "Chy majemo avtentychni hramoty kniazia L'va" (Do we have the authentic charters of prince Leo?), *Zapysky Naukovoho Tovarystva imeni Shevchenka*, 45.1 (1905), pp. 1-21; Ivan Linnichenko, "Hramoty halickoho kniazia L'va i znachenie podlozhnykh dokumentov kak istoricheskikh istochnikov" (Charters of Halych prince Lev and the importance of the falsified documents as historical sources), *Izvestiia otdeleniia russkaho jazyka i slovesnosti Imperatorskoj Akademii Nauk*, 9.1 (1904), pp. 80-102.

Rus' the local legal process was very often governed by the oral mode of communication and writing did not always constitute the authority against which the correctness of the remembered past could be checked. In this context of oral culture, the collective memory, customs, and traditions turned out to be very flexible social mechanisms, which were easily adjusted to the neeeds of the community and to changing social realities.[83] From this perspective, the memory and tradition of *Russie antiqui incolae et heredes* represented a defensive strategy, deliberately constructed by the group whose rights and status were under the threat.

[83] This feature of the social memory and transmission of knowledge in traditional illiterate societies has been recently emphasized by anthropologists. See, for example: Jack Goody and Ian Watt, "The Consequences of Literacy," in *Language and Social Context. Selected Readings*, ed Paolo Giglioli, (London, 1972), esp. pp. 312-319; As for similar approaches in studying medieval memory, see Stock, *Implication of Literacy*, p. 15; Clanchy, *From Memory to Written Record*, pp. 294-299; Geary, *Phantoms of Remembrance*.

ORAL HISTORY OF THE MIDDLE AGES
THE SPOKEN WORD IN CONTEXT

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MEDIUM AEVUM QUOTIDIANUM

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Oral History of the Middle Ages
The Spoken Word in Context

Edited by Gerhard Jaritz and Michael Richter

Krems and Budapest 2001

GEDRUCKT MIT UNTERSTÜTZUNG DER ABTEILUNG KULTUR UND WISSENSCHAFT DES AMTES DER NIEDERÖSTERREICHISCHEN LANDESREGIERUNG

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Cover illustration: The wife of Potiphar covets Joseph: "... erat autem Joseph pulchra facie et decorus apectu: post multos itaque dies iecit domina oculos suis in Ioseph et ait dormi mecum." ("... And Joseph was [a] goodly [person], and well favoured. And it came to pass after these things, that his master's wife cast her eyes upon Joseph; and she said, Lie with me."), Gen. 39: 6-7 (KJV). Concordantiae Caritatis, c. 1350. Cistercian abbey of Lilienfeld (Lower Austria), ms 151, fol. 244v (detail). Photo: Institut für Realienkunde des Mittelalters und der frühen Neuzeit (Krems an der Donau).

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Preface

Oral culture played an instrumental role in medieval society.[1] Due to the lack of any direct source evidence, however, research into the functions and importance of oral communication in the Middle Ages must confront a number of significant problems. Only indrect traces offer the opportunity to analyze phenomena that were based on or connected with the spoken word. The 'oral history' of the Middle Ages requires the application of different approaches than dealing with the 20th or 21st century.

For some decades Medieval Studies have been interested in questions of orality and literacy, their relationship and the substitution of the spoken by the written word.[2] Oral and literate culture were not exclusive and certainly not opposed to each other.[3] The 'art of writing' was part of the 'ars rhetorica' and writing makes no sense without speech.[4] Any existing written statement should also be seen as a spoken one, although, clearly, not every oral statement as a written one. Authors regularly wrote with oral delivery in mind. 'Speaking' and 'writing' are not antonyms.

It is also obvious that "the use of oral communication in medieval society should not be evaluated . . . as a function of *culture populaire* vis-à-vis *culture savante* but, rather, of the communication habits and the tendency of medieval man

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[1] For the late Middle Ages and the early modern period, cf. Willem Frijhoff, "Communication et vie quotidienne à la fin du moyen âge et à l'epoque moderne: réflexions de théorie et de méthode," in *Kommuniation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 24: "La plupart de gens vivait encore pour l'essentiel dans une culture orale et les procédés d'appropriation des idées passaient de préférence par la parole dite et écoutée, quand bien même on était capable d'une lecture visuelle plus ou moins rudimentaire."

[2] See Marco Mostert, "New Approaches to Medieval Communication?" in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), pp. 15-37; Michael Richter, "Die Entdeckung der 'Oralität' der mittelalterlichen Gesellschaft durch die neuere Mediävistik," in *Die Aktualität des Mittelalters*, ed. Hans-Werner Goetz (Bochum: D. Winkler, 2000), pp. 273-287.

[3] Peter Burke calls the construct of "oral versus literate" useful but at the same time dangerous: idem, "Mündliche Kultur und >Druckkultur< im spätmittelalterlichen Italien," in *Volkskultur des europäischen Spätmittelalters*, eds. Peter Dinzelbacher and Hans-Dieter Mück (Stuttgart: Alfred Kröner Verlag, 1987), p. 60.

[4] Michael Clanchy, "Introduction," in *New Approaches to Medieval Communication*, ed. Marco Mostert (Turnhout: Brepols, 1999), p. 6.

to share his intellectual experiences in the corporate framework."[5] Oral delivery was not "the sole prerogative of any socioeconomic class."[6]

For all these reasons, it is important to analyze the extent of and context, in which 'speech acts,' auditive effects, and oral tradition occur in medieval sources .[7] Research into the use of the spoken word or references to it in texts and images provides new insight into various, mainly social, rules and patterns of the communication system. It opens up additional approaches to the organization and complexity of different, but indispensably related, media in medieval society, and their comparative analysis.[8]

The spoken word is connected with the physical presence of its 'sender.' Speech may represent the authenticity of the given message in a more obvious way than written texts or images. Therefore, the use of 'speech acts' in written or visual evidence also has to be seen in context with the attempt to create, construct, or prove authenticity. Moreover, spoken messages contribute to and increase the lifelikeness of their contents, which may influence their perception by the receiver, their efficacy and success. Being aware of such a situation will have led to the explicit and intended use and application of the spoken word in written texts and images – to increase their authenticity and importance, too.

If one operates with a model of 'closeness' and 'distance' of communication with regard to the level of relation of 'senders' and 'receivers,' then the 'speech acts' or their representation have to be seen as contributors to a 'closer' connection among the participants of the communication process.[9] At the same time, however, speech might be evaluated as less official. One regularly comes across 'oral space'

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[5] Sophia Menache, *The Vox Dei. Communication in the Middle Ages* (New York and Oxford: Oxford University Press, 1990), p. 19.

[6] Ibidem, p. 21. Cf. also Jan-Dirk Müller, "Zwischen mündlicher Anweisung und schriftlicher Sicherung von Tradition. Zur Kommunikationsstruktur spätmittelalterlicher Fechtbücher," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), p. 400: "Offensichtlich sind schriftliche und nichtschriftliche Tradierung von Wissen weiterhin relativ unabhängig voneinander, nachdem die Schrift längst dazu angesetzt hat, Inseln der Mündlichkeit oder praktisch-enaktiver Wissensvermittlung zu erobern. Die Gedächtnisstütze kann die Erfahrung nicht ersetzen, sondern allenfalls reaktivieren. Sie ist sogar nur verständlich, wo sie auf anderweitig vermittelte Vorkenntnisse stößt."

[7] Cf. W.F.H. Nicolaisen, ed., *Oral Tradition in the Middle Ages* (Binghamton: Center for Medieval and Renaissance Studies, 1995).

[8] See, esp., Horst Wenzel, *Hören und Sehen, Schrift und Bild. Kultur und Gedächtnis im Mittelalter* (Munich: C.H. Beck, 1995), passim.

[9] See also Stefan Sonderegger, ">Gesprochen oder nur geschrieben?< Mündlichkeit in mittelalterlichen Texten als direkter Zugang zum Menschen," in *Homo Medietas. Aufsätze zu Religiosität, Literatur und Denkformen des Menschen vom Mittelalter bis in die Neuzeit. Festschrift für Alois Maria Haas zum 65. Geburtstag,* eds. Claudia Brinker-von der Heyde and Niklaus Largier (Bern et al.: Peter Lang, 1999), p. 665: "Jedenfalls darf man sich bewußt bleiben, daß auch in den Texten des deutschen Mittelalters die Reflexe gesprochener Sprache eine bedeutende Schicht ausmachen, die besonders dann immer wieder hervortritt, wenn es um einen direkten Zugang zum Menschen geht, um einVerstehen aus unmittelbarer Partnerschaft heraus ..."

that has become institutionalized or more official by the application of 'written space.'[10] Simultanous employment of such different levels and qualities of messages must often have had considerable influence on their efficacy.[11]

The papers in this volume are the outcome of an international workshop that was held in February, 2001, at the Department of Medieval Studies, Central European University, Budapest. Participants concentrated on problems of the occurrence, usage, and patterns of the spoken word in written and visual sources of the Middle Ages. They dealt with the role and contents of direct and indirect speech in textual evidence or in relation to it, such as chronicles, travel descriptions, court and canonization protocols, sermons, testaments, law-books, literary sources, drama, etc. They also tried to analyze the function of oral expression in connection with late medieval images.

The audiovisuality of medieval communication processes[12] has proved to be evident and, thus, important for any kind of further comparative analysis of the various levels of the 'oral–visual–literate,' i.e. multimedia culture of the Middle Ages. Particular emphasis has to be put on methodological problems, such as the necessity of interdisciplinary approaches,[13] or the question of the extent to which we are, generally, able to comprehend and to decode the communication systems of the past.[14] Moreover, the medievalist does not come across any types of sources in which oral communication represents the main concern.[15] Instead, she or he is confronted, at first glance, with a great variety of 'casual' and 'marginal' evidence.

We would like to thank all the contributors to the workshop and to this volume. Their cooperation made it possible to publish the results of the meeting in the same year in which it took place. This can be seen as a rare exception, at least in the world of the historical disciplines. The head, faculty, staff, and students of the Department of Medieval Studies of Central European University offered various help and support. Special thanks go to Judith Rasson, the copy editor of

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[10] This, e.g., could be well shown in a case study on the pilgrimage to Santiago de Compostela: Friederike Hassauer, "Schriftlichkeit und Mündlichkeit im Alltag des Pilgers am Beispiel der Wallfahrt nach Santiago de Compostela," in *Wallfahrt und Alltag in Mittelalter und früher Neuzeit*, eds. Gerhard Jaritz and Barbara Schuh (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 277-316.

[11] Cf. Bob Scribner, "Mündliche Kommunikation und Strategien der Macht in Deutschland im 16. Jahrhundert," in *Kommunikation und Alltag in Spätmittelalter und früher Neuzeit*, ed. Helmut Hundsbichler (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1992), pp. 183-197.

[12] Wenzel, *Hören und Sehen*, p. 292.

[13] Cf. Ursula Schaefer, "Zum Problem der Mündlichkeit," in *Modernes Mittelalter. Neue Bilder einer populären Epoche*, ed. Joachim Heinzle (Frankfurt am Main and Leipzig: Insel Verlag, 1994), pp. 374 f.

[14] Frijhoff, "Communication et vie quotidienne," p. 25: "Sommes-nous encore en mesure de communiquer avec la communication de jadis?"

[15] Michael Richter, *Sprache und Gesellschaft im Mittelalter. Untersuchungen zur mündlichen Kommunikation in England von der Mitte des elften bis zu Beginn des vierzehnten Jahrhunderts* (Stuttgart: Anton Hiersemann, 1979), p. 22.

this volume, who took particluar care with the texts of the many non-native speakers fighting with the pitfalls of the English language.

Budapest, Krems, and Constance
December 2001

Gerhard Jaritz and Michael Richter