"... KILLINGS, UNFORTUNATELY, TAKE PLACE MORE OFTEN HERE THAN ANYWHERE ELSE:" CIVIL AND CLERICAL HOMICIDE IN LATE MEDIEVAL NORWAY

Torstein Jørgensen

Introduction

The quotation in the title is taken from a letter of rebuke from the bishop of Oslo to the people of the district of Upper Telemark in 1395.[1] The bishop, who had visited the area, was consternated about what he had seen of violence and killing, both in terms of frequency and the degree of brutality. Whether the bishop was right in his comparative assertion or not can, of course, never be fully ascertained. But it is a fact that according to the preserved late medieval sources this area seems to have been especially stricken with violence and killing.[2] From different sources we know that physical brutality and fighting, with or without weapons, often ending in death, occurred frequently in Norwegian society in the late Middle Ages. Altogether, some 300 cases of killing are registered as having been dealt with by the Norwegian civil jurisdictional apparatus during the period from 1300 to 1560.[3] When it comes to the ecclesiastical structure, we know from the registers of the office of the Papal Penitentiary that clerics were by no means left out of these matters, either as perpetrators or victims. From the rather limited period of surviving protocols from the medieval operation of this office, i.e., from around 1450 onwards,[4] altogether 34 supplications dealing with clerics who

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1 "... manndrapp, þuj wær, hænda hær meir æn j nokrom adrom bygdælagom," *Norges Gamle Love* (henceforth *NGL*) 2. Række, vol. I (Kristiania: Grøndahl & søn, 1904), 329.

2 Steinar Imsen, *Norsk bondekommunalisme fra Magnus Lagabøte til Kristian kvart*, I. Middelalderen (Trondhjem: Tapir, 1990), 91.

3 Olav Solberg, *Forteljingar om drap – kriminalhistorier frå seinmellomalderen* (Bergen: Fagbokforlaget, 2003), 15; Steinar Imsen, "Den gammelnorske drapsprosessen," *Historisk Tidsskrift* 88, no 2 (2009), 188.

4 The oldest existing protocol dates from 1409. A few scattered volumes are preserved from the first half of the fifteenth century, but a more complete series of annual register volumes have only been preserved from 1450 onwards.

had somehow been involved in killing and violence originated from the Norwegian church province.[5]

This article will outline different aspects connected to dealing with violence and homicide in late medieval Norway. The act of killing was a most dramatic event that involved a set of societal aspects such as legal proceedings and law, economics in the form of fines and compensation, morals, honour, and sometimes vengeance. For the perpetrator it was a most severe matter that meant that almost everything was suddenly at stake: One's total existence could end by banishment or pardon, in ruin or restitution. Or it could remain more or less unresolved, or result in cases when the decisions of the courts and authorities were not enforced, such as when the imposed compensations were not paid and acts of revenge from the offended party entailed more killing. Particular focus will be put on cases of killing in which clerics were somehow involved. Clerics committing crimes were, in accordance with the *privilegium fori*, in principle only to be put on trial by ecclesiastical courts. In the later Middle Ages such cases were also among the matters that the popes reserved for themselves to decide, i.e., they could no longer be resolved by local bishops or archbishops, but had to be addressed to the Holy See.

First, I will take a closer look at the issue of homicide in medieval Norway as treated by the civil system of justice. This will function as a backdrop for my second and more detailed focus on acts of violence and killing in which clerics were involved. Finally I will draw some perspectives on the connecting lines between the two.

Homicide and the civil system of law and jurisdiction

Two kinds of killing - the *ubotamål* and the *botamål*

Old medieval Norwegian legislation distinguished between two categories of homicide that to some extent can be compared with the modern distinction between murder and manslaughter. The more serious felony of the former kind is often referred to in Norwegian texts as *nidingsdrap*, which indicates that the killing was a most disgraceful act of shame and dishonour.[6] Examples of *nidingsdrap* are murder in the qualified sense as a premeditated act, killing of a close relative,[7] or in places of peace, protection

5 All registered penitentiary supplications are published in Torstein Jørgensen and Gastone Saletnich, *Synder og pavemakt: Botsbrev fra Den Norske Kirkeprovins og Sudereyene til Pavestolen 1438-1531*, Diplomatarium Poenitentiariae Norvegicum (Stavanger: Misjonshøgskolens forlaget, 2004).

6 See, for instance, *Gulatingslovi*, trans. Knut Robberstad (Oslo: Samlaget, 1952), IX, 29, p. 186, *Magnus Lagabøters Landslov* (henceforth *MLL*), trans. Absalon Taranger (Oslo: Universitetsforlaget, 1915-79), IV, 3-6, p. 44-47.

7 Such as parents, children, brothers, and sisters.

or safe conduct,[8] or killing someone by setting fire to a locked house. Together with other kinds of the most severe felonies these kinds of killing were categorised as *ubotamål*[9] and the perpetrator was called *ubotamann*.[10] The terms refer to an act of killing and a person who had committed homicide in a way that was so grave that it could not be compensated by fines, neither to the relatives of the murdered person nor to the king. The general sentence to be imposed on culprits of this category was to declare them outlaws and confiscate their property.[11] Often such a person was simply put to death, either randomly by anyone[12] or by an official execution.[13] In many cases banished persons managed to flee the country, but some are also known to have remained untouched in their local communities.[14]

If, on the other hand, it was possible for the killer to raise an argument of sufficient mitigating circumstances, the act would be categorised as *botamål*[15] and the perpetrator would be declared *botamann*.[16] In such a case the culprit would be sentenced to pay compensation to the family of the deceased person and, in most cases, a fine to the king. In fact, a decisive condition for a homicide case to be accepted as *botamål* was that the person who had actually and in objective terms caused another's death declared the killing on himself in public. This announcement was called *vigfysing*, and was supposed to take place within the county, normally at the nearest farm unless it was inhabited by relatives of the deceased, on the same day as the killing had been committed.[17] If, on the other hand, the killer committed his crime in secret or tried to conceal his act or to escape, the crime would be regarded as murder, or as the *Landslaw* of King Magnus the Lawmender puts it, "But if he does not in this way declare the killing, then he is a proper murderer and has forfeited his livestock and his peace."[18]

The category of cases that could be resolved by fines and compensation is by far the best documented in the preserved source material. This is not surprising since

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8 Such as churches and churchyards, *thing* locations and courts and somebody's own home.

9 A criminal act that cannot be solved by indemnification.

10 A person who has committed a crime that cannot be resolved by indemnification. *MLL*, IV, 2-6, p. 43-47.

11 *Gulatingslovi*, IX, 29, p. 186. For a wider overview of crimes leading to sentences of banishment and confiscation, see *MLL*, IV, 3, p. 45-47.

12 *MLL*, IV, 3, p. 45.

13 *MLL*, IV, 9, p. 49.

14 Solberg, *Forteljingar om drap*, 28.

15 A criminal act that can be resolved by indemnification.

16 A person who committed a crime that can be resolved by indemnification; Imsen, "Den gammelnorske drapsprosessen," 185-229.

17 "If someone kills another, then that person is the slayer who declares the killing on himself. But the killing shall be announced on the same day within the county, and he shall tell his name and his place of dwelling for the night, and the place from where he comes, and he shall state his declaration to a free and full-grown man." *MLL*, IV, 12, p. 51-12. See also Imsen, "Den gammelnorske drapsprosessen," 199-200.

18 *MLL*, IV, 12, p. 51.

this kind of case required more argumentation and deliberation, and not least negotiation on economic issues, than the more straightforward *ubotamål* cases. But due to this imbalance and the generally low number of cases it is impossible to suggest any numerical proportion between *ubotamål* and *botamål* cases.[19]

Documentation

Within the civil system of legal procedure the treatment of *botamål* cases is reflected in different kinds of documents. In the first instance the killer would be in need of a so-called *gridsbrev*,[20] i.e., a letter authorised by the king[21] that granted him the right to remain untouched for the period when his case was under investigation and trial. It seems that a common procedure was that the culprit himself travelled to the royal chancellery and brought the letter back to the local authorities.[22] Another point of this letter was to instruct the magistrate of the district or some other official to investigate and try the case, to register the facts of the event as accurately as possible by hearing witnesses. The result of this investigation was then put on paper in a so-called *prøvsbrev*,[23] i.e., a letter of proof, addressed to the king. If the king accepted the argumentation presented in the letter of proof that the circumstances of homicide included enough mitigating elements to classify the killer as a *botamann*, a so-called *landsvistbrev*[24] would be issued in the name of the king. This document granted the killer the right to live in peace in the realm once the fines imposed and amounts of compensation had been paid. Since killing was a matter of considerable public interest, not the least in the setting of the perpetrator's and victim's local community, the contents of the *landsvistbrev* seem to have been publicly announced at the local *things*. When the fines to the king had been received a *kvitteringsbrev*, i.e., letter of receipt, would be issued.[25] With these two documents in possession the case was in principle resolved as far as the relation to the king was concerned. A remaining matter, however, was the settling of accounts with the kinsmen of the deceased.

Fines and compensation

Whereas murderers forfeited all their property – and were happy if they saved their lives by escaping – two kinds of penalties were levied on the part of the king on

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19 Imsen, "Den gammelnorske drapsprosessen," 188.

20 Solberg, *Forteljingar om drap*, 29; Imsen, "Den gammelnorske drapsprosessen," 200-2.

21 The letter was normally issued by the royal chancellery.

22 Imsen, "Den gammelnorske drapsprosessen," 200.

23 Ibidem, 203-9. The document could also be called *drapsbrev*, i.e., the letter that reported the killing.

24 Ibidem, 216-9.

25 Solberg, *Forteljingar om drap*, 29.

killers who had the established status of *botamenn*. One was a fine called *tegngjeld*, established to compensate the king for the loss of one of his subjects;[26] the other, called *fredkjøp*, was instituted as a purchase of the king's peace.[27] The former seems to have been imposed on the basis of a certain tariff, which, however, could be increased or reduced according to the circumstances. The latter seems to have been more the object of individual evaluation in each case.[28] Notification of the amounts of these fines was the main issue of the *landsvistbrev*.

For someone who had committed homicide the resolution of the case with the civil authorities was, of course, the first priority as far as questions of guilt and economy were concerned. The settlement with the kinsmen of the deceased, however, was also of the highest importance. The economic compensation levied on a killer and paid to the relatives of the victim was called *frendebot*.[29] In some cases, such as if the killing was accidental, the king could abstain from claiming any kind of fine at all from the perpetrator. This did not, however, alter the necessity of compensating the kinsmen.[30] The process of meting out this compensation, which included both an economic settlement and a formal reconciliation between the two parties, was normally a matter organised on the local level, either between the parties themselves or by the local law speaker assisted by members of some kind of jury.[31] Examples of the size of the *frendebot* that we have from the sources show that this could be a very expensive affair and could be meted out in gold or silver, land or cattle. Sometimes the levied burden was so heavy that it took years until the final settlement was completed. And until this was done, the case was still pending. Sometimes the unsolved case could also be submitted to the authorities, with whom the killer could lose his status as *botamann* and be re-convicted as *ubotamann*.[32] But the kinsmen of the victim could also take the matter into their own hands and revenge themselves on the killer. An example of this course of action is described in a letter of proof from 1315. The document tells of a killer who had obtained his royal *gridsbrev*, which he read in public, and also offered compensation to the family of the deceased. But the killer never applied to the magistrate for investigation of the case and the family of the deceased never saw anything of the promised compensation. Instead, six kinsmen of the killed man found the killer and put him to death, apparently

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26 Tegn=subject, gjeld=dept.

27 Fred=peace, kjop=purchase.

28 *MLL*, IV, 2 and 6; Imsen, "Den gammelnorske drapsprosessen," 220-1.

29 Frende=kin, bot=fine, compensation. Solberg, *Forteljingar om drap*, 29; Imsen, "Den gammelnorske drapsprosessen," 202, 223-227.

30 In this we see a distinction between punishment and compensation. Imsen, "Den gammelnorske drapsprosessen," 213-4.

31 *Diplomatarium Norvegicum* (henceforth *DN*), I, No 297; Imsen, "Den gammelnorske drapsprosessen," 217.

32 *DN* I, No 153; Imsen, "Den gammelnorske drapsprosessen," 216.

motivated by the idea that if compensation failed revenge was better for the honour of the family than nothing.[33]

Homicide among clerics and the ecclesiastical system of legal and penitentiary procedures

Turn to the dominion of the medieval Church, the statutes of canon law and the legal procedures developed over the centuries to deal with matters pertaining to its jurisdiction reached into all corners of Western Christendom including the very northernmost of its provinces, the Norwegian archdiocese of Nidaros. The established system was in itself a well-structured tool for church authorities to deal with these matters both in theoretical terms as issues of theological and juridical nature and as far as procedures were concerned. The actual application and practice of the system in local communities far from the centre of the papal curia was, however, another matter.

Also, when it came to the treatment of violence and killing in which clergymen were involved the statutes of canon law were, of course, both in theory and practice the basic platform for handling such cases. The main point here was that clerics who committed or took part in violence or killing *ipso facto* became irregulars.[34] This implied that their priestly acts became invalid, and in practice such a person fell into a state of suspension.[35] The need for a solution was therefore important. Since the act belonged to the so-called reserved delicts,[36] i.e., matters that the pope had reserved for the papal administration to resolve, cases of this kind had to be sent all the way to the Holy See. On the mandate of the pope, the Apostolic Penitentiary was the principal office that was commissioned to deal with cases of clerical violence and killing.[37] It is, however, important to note that although canon law principles formed the grounds upon which this office handled the cases submitted to them, the aim of the procedure was not only the execution of justice, but also, and no less important, the administration of divine grace.

Of the already-mentioned 34 Norwegian cases of clerics involved in violence and killing registered as having been submitted to the Penitentiary Office, 27 supplications deal with killing and seven with violence. In 29 of the cases the perpetrators were clerics[38] in the remaining five cases they were the victims.[39]

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33 *DN* II, No 123; Solberg, *Forteljingar om drap*, 81-7.

34 *Corpus Iuris Canonici*, II, Liber Extra 5.31.10, ed. Aemilius Friedberg, II, (Leipzig 1879, reprint Graz: Akademische Druck- und Verlagsanstalt, 1959), col. 838.

35 Johannes Baptist Sägmüller, *Lehrbuch des katholischen Kirchenrechts* I (Freiburg: Herder, 1914), 226-7, Ludwig Schmugge et al., *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458-1464)* (Tübingen: Niemeyer, 1996), 99.

36 Provision from *Lateranum* II, 1139.

37 *Sacra Poenitentieria Apostolica.*

38 24 cases of killing and five cases of violence.

Documentation

Three stages of documentation reflected the course of such cases, namely, the supplication from the perpetrator, the letter of reply from the penitentiary office, and the records of register protocols kept in this office. In the supplication the petitioner presented his or her case to the Penitentiary. For the purpose of speedy and efficient treatment the supplication had to be submitted in accordance with the so-called curial style,[40] stressing the elements and aspects of the case that were relevant for an assessment according to canon law. Normally the supplication thus passed through the hands of one of the proctors officially commissioned to work as mediators between petitioners and the curial offices.[41] Since clerics who had committed homicide – as irregulars – had an urgent need to have their cases resolved, they often travelled to the Holy See with their own supplications. Other cases which were not so urgent could be brought to Rome by messengers. Unfortunately, it seems that the Penitentiary office found no reason to keep the original supplication. They were supposed to have been handed back to the petitioner and, since they were generally not written on parchment but on paper, most of them have been lost.[42]

If the supplication was granted the resolution was passed on to the petitioner in the form of a *littera ecclesiae*, i.e., a letter of reply.[43] As a letter primarily of personal value to the petitioner, at least in the matter of clerical violence,[44] he was supposed to keep it as long as he lived, but after his death it lost its relevance. Since these documents were generally composed on parchment, however, they have survived in limited numbers in different archives around the world.[45] Sometimes the grant was given unconditionally, but sometimes it was commissioned to the curial *auditor* for juridical examination or to the *ordinarius*, in most cases the local bishop, for an assessment of the facts of the case.

The third category of documentation of penitentiary petitions, which lays the groundwork for more substantial research on these matters today, consists of the re-

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39 Three cases of killing and two cases of violence.

40 *Stilus curiae.* Schmugge et al., *Supplikenregister*, 19.

41 Ibidem, 19-20.

42 Filippo Tamburini, "Suppliche e lettere di penitenzieria (sec. XIV-XV)," *Archivium Historiae Pontificae* 11 (1973), 149-208. See also Torstein Jørgensen and Gastone Saletnich, *Letters to the Pope: Norwegian Relations to the Holy See in the Late Middle Ages* (Stavanger: Misjonshogskolens forlaget, 1999), 28-9.

43 Schmugge et al., *Supplikenregister*, 18.

44 In other matters, such as the marital cases, the grace from the Pope was generally relevant also for the children and other relatives of the petitioners.

45 Only one document of this category referring to the Norwegian church province seems to have survived. The *littera* was issued in Rome on 2 April 1400 and authorised the bishop of Stavanger to absolve a priest of homicide on the condition that the killing was committed in self-defence. *DN*, IV, No 709, p. 521-2. For the English translation, see Jørgensen and Saletnich, *Letters to the Pope*, 402.

corded versions of the resolved cases in the register protocols of the penitentiary office. These registers include, however, only the cases granted. The refused cases did not change anything in the case of the supplicant and were worthless both to him and the papal curia. Most likely the negative decisions of the penitentiary were simply added to the sheet of the supplication which was sent back to the petitioner, who on his side cannot have been very interested in keeping it.

The penitentiary protocols contain thousands of supplications from all over Western Christendom, of which those from clerics who had killed or hurt someone and from laymen who had killed or hurt clerics form an important part. However, as already mentioned, the oldest surviving protocols date only from the fifteenth century onwards.[46]

Argumentation and aim of the petition

The ecclesiastical system also had a categorisation of cases that can be seen as a kind of parallel to the distinction between *botamann* and *ubotamann*. But unlike civil cases, the matter at stake in the ecclesiastical realm was not a question of life and death or different kinds of fines and monetary compensation to the victims. For a cleric who had killed someone and become irregular it was a matter of keeping or losing one's means of livelihood. And both for him and for a lay person who had killed a priest the state of excommunication from the Church was a matter of the greatest importance implying that no less than one's hope for eternal salvation was at stake.

As far as economy was concerned, the submission of a supplication to the pope also had its costs, for travelling or sending the petition, and in terms of fees to be paid at different stages of the process. Also, clerics who had killed someone were not exempt from the civil imposition of compensation to the victim's relatives.

When guilt is admitted

For priests who had killed and addressed the curia there were two main options: They could plead guilty or not guilty. If the guilt was obvious, the aim of the petition would simply be to obtain a papal absolution.[47] For such a petitioner there was no need to go into detail about the course of events of the case. The decisive points were that an act of homicide had been committed, that the perpetrator was a priest, that

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[46] Only scattered protocols date from the first half of the century, but from 1450 onwards a more complete series of annual register protocols is preserved.

[47] For examples from the Norwegian material, see *Archivio Segreto Vaticano* (henceforth *ASV*), *Penitenzieria Reg. Matrim. et Div.*, vol. 5, fol. 146r, vol. 5, fol. 294v, vol. 15, fol. 86r, vol. 18, fol. 183v, vol. 44, fol. 164v; Jørgensen and Saletnich, *Synder og pavemakt*, no. 39, 40, 44, 46, 79.

he had been sentenced to excommunication, and that guilt was admitted. Thus, the records of these cases[48] are generally short. An example of a standard supplication of this kind, as recorded in the penitentiary registers, is that by the priest Ivarus Gunnari, or Ivar Gunnarsson, which must have been his Norwegian name, who had killed another priest:

> Blessed Father, Your devoted Ivar Gunnarsson, priest from the diocese of Oslo, explains to Your Sanctity that he one day, instigated by the devil, killed a priest, thereby incurring the sentence of excommunication, as generally promulgated in such cases. The said petitioner now asks that Your Holiness may absolve him from the crime of homicide and in the same way from the sentence of excommunication and from his other sins, by ordinary mandate.
> Granted, by ordinary mandate, Dominicus, Santa Croce, Rome, 18 August, 1456.[49]

When guilt is not admitted

If on the other hand, it was possible, as in some of the civil cases mentioned above, to avoid guilt on the basis of extenuating circumstances the perpetrator could plead innocent. The aim of the petition to the pope in such a case was a papal letter to confirm this innocence. Such a document would have the effect of debarring accusations of the opposite in the community of the supplicant, or as is often expressed in the texts, "to stop the mouth of"[50] ignorant and simple accusers who thought otherwise about the question of guilt. The confirmation from the pope, which was issued in the form of an official declaration, generally also authorised the supplicant to remain in office and to be eligible for other offices and benefices. A special characteristic of the supplications in which the petitioner asked for a papal declaration of innocence is that they contain a longer narrative section in which the details of the dramatic event are

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48 The supplications from laymen who had killed or hurt clerics and whose guilt had been settled follow the same pattern as the same kind of petitions from clerics. The aim was papal absolution and a lifting of the state of excommunication. *ASV, Penitenzieria Reg. Matrim. et Div.*, vol. 9, fol. 178r, vol. 8, fol. 184r, vol. 18, fol. 183v, vol. 35, fol. 152r, vol. 38, fol. 251r; Jorgensen and Saletnich, *Synder og pavemakt*, no 6, 42, 47, 68, 77.

49 The English version is my own translation of the following Latin text: *Beatissime Pater, exponit Sanctitati Vestre devotus vir Ivarus Gunnari presbiter Asloensis diocesis quod ipse olim dyabolo instigante quendam presbiterum interfecit, propter quod sententiam excommunicationis incurrit in tales generaliter promulgatam. Supplicat Sanctitati Vestre predictus exponens quatenus ipsum a reatu homicidii ac sententia excommunicationis huiusmodi et peccatis suis aliis absolvi dignemini, ut in forma. Fiat in forma. D<ominicus>, S<ancte> Crucis. <Rome>, xv kal. sept. <anno secundo domini Calixti pape iii>. ASV, Penitenzieria Reg. Matrim. et Div.*, vol. 5, fol. 294v; Jorgensen and Saletnich, *Synder og pavemakt*, no 40.

50 "... *ad ora igitur ... obstruenda* ...". See, for instance, *ASV, Penitenzieria Reg. Matrim. et Div.*, vol. 41, fol. 277r-v; Jorgensen and Saletnich, *Synder og pavemakt*, no 78.

recounted. The text below can serve as an example to illustrate the different formats of a supplication for absolution versus a petition for a declaration of innocence. The supplication reports the case of the priest Jon Ingemundsson, of the diocese of Stavanger, who killed his servant, Hermann Bolbersan, in a quarrel about salary, probably in the year 1483:

> Jon Ingemundsson, a priest from the diocese of Stavanger, explains that one evening he was sitting at the dinner table in a house together with Hermann Bolbersan, a layman, who, when he was still alive, was his servant, on purpose to eat or to refresh himself. It then happened during an exchange of words between them that the said Hermann demanded from the petitioner the salary owed to him by the latter for his service or his job as a servant. Since the petitioner refused to pay the salary when he was asked, Hermann added that he would kill him in case he did not satisfy his request immediately. When the petitioner again refused to pay, Hermann struck the said petitioner with a sword he held in his hands, and with one blow pierced and ripped the latter's coat at his right shoulder without, however, injuring his body. The petitioner, afraid of being exposed to Hermann's anger and by no means intending to kill Hermann but rather to keep him away and to block his hands, averted violence by violence. With a small knife he had used at the table he injured Hermann with one stab in the chest. Of this Hermann died before nightfall.
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> Although the petitioner was not guilty of this death other than in the aforementioned manner, but has been mourning his death deeply and is still mourning, and has a devoted and fervent desire to serve licitly in all his holy and priestly orders, some people who are envious of the petitioner assert, however, that he thus has made himself guilty of homicide and therefore is unable to licitly serve in all his holy and priestly orders. To silence the voices of these detractors the said petitioner now asks Your Holiness for a declaration to be issued stating that by what happened he neither made himself guilty of homicide nor incurred any stain of irregularity or inability, but unimpeded by the said circumstances, can freely and licitly serve in his holy orders by special mandate.
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> Granted as below, Julianus, Bishop of Bertinoro, Regent. To be committed to the ordinary, who, provided that the necessary inquiries prove that the petitioner by averting violence with violence hit Hermann in self-defence against mortal danger, shall declare as is requested. Rome 9 February, 1484.[51]

This text is by no means the longest in this category, but it gives a good impression of the way in which such a petition was set up. As a letter whose main purpose was to argue that the petitioner met the requirements of one to be granted a declaration of

[51] For the original text, see the appendix.

innocence, a somewhat longer presentation of the course of events of the case was needed.

The background of the actual conflict is stated briefly, in this case a servant's claim of a salary from his clerical master. The scene of the case is a banquet at someone else's house where both the priest and his servant sit at the same table as guests. The situation seems to be peaceful at the beginning, until the servant states his claim. Nothing is indicated as to whether the claim was rightful or not, nor was this an issue once the case developed into a homicide case. The description of the course of events is, despite its qualities of a dramatic narrative, a strictly edited version focused on, and more or less limited to, the points which are in favour of the petitioner that are relevant for the evaluation of the case in the penitentiary office.

One crucial point in the trial of the case was the context in which the weapon was used, especially, as mentioned above, if a situation of self-defence could be established.[52] Violence used in self-defence was regarded as an act within the framework of the law (*vis licita*). There is no doubt that the motif of self-defence was applicable to the case of Jon Ingemundsson, attacked as he was by the sword of his servant, trying to block the attacker's hands. In such a situation to avert violence by violence was accepted.[53] The term *vim vi repellendo* is a term with deep historical roots in pre-Christian Roman law. In the penitentiary supplications the term is one of the most frequently occurring points in texts where a petitioner applies for an apostolic declaration of innocence.[54]

Also, the tool used by the priest in this case to commit the killing was within the acceptable framework of canon law. Generally clerics were not allowed to carry and use weapons, as formulated in the *Liber Extra*: *Clerici arma portantes et usurarii excommunicentur*,[55] but sometimes it was difficult to distinguish between weapons and tools. Axes and knives could be used for both purposes, and it was often the use rather than the item itself that decided if it was one thing or the other. The use of a small knife for cutting bread, for instance, was, of course, allowed for a priest.[56] Thus, in addition to the circumstance of self-defence also the fact that the item used for the killing was a

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52 *Clementinae* 5.4.1., Friedberg, *Corpus Iuris Canonici* II, col. 1184, Schmugge et al., *Supplikenregister*, 99,

53 *Corpus Iuris Canonici*, II, *Liber Extra* 5.39.3: *... si in continenti vim vi repellat, quum vim vi repellere omnes leges inniaque iura permittant.* Friedberg, *Corpus Iuris Canonici* II, col. 890.

54 Schmugge et al., *Supplikenregister*, 176.

55 *Corpus Iuris Canonici*, II, *Liber Extra*, 3.1.2; Friedberg, *Corpus Iuris Canonici* II, col. 449.

56 Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX: systematisch auf Grund der handschriftlichen Quellen dargestellt*, Studie e testi 64 (Città del Vaticano: Biblioteca Apostolica Vaticana, 1935), 342-3. Examples: *ASV*, *Penitenzieria Reg. Matrim et Div.*, vol. 16, ff. 128r-v; vol. 48, ff. 428r-v; vol. 59, ff. 363v-364v; vol. 77, ff. 9v-10r; Jørgensen and Saletnich, *Synder og pavemakt*, no 26, 29, 35, 65, Dan Sebastian Crişan, "Physical Violence and the Church: The *De Declaratoriis* Supplications from the German-Speaking Area during the Pontificate of Paul II," MA thesis (Budapest: Central European University, 2006).

small table knife is a most relevant point in the penitentiary evaluation of his case. The priest's conduct and use of weapon also comply with the canon law principles of moderation. According to these the violence of the defender was not allowed to be stronger than that of the attacker. The so-called *moderamen ratione instrumenti*-principle implied that the weapon used was lighter and not heavier than that of the attacker.[57]

The text of this supplication also mentions something about the killer's motives and general attitude. Already at the beginning it is stated that Jon's purpose in attending the dinner was to eat, and nothing else, let alone some hidden intent of killing his servant. As grounds for his petition it is, by the use of rather fixed formulas, stressed that the supplicant has been mourning Hermann's death and is still mourning it and that he has a devoted and burning desire to continue to serve in his orders in a licit way. The theological underpinning of canon law principles and their actual administration becomes visible in these formulations about a pious and compassionate person, to some extent a repentant sinner, with a strong holy vocation in his heart. For absolution to be obtained, which in fact was no less than the granting of divine grace, a repentant heart was necessary.[58] Even in cases when guilt was not admitted, as in the case of Jon Ingemundsson, the demonstration of a clean and pious heart was relevant when assessing whether a person was innocent or not. A zealous determination to be faithful to one's vocation was also an argument in this.

When the guilt question is pending

In the ecclesiastical system, there was also a third possibility that did not exist in the civil structure, namely, that of pleading not guilty and at the same time applying for absolution[59] as a precaution against some guilt being attached to the event in spite of one's argument for the opposite.[60] Like the supplications for a declaration of innocence, the petitions for an absolution as a precaution against possible guilt also include longer narrative passages. An example of a supplication of this kind is that by the priest Bavald Larsson, from the diocese of Nidaros, who killed his drunken servant, Gudleik Eriksson, in 1514 or 1515. This killing also took place in connection with a banquet. The text briefly sketches a situation in which the drunken Gudleik broke into the setting of a peaceful meal and started to attack another of Bavald's servants. After several vain attempts to reprove Gudleik, the priest punched him on his chin so he fell to the ground. When standing up again the drunken servant pulled his belt-knife and threw himself

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57 Kuttner, *Kanonistische Schuldlehre*, 340-1.

58 Cfr the principle of confession in the general term of *contritio cordis et confessio oralis*.

59 In the civil structure the corresponding grace would have been a reprieve.

60 Examples from the Norwegian material: *ASV*, *Penitenzieria Reg. Matrim et Div.*, vol. 46, fol. 256r-v; vol. 48, fol. 428r-v; vol. 59, fol. 363v-364v; vol. 48, fol. 613v-614r; vol. 62, fol. 612v-613v; Jorgensen and Saletnich, *Synder og pavemakt*, no 24, 26, 29, 54, 61.

against the priest, who for his part, in order to defend himself, had drawn a small knife that he was carrying. In the heat of the fight the priest's knife caused a wound in Gudleik's chest of which he died some days later.

This group of penitentiary supplications, like those asking for declarations of innocence, also normally contains the same standard formulation stating that the petitioner is not guilty in any other way than as described in the account of the event. But instead of asking for a declaration to confirm innocence in order to silence the mouth of opponents who thought otherwise, these supplicants ask for absolution as a precaution in case they might have been guilty after all. A representative example of this category is the following excerpt from Bavald Larsson's supplication:

> The said petitioner did not aim to kill the deceased, but is mourning deeply, and from what has been presented he is not guilty other than in the aforementioned manner since it all happened accidentally. It seems therefore that he is almost without guilt. But it is typical for good people to fear guilt where there is no guilt. He wishes, Holy Father, as a precaution, to be absolved from homicide, if he in this way has made himself guilty of it, and to remain in his orders and to serve at the altar. Therefore, as a precaution, he asks Your Holiness to instruct that this petitioner be absolved from homicide in case he committed such a crime in what has been described.[61]

These examples show that the argumentation of the supplications for a declaration of innocence and those asking for absolution as a precaution are very similar. Both focus on codified mitigating circumstances supporting the alleged innocence of a priest who has killed someone. The recorded courses of events also follow the same pattern. As far as the stressing of extenuating circumstances is concerned, the variation between the two categories of texts seems no larger than that between texts within each of the two categories. It is, therefore, difficult to give a general conclusion based on the facts of the cases about why some of these petitions asked for a declaration of innocence and others for absolution as a precaution against possible guilt. The best explanation seems to be that in the requests for absolution as a precaution the supplicant himself seems to have harboured doubts about his innocence, either because of the facts of the case or with regard to the canonical evaluation of them by the papal penitentiary. In none of these cases did the assessment of the penitentiary result in the conclusion that the supplicant was innocent by the grant of a declaration of innocence instead of the requested absolution as a precaution against possible guilt.

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61 *... licet idem orator in mortem dicti defuncti, de qua ab intimis dolet, minime aspiraverit nec de ea, aliter quam ut premittitur, culpabilis fuerit, sed premissa casu acciderint et quasi inculpabilis esse videatur, quia tamen bonarum mentium est ibi timere culpam, ubi culpa minime reperitur, cupereteque, Pater Sancte, a reatu homicidii, si quem propter ea incurrit, tutiori pro cautela absolvi ac in suis ordinibus etiam in altaris ministerio manere, supplicat quatenus oratorem ipsum ab homicidii reatu, si quem propter premissa incurreret, ad cautelam et excessibus huiusmodi necnon peccatis etc. absolvi. ASV, Penitenzieria Reg. Matrim. et Div*, vol. 59, ff. 363v-364v. T. Jørgensen and G. Saletnich, *Synder og pavemakt*, No 29.

An explanation may be that when the grace was granted by the penitentiary cardinal or his regent, the process of assessment was not necessarily fully completed. What could remain were both a more thorough juridical examination and a further clarification of the true facts of the case. Hence, the vast majority of Norwegian supplications of both categories were committed either to the curial auditor or to the ordinary of the supplicant after the grant of the penitentiary, or to both, for juridical evaluation and examination as to whether the written petition agreed with the facts of the case. A standard formulation of this concern was:

> Granted by special and express mandate, Julianus, Bishop of Bertinoro, regent. The case be committed to the bishop of Mylopotamos, presently residing at the Roman Curia, who will examine whether the petitioner has the necessary evidence for his case as it has been presented in this letter, granted, Julianus. Rome at St. Peter's, 16 January 1500. [62]

Overlaps between the two systems

The presentation here of dealing with homicide in the civil and ecclesiastical structures of legal procedures has so far focused on the handling of these cases as if it took place in totally separate rooms. To be sure, there were several similar and more or less parallel features, not the least as far as the principles of reasoning and argumentation were concerned. The good overview that has been established of the documented Norwegian cases of homicide[63] leaves the general impression that a rather clear demarcation line between civil and ecclesiastical jurisdiction was in force, i.e., that civil cases of homicide were treated by the civil authorities and cases in which clerics were involved by the ecclesiastical system. The principle of a *privilegium fori* for clerics, thus, seems to have been respected in the main.

The picture was, however, not that simple. Lay killers, of course, were not only forced to deal with civil authorities. They also had to settle their cases with the Church in the form of confession and penance. But these latter processes belonged to the *forum internum*, normally at the local or regional level, and they entailed little written evidence. Since most of the medieval church archives in Norway, like the rest of Scandinavia, were destroyed during the time of the Reformation, knowledge of all kinds of disciplinary and penitentiary cases as dealt with by local church authorities is limited. This also

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62 *Fiat de speciali et expresso, Iul<ianus>, episcopus Brictonoriensis, regens; et committatur episcopo Milopotamensi ad presens in Romana Curia residenti attento, quod orator sufficientes probationes ad hoc sibi necessarias habeat in eadem; fiat, Iul<ianus>*
Rome apud Sanctum Petrum, xvii kal. febr. anno octavo domini Alexandri pape vi. ASV, Penitenzieria Reg. Matrim. et Div., vol. 48, fol. 428r-v. T. Jørgensen and G. Saletnich, *Synder og pavemakt*, no 26.

63 As for the civil cases, see S. Imsen, "Den gammelnorske drapsprosessen," and for the ecclesiastical cases, T. Jørgensen and G. Saletnich, *Synder og pavemakt*.

applies to the treatment of cases of homicide committed by the clergy. From other countries it is known that the existence of such local documentation is necessary to obtain a more complete and detailed understanding of the many different aspects that were part of the case.[64]

Among the homicide cases dealt with by the civil authorities, however, a limited number of cases appear in which the perpetrator was a priest. Although they are few, these documented cases leave an indication that there was also a civil jurisdictional side of the cases of clerical homicide. The question to ask, therefore, is whether this was a violation of the *privilegium fori*-principle. In order to answer this, a closer look at the Norwegian variant of the medieval discourse between King and Church on the drawing of a demarcation line between civil and ecclesiastical jurisdiction is necessary, here confined to some of the main points.

In 1277 a formal agreement, referred to as the *Compositio Tunbergensis* or the Tønsberg Concordat,[65] was signed by King Magnus the Lawmender and Archbishop Jon the Red of Nidaros. A main principle of the agreement is a concession on the part of the king renouncing royal jurisdiction in matters pertaining to Church law – *causarum ad ecclesiam spectancium* – which he, as the document states, renounces fully – *renunciavit … omni iuri.*[66] Such cases were, again in the words of the document:

> Cases in which clergymen are at law with one another or are sued by laymen, matrimonial cases, birth, patronage, tithes, holy vows, wills – especially when gifts to churches are involved – monasteries and holy foundations, protection of pilgrims coming to Saint Olav's or other Norwegian cathedrals' doorsteps. Further, cases concerning church property, sacrilege, perjury, usury, simony, heresy, concubines, adultery, and incest and all other things which in any way may belong to the ecclesiastical forum according to separate jurisdiction, but with the reservation of royal right in cases in which, according to custom or the laws of the country, fines are to be imposed.[67]

The reservation stated in the concluding phrase of this paragraph is important to note. The king's renunciation of jurisdictional rights in the matters listed was limited to cases that did not involve economic settlements in the form of fines. This implies that both

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64 A very useful study of such cases is given in Paolo Ostinelli (ed.), *Penitenzieria Apostolica: Le suppliche alla Sacra Penitenzieria Apostolica provienti dalla diocesi di Como (1438-1484)* (Milano: ed. Unicopli, 2003).

65 In Norwegian referred to as *Sættargjerden*. See *Norske middelalderdokumenter i utvalg*, ed. Sverre Bagge et al. (Bergen: Universitetsforlaget, 1973), 136-51.

66 *Norske Middelalderdokumenter*, 143.

67 Our translation from ibidem: "*Omnes cause clericorum quando inter se litigant uel a laicis impetuntur, matrimonium, natalium, iuris patronatus, decimarum, votorum, testamentorum – maxime quando agitur de legatijs ecclesijs et piis locis et religiosis -, tuicio peregrinorum visitancium limina beati Olaui et aliarum ecclesiarum cathedralium in Norwagia et eorum cause. Item cause possessionem ecclesiarum, sacrilegij, periurij, usurarum, simonie, heresis, fornicationis, adulterij et incestus et alie consimiles que ad ad ecclesiam spectant mero iure saluo semper regio iure in hijs cawis ubicumque debetur ex consuetudine approbata uel legibus regni multa pene pecuniarie persoluenda.*"

the ecclesiastical and civil jurisdictional structures operated in cases entailing penalties, and also in cases that, according to the contents (*ratione materiae*) or personal status (*ratione personae*), belonged to the ecclesiastical forum.

The dividing line in the question of jurisdiction between the two realms was an issue that was never precisely drawn throughout the Middle Ages, and from time to time it was the object of further discussion and attempts at clarification. Thus, in 1337, the Norwegian National Council issued, after a disagreement between the king and archbishop, a prescript on how the episcopal *officialis* and the royal *lagmann*[68] should cooperate and share power when fines were to be imposed for violations in the realm of ecclesiastical law.[69] In the course of the fifteenth century, already-agreed-upon principles were again confirmed or specified.[70]

One of the few cases of clerical homicide that was dealt with by the civil authorities dates from 1357. The case was reported in a letter of proof from Telemark County,[71] the very district that was rebuked by the bishop of Oslo for widespread violence, as mentioned at the beginning of this article. The letter contains a longer narrative section, similar to that found in the penitentiary supplications for a papal declaration of innocence, reporting the course of events of the case. The killing took place at the manor of the priest Guttorm Thorlaugsson, who had been found at his home by three aggressive neighbours. A dispute of words escalated into a free fight and ended with the priest killing one of the intruders with a blow to his head with an axe.

The letter also states that the priest who committed the killing, in accordance with civil law,[72] declared the killing on himself at a neighbouring farm before nightfall. The examination of the case by the hearing of witnesses and the summoning of the heirs of the deceased also follow the ordinary procedures of a civil homicide case. But it also bears clear similarities to the penitentiary supplications, such as the argument stressing similar mitigating circumstances. When it comes to the conclusion about the guilt question, the standard term used in the Norwegian letters of proof, i.e., the word *ufyrirsynja*,[73] is a parallel to the standard formulation – *cum autem ipse exponens alias quam ut premittitur culpabilis non fuerit* – of the penitentiary petitions for declarations of innocence.

It is not known whether the way this case was dealt with in the civil jurisdictional system had a parallel in the ecclesiastical structure, i.e., whether it was not only reported to the royal chancellery in the form of a letter of proof with a petition for a *landsvistbrev*, but also to the papal administration in the form of a supplication for a de-

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68 Law speaker.

69 *NGL* 1, III, p. 161-2.

70 *NGL* 1, IV, p. 160-82; 2, II, p. 140-4; 1, II, p. 270-1.

71 *DN* 1, no 359.

72 See above, note 17.

73 The term is normally translated with the word "inadvertently," but in fact it covers a wider range from "accidental" to "by some kind of intent."

claration of innocence. As already mentioned, the oldest surviving penitentiary supplications date from the early fifteenth century. The fact, however, that Guttorm's case was brought to the king as far as the matter of fines was concerned – to the king in the form of *tegngjeld* and *fredkjøp* and compensation in the form of *frendebot* to the kinsmen of the deceased – was in agreement with the established regulations of royal and ecclesiastical jurisdiction. The letter of proof in the case of the priest, Guttorm Thorlaugsson, who killed a man, does, however, follow the general pattern of such letters in every respect. Thus, it leaves the impression that a cleric who had committed homicide was, or could be, treated in exactly the same way as a layperson who killed someone.

Conclusion

Because of the general scarcity of sources it is difficult to draw a more complete and consistent picture of how clerical violence was dealt with in Norway in the high and late Middle Ages. Very few cases are witnessed by more than one document, so it is impossible to follow the sequence of a case as it was dealt with by the authorities. It seems that civil and ecclesiastical authorities managed to agree upon some basic principles of a dividing line between their fields of jurisdiction and to some extent these principles were followed. During the period of preserved cases from the Apostolic Penitentiary office, supplications were regularly submitted by Norwegian clerics who had committed homicide, and a number of similar cases regarding laymen in the civil structure are registered and preserved in the sources. An overlapping field between the two realms is to be found in cases involving fines. But in some cases, as in the one described from Telemark, the royal power seems to have overruled the agreed-upon balance of power.

Appendix

1484, February 9: Supplication of the priest Jon Ingemundsson, who had killed his servant, to the Apostolic Penitentiary:

Iohannes Ingemundi presbiter Stawargensis diocesis <exponit> quod, cum ipse olim in quadam domo de sero in mensa seu tabula cum quodam Hermanno Bolbersan laico ipsius domini adhuc vivente familiari animo ibidem comedendi seu se recreandi cum sedisset, accidit quod inter verba inter eos habita, dictus Hermannus ab ipso exponente salarium, in quo sibi ratione famulatus seu servicii erat obnoxius, primum dari petiisset et cum sibi petenti huiusmodi salarium dare obstinuisset, demum et ipse Hermanus[1] *subiunxisset quod nisi ipse exponens sibi ad statim de salario huismodi satisfaceret, eum interficeret, uti et tunc ipse Hermannus dictum exponentem quam primum tunc non solvebat, in ipsius scapula dextra vestes sibi cum quodam gladio, quem in suis tenebat manibus, unico ictu perforando seu scindendo absque tamen sui corporis lesione percussit, et cum exponens furori ipsius Hermanni cedere pavesset, non animo ipsum Hermannum interficiendi, sed potius ipsum a se divertendi et ut manus eius impedire possit vim vi repellendo cum quodam parvo cultello, quo ipse exponens in dicta mensa seu tabula utebatur, in illius pectore unico actu vulneravit, ex quo idem Hermannus illatenus nocte diem vite sue clausit extremum.*

Cum autem, Pater Sancte, dictus exponens in morte dicti Hermanni, absque ut premittitur, culpabilis non fuerit, ymo de ipsius morte ab intimis doluerit et dolet de presenti, cupiatque ex magno devotionis fervore in omnibus etiam sacris et presbiteratus ordinibus suis licite ministrare, a nonnullis tamen ipsius exponentis emulis asseritur ipsum propter premissa homicidii reatum incurrisse et propter ea in omnibus sacris etiam presbiteratus ordinibus suis licite ministrare non posse; ad ora igitur talium etc. emulorum obstruenda, supplicat eidem Sanctitati Vestre prefatus exponens quatenus ipsum occasione premissorum nullum homicidii reatum incurrisse nullamque irregularitatis sive inhabilitatis notam contraxisse, sed predictis non obstantibus ipsum in dictis suis etiam sacris et presbiteratus ordinibus libere et licite ministrare posse, misericorditer declarari mandare dignemini de gratia speciali.

Fiat ut infra, Iul<ianus>, episcopus Brethonoriensis, regens.

Committatur ordinario et si vocatis vocandis sibi constiterit quod exponens vim vi repellendo et se defendendo aliter fugere seu movere non valens evadere dictum Hermannum percusserit, ut prefertur et de aliis expositis, declaret ut petitur.

Rome v id. feb. <anno xiii Sixti pape iv>. (*ASV, Penitenzieria Reg. Matrim. et Div.*, vol. 33, fol. 173v; Jørgensen and Saletnich, *Synder og pavemakt*, no 75).

VIOLENCE AND THE MEDIEVAL CLERGY

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Gerhard Jaritz
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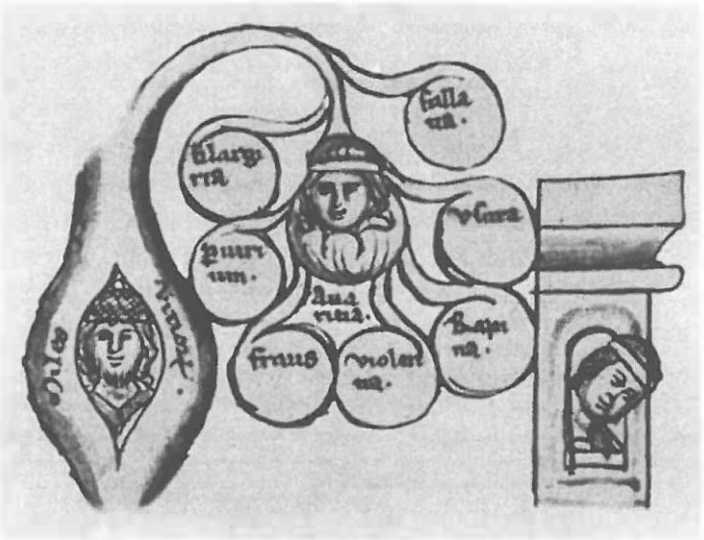

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Central European University
Department of Medieval Studies
Nádor u. 9, H-1051 Budapest, Hungary
Telephone: (+36-1) 327-3051, Fax: (+36-1) 327-3055
E-mail: medstud@ceu.hu, Website: http://medstud.ceu.hu

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Telephone (+1-212) 547-6932, Fax: (+1-646) 557-2416
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PREFACE

Studies of the Apostolic Penitentiary and its role and function for all strata of late medieval society have become an important field of research at the international level. The requests of Christians for grace to be granted by the papal curia offer information about a variety of problems and needs that confronted both clerics and laypeople and made petitions to the pope necessary or, at least, advisable.

Since 2001, the Department of Medieval Studies of Central European University has been concentrating on comparative research in the East Central European data of the Penitentiary Registers. This has led to intensive cooperation with other scholars in the field, to a number of international meetings and the publication of their results.[1] The most recent of these workshops was held in Dubrovnik in 2008 and dealt with a research question for which the Penitentiary registers contain rich material: "Coping with Violence, and the Medieval Clergy (from the Local Settlement of Dispute to Approaching the Apostolic Penitentiary)."

In recent decades research into violence in the Middle Ages has seen a particular boom. In a large number of studies historians discovered that violence was omnipresent in medieval society and affected all areas of life and the members of all social strata. Although one has to be careful with such generalizations, it can be stated that the surviving sources deal regularly with issues of violent actions, signs and results of violence, violent people and coping with violence. Members of the clergy played an important role in recording such evidence – as writers about violence and critics of violence, but also as perpetrators, victims, and witnesses. However, systematic analyses of the patterns of behaviour and the different functions and actions of clerics on these issues have not yet been realized often in a context-bound and comparative way. The Dubrovnik workshop aimed to contribute towards changing this situation and offer a forum to discuss questions about the various roles of medieval clerics in the attempts

[1] The results of meetings at Bergen (2003) and Budapest (2004) were published in Gerhard Jaritz, Torstein Jørgensen and Kirsi Salonen (ed.), *The Long Arm of Papal Authority. Late Medieval Christian Peripheries and Their Communication with the Holy See*, CEU Medievalia 8 (Budapest and New York: Central European University Press, 2005); selected papers of a workshop at Rome (2005) may be found in iidem (ed.), ... et usque ad ultimum terrae *The Apostolic Penitentiary in Local Contexts*, CEU Medievalia 10 (Budapest and New York: Central European University Press, 2007).

and processes designed to cope with violence. Particular emphasis was put on the function of the Apostolic Penitentiary and its decisions in this context. This volume contains selected contributions from the meeting.

In his introductory paper, Peter Clarke offers an overview of the state of the art of research into the connection of the clergy and violence in the Middle Ages. Kirsi Salonen concentrates on violence at the Roman curia and its reflection in the Penitentiary records. Torstein Jørgensen and Etleva Lala deal with violence and the clergy in two peripheral areas of medieval Western Christianity, namely, Norway and Albania, and also include Penitentiary evidence in their analysis. Gerhard Jaritz studies the role of one important object in the violence-bound argumentation of the supplicants to the Penitentiary: the short bread-knife that was allowed to be carried by everyone and did not count as a weapon, but seems to have been used regularly as such. Gordan Ravančić and Nella Lonza offer analyses of problems of violence occurring in the clerical space of medieval Dubrovnik.

November, 2011

Gerhard Jaritz (Budapest and Krems)
Ana Marinković (Budapest and Zagreb)