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The Law as a Frontier? Process and Difference in Medieval Poland's "Polish" and "German" Law Courts

Abstract

The frontier ranges in meaning between the literal – a zone of physical separation – and the abstract – a difference across a gradient of high-order cultural attributes. In medieval Poland, one such attribute was the law: drawn as a sharp distinction between "Polish" and "German" law, two comparable yet substantively different legal systems. This article explores this frontier through close examination of judicial cases, in what I designate here as "Polish" and "German" courts. The source material is hundreds of stories about what happened in courts, embedded in charters and in records of Kraków's civic court, spanning the years 1280–1370. The article opens with a survey of these courts (as they appear in that source material), then closely compares the court cases along their full course on the two sides of the supposed ethnic divide. The result is a wide range of similarity, analogy, and difference in the working of those courts. Rather than two sharply distinct legal systems, "Polish" and "German" courts comprised a complex, internally varied institutional universe. Within that universe, curiously invisible is transformative influence – diffusion – across the frontier from one side to the other – above all, from "German" to "Polish" courts.

Keywords: frontier, courts, Polish law, German law, procedure, comparative history, charters, Kraków civic register

In memory of Björn K.U. Weiler (1969–2024)

1. Law as a frontier

As a construct and historical subject, the frontier ranges in meaning.[1] Literally, the word designates a line or a wider transitional zone physically separating space, and people,

[1] Among an enormous literature: Bartlett, MacKay, *Medieval Frontier Societies*; Lewis, "Closing"; Kłoczowski, *Europa słowiańska*, 9, 11–12, 196–9; Curta, *Borders, Barriers, and Ethnogenesis*; Murray,

societies, and processes on each side of the resulting divide. Its subset is boundary, or border: a zone that is usually linear, closely managed, and politically potent.[2] Abstractly, the frontier means difference itself: some specifiable distinction between people, societies, and processes, assessed across a gradient of attributes, cultural, material, mental, or social. In medieval Poland, one type of frontier was the law: articulated in the written record through ethnic-specific adjectives, juxtaposing "Polish" to "German law," understood as two different, yet conceptually parallel and comparable legal systems.[3] As a frontier, the law sits at an interesting place between the literal and the figurative. It entails a spatial element. The classification refers to two major polities in Europe – put somewhat simplistically, Poland and Germany – within, and out of which, each legal system in some sense emerged. Locally, the "Polish" and the "German" "laws" operated, at least to a degree, in different spaces comprising medieval Poland's villages and towns – insofar as the people subject to each "law" lived, or acted, separately from one another, or as the practices or institutions specific to each were lodged in different sites of a rural or an urban space.[4]

These literal meanings are conceptually and empirically unstable. The key terrain for the emergence and development of both "German" and "Polish" "laws" were the Piast duchies themselves ("Poland"), no less than the two big polities at the root of the qualifying adjectives.[5] The local spaces where "German law" operated, rural and urban, were affected by highly dynamic settlement transition, impacting the localities, the sites comprising them, and the population patterns, ethnic or otherwise. Thus, at least as a point of departure, it seems more promising to treat the two "laws" as a boundary in the figurative sense: as patterns of lived practice, that either distinguished between, or on the contrary bridged, the ethnic classification expressed by the adjectives, *Polish* and *German*.

One area of such practice is conflict: including disputing, and, as its subset, adjudication.[6] Surprisingly, one subject missing from the study of these two legal systems has been the exact course of disputing present under each. Instead, much like our medieval predecessors, historians today accept the dichotomy between "Polish" and "German" "laws" axiomatically, and pursue their meanings – substance, evolution, similarity and difference, and unilateral or mutual impact – along lines that are strongly institutional[7] and, in various meanings of this word, normative. Where they exist, close treatments of the actual course of litigation in medieval Poland comprise a part of, and read like, an advanced textbook: a sequence of rules prescribing all the steps of a generic legal case.[8]

Crusade and Conversion; Jamroziak, *Survival and Success*; Górecki, "Ambiguities"; Górecki, *Local Society*, 5–8; Górecki, "View from a Distance".

[2] Immonen, „Monasticism," 304 (n. 4); Myśliwski, "Powstanie i rozwój," 7–8.

[3] Eichler, Lück, Carls, *Sächsisch-magdeburgische Recht*; Willoweit, "Deutsche Recht im Osten"; Szende, "*Iure Theutonico*"; Wünsch, "Transformation durch Kolonisation"; Mikuła, *Municipal Magdeburg Law*.

[4] Szende, "Neighbourhoods"; Mühle, *Breslau und Krakau*; Felskau, "City Building". The superb study, Myśliwski, *Człowiek*, 107–13, 127–31, documents significantly later material.

[5] Zientara, "Sources," 186–7.

[6] Davies, Fouracre, *Settlement*; Brown, Górecki, "What Conflict Means," 1–2.

[7] Goetz, "Perception of «Power» and «State»," 17–20; Davies, Fouracre, *Settlement*, 2–3, 113, 150, 254; Górecki, "The Early Piasts Imagined," 81–2.

[8] Two recent examples include: Szymański, *Nauki*, 478–84; Makiłła, *Historia*, 36–7, 120–71. But see Bardach, *Historia*, 340–61, which, decades before the "rule" – "process" distinction, remains closest to the kind of reconstruction of a court case proposed here.

Relatively absent is a more processual approach – a closer, more problematized inquiry into what actually happened in court, including, at the time, variety, contingency, and choice, and for us today, uncertainties about the resulting story.[9] One subset of this problem concerns courts that, with deliberate simplification, I call "Polish," and "German." By which I mean courts situated, in some sense, on two sides of perhaps the most important ethnic divide in medieval Poland: between, on the one hand, people, "Poles" and "Germans," and, on the other, several abstract attributes nominally related to people: "laws," lordship, social practices, and institutions – including courts.

The present article proposes a preliminary closure of this lacuna. However, the above specification immediately raises a conceptual question: the exact meaning, or range of meanings, of the divide marked out by these two ethnic-specific adjectives. Underneath the adjectives, we have multiple phenomena – which, while individually specifiable, do not add up to one crisp, distinguishing specification of what actually was a "Polish" or a "German" court. For example, by that kind of court we might mean a court concerned with claims involving the indigenous, or Polish, and the foreign, or German, populations ("Poles" and "Germans"); or, a court where the "Polish" and the "German" "laws" operated; or both; or something else. Yet, those and similar specifying criteria are problematic. While throughout our sources we have ubiquitous references to "Poles," "Germans," and their respective "laws," what is usually not fully clear about any one court is the actual "law" operating in it, and the ethnicity of the people subject to it. Historians of law in Piast Poland have long agreed that, from a relatively early point in the 14th century, "German law" was widely extended to the indigenous population, the Poles[10] – as part of an emerging range of options, articulated in tandem with that transition, for selection among "laws" varying in ways that either corresponded to, or, on the contrary, bridged differences in ethnicity.[11] Thus, we cannot presume that a court where "German law" in some sense applied judged Germans, or involved Germans as judges or other personnel; or the equivalent, regarding "Polish law" and Poles, in both capacities.

In this study, I reach the same conclusion on a different basis. In the detailed records that I use here of what actually took place in the course of legal cases, a notoriously sparse element is the formal legal basis for the outcome. Thus, usually we do not have access to the "law" informing that outcome – "German," "Polish," or otherwise – not because such "law" was necessarily irrelevant to an outcome, but because it is not noted in the record. This is one reason why one alternative resolution to my quandary – a replacement of "Polish" versus "German courts," with "courts of Polish law" versus "courts of German law" – is unhelpful.

The issues just noted pull me toward projects that are entirely different from mine right now, and from one another. Thus, despite slight unease, I remain with the dichotomy, *German* and *Polish*, qualifying the word *court*. I base this semantic choice on three

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[9] Roberts, "Study of Dispute," 10–3; Comaroff, *Rules and Processes*; White, "Settlement of Disputes"; Roberts, Palmer, *Dispute Processes*, 221–75.

[10] Ihnatowicz, Mączak, Zientara, *Społeczeństwo*, 109–13; Matuszewski, "Prawo sądowe," 43–5, 48, 57, 62–3, 66–7, 74; Matuszewski, "Rodzaje własności," 159; Matuszewski, "Ius Teutonicum," 242, 244; Matuszewski, "Dzieje wpływów," 20; Zientara, "Sources," 187, 215.

[11] Matuszewski, "Prawo sądowe," 57; Matuszewski, "Rodzaje własności," 158 (n. 1), 159; Matuszewski, "Ius Teutonicum," 231–2, 234, 243–4.

grounds. First, the dichotomy corresponds to one fundamental strand of the historiography. Historians of medieval Poland, in Poland, Germany, the anglophone world, and elsewhere, have long shared, and continue to share today, a high-level, broad and intuitive understanding of the difference between "Polish" (or indigenous), and "German" (or foreign) as adjectives-at-large, understood in a globalizing sense, and attached to an enormous swath of social and cultural reality, including, but far exceeding, the law – as a fundamental, perhaps indeed the constitutive, element of what is important about this polity and its history during the medieval period.[12] The dichotomy between "the Polish" and "the German" is upon us. It is paradigmatic.

Second, regarding the present subject, the individual strands that inform this highly dominant paradigm can indeed be unpacked. Every part of what we, today, might mean by "Polish" or "German" courts, was generated in the medieval past, by and about its population. Some examples. While may not quite know what our predecessors meant by a "Pole," a "German," the "laws" of each, their adjectival variants, and what turned on those classifications for specific purposes – such as the process of disputing – our predecessors did.[13] Thus, the binary maps onto meanings that may not be quite accessible to us, but were accessible to the population that we study, and, in that sense, were a real part of the past.

Third, the empirical evidence I examine here in itself allows us to specify, at least to a degree, this distinction: "German" and "Polish" courts. That evidence consists of detailed records of the course of litigation, which took place before a wide range of courts. Those records always specify the parties to a conflict, and the contested subject matter. These two attributes allow me to specify three criteria for classifying courts as "Polish" or "German": the subject matter litigated; the parties and other participants in litigation; and, most importantly at this point of departure, the institutional provenance of a court. By this, I mean the origins – across a long span of time, and with various directions of development – of a given type of judge, or of court. These origins, and subsequent developments, can, at least as a point of departure, be characterized as either indigenous or foreign. This is what, in this article, I shall mean by "Polish" or "German," as a qualifier of a court in Piast Poland.

The key marker of a "Polish" court is its anchoring in the power of the ruler: the Piast duke, and after 1320, the king. A large network of courts, proliferating over time, consisted, at the core, of the ruler's personal court, and of courts presided by "judges," or by otherwise identified agents or officials – whose shared, most visible trait was their subordination to the ruler. That proliferation, and the resulting transition in the names, status, identity, and range of roles of the presiders, accelerated with the reunification of

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[12] Frequently related, separately or in conjunction, to Poland's "Germanization," or "Europeanization," or "modernization" in the Middle Ages. Bartlett, *Tworzenie*; Jurek, *Obce rycerstwo*; Gawlas, *O kształt*; Gawlas, "Przemiany systemów prawa"; Gawlas, "Komercjalizacja," 29–33, 44–62. On this strand of work, see Górecki (review), "Tomasz Jurek, *Obce rycerstwo na Śląsku do połowy XIV wieku*," and Górecki, "«Tworzenie Europy» Roberta Bartletta," 513–5.

[13] Lurking here is yet another enormous, and different, subject: identity. Antedating the enormous anglophone output, the highpoints of Polish scholarship include: Heck, *Dawna świadomość*; Banaszkiewicz, *Kronika Dzierzwy*; Gieysztor, Gawlas, *Państwo*; Cetwiński, "Polak Albert," 68, 71; Pleszczyński, *Imagined Communities*. See also Górecki, "Assimilation," 455–9, 462, 464–7, 472–5.

the Polish kingdom, especially in the reign of King Casimir the Great.[14] However, their anchoring – "origins" – in the ruler remained constant.

The key marker of a "German" court is its anchoring in agents entrusted with establishing, or transforming, settlements and lordships "according to German law" – agents who, especially in the earlier decades of their appearance in Poland, themselves were, and recruited, Germans. Those agents operated in rural and urban settings. One result was the emergence of courts over which they presided as judges. Over time, in a broad (though only a highly approximate) parallel with their "Polish" counterparts, those courts, their presiders, other significant people present, all underwent transition, proliferation, and expansion of institutional complexity – again, especially under King Casimir. However, the courts, all of them, are always traceable, historically, logically and substantially, to those "origins."

To paraphrase Charles Donahue's phrase of many years ago about canon law, there is another good reasons why this kind of parallel legal history of what happened in "Polish" and in "German" courts remains unwritten.[15] That reason is the nature of the written evidence. For a full century, beginning in 1175, we have a record of the presence of Germans, and, slightly later, of what the documents call "German law," in Piast Poland. Across that same century, as an important subset of that record, we have rich, well-textured stories about judicial cases, reporting events that antedated, comprised, and in some instances followed, resolutions of disputes. The stories appear in the narrations and dispositions of charters. Those stories are the evidentiary basis of this article. Here is the evidentiary problem. That early record concerns entirely the indigenous, Polish population, that took part in litigation in "Polish" courts of several kinds.[16] The German side is missing. Over that same century, we have no comparable record – no reports of any kind, in charters or otherwise – about the course of individual court cases specific to "Germans," determined by "German law," or situated in any kind of "German" court.

Yet, during that early century, "German" courts certainly existed. We have a written record of courts on both sides of this ethnic divide. However, that record is different from the stories of individual cases noted above. It, too, is lodged in charters, but of a specific genre: ducal diplomas of immunity, promises, by the ruler, to the recipients of specific privileges within their estates, above all over the peasant inhabitants.[17] In form, those promises were entirely normative – commands, or binding approvals – and placed in disposition clauses. One privilege was jurisdiction over the peasants. Jurisdiction was specified according to several criteria. One was ethnicity: the distinction, always expressed in these words, between "Poles" (*Poloni*) and "Germans" (*Theutonici*). These clauses allocated judicial power of the lords over "Poles," over "Germans," and, in highly specific scenarios, over both groups, inhabiting their estates.[18] In tandem with such provisions,

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[14] Kurtyka, *Odrodzone*, 115–48; Gąsiorowski, *Urzędnicy*; Gąsiorowski, *Państwo*, 61–81, 132–60.

[15] Donahue, *Why*.

[16] This early charter record reports approximately 100 "Polish" court cases. Three interesting examples: KDW 1, no. 33 (1200), 40–1; SUB 2, no. 375 (1249), 238–9; SUB 4, no. 67–68 (1268), 58–60. On two of these, see: Kozłowska-Budkowa, *Repertorium*, 73–4; Paroń, "Ugoda".

[17] Grodecki, *Początki*; Matuszewski, *Immunitet*; Kaczmarczyk, *Immunitet*; Górecki, *Economy*, 10–1, 36 (n. 38), 123–203, 228–9, 283 (nn. 40, 44).

[18] Górecki, *Economy*, 163–8, 170–7, 180–3, 186–7, 195–202, 219, 229, 265–6.

they sometimes specified a residual jurisdiction retained by the dukes over the same two categories of people.

As a result, the earliest evidence of courts that concerned "Germans," "Poles," and their respective "laws," refers to jurisdiction of lords over peasants. This raises another empirical inconvenience. We know that manorial courts existed. However, until much later, in the 15th century, we have no records at all of the course of disputing there. The early normative documents preview for us glimpses of that subject. One is proof. A key part of seigneurial jurisdiction over peasants in the immunity charters was the lords' capacity to administer to the peasants the ordeals of water, iron, and duel.[19] Such clauses were ethnically specific. The population subject to those proofs was clearly indigenous, that is, Polish, while the proofs themselves were identified, with those words, as part of "Polish law."[20] In contrast, immunity clauses describing jurisdiction over "Germans," or referring to "German law," say nothing about proof, ordeal or otherwise.

Another early glimpse of our subject is the judge. Clauses that are general – that is, that refer to the rural population as a whole, with no other distinction, ethnic or otherwise – vest jurisdiction over peasants either directly in the lord, or, in the lord's stead, the lord's (and his peasants') "own judge": *suus iudex*.[21] Regarding the indigenous peasants, the lord's judge is never additionally specified.[22] In sharp contrast, clauses concerned with "German" peasants, and "law" always specify the judge with a different and more diverse terminology of office: as "village bailiff" (*scultetus*, *villicus*, *locator*); or "advocate" (*advocatus*).[23] Although these words varied somewhat in their meaning, the one common role on which they converged was the judicial.

On both sides of the ethnic divide, these clauses exempted peasants from summons before courts other than their lords'. They sharply reduced the range of courts where peasants were obliged to respond as defendants. One variant is that peasants may be

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[19] K.Maz., no. 211–212 (1222), 208.33–34, 211.20–21; SUB 2, no. 375 (1249), 239.11–12, 14; KDM 2, no. 436 (1252), 86; KDM 1, no. 364 (1257), 324; KDW 6, no. 17 (1270), 22; KDW 1, no. 545 (1284), 504; no. 546 (1284), 505; no. 549 (1284), 508; KDW 6, no. 40 (1290), 50; Bartlett, *Trial by Fire and Water*, 43 (map 2), 44–6; Górecki, "Irreducible Ambiguity," 431, 439, 443.

[20] KDW 1, no. 311 (1253), 277; no. 364 (1257), 324; KDW 2, no. 677 (1291), 55; no. 680 (1292), 58; no. 718 (1294), 89.

[21] SUB 1, no. 93 (1204), 66; KDW 1, no. 303 (1252), 269; Górecki, *Economy*, 165 (nn. 4–5).

[22] SUB 1, no. 77 (1202), 51; no. 211 (1211), 154; K.Maz., no. 211 (1222), 208.31–34; no. 212 (1222), 211.5–7, 19–21; SUB 1, no. 227 (1223), 166–7; no. 254 (1225), 186; K.Maz., no. 278 (1230), 303.18, 21; KDW 1, no. 148 (1233), 129; SUB 2, no. 140 (1237), 92.9; no. 166 (1239), 106.6; no. 241 (1243), 145.36–37; no. 255 (1243), 153.41; no. 270 (1244), 162.46; no. 272 (1244), 164.11–12; no. 297 (1245), 178.40; no. 299 (1245), 180.37; no. 323 (1247), 191.15; no. 344 (1248), 204.9; no. 404 (1250), 255.1–2, 4–5; no. 413 (1250), 260.18; SUB 3, no. 19 (1251), 27.5–6; no. 151 (1255), 107.9; no. 267 (1258), 177.14; no. 311–313 (1260), 206.29 – 207.15, 39–40; no. 315 (1260), 209, ll.43–44; no. 318 (1260), 212.11; no. 349 (1261), 228.14; no. 376 (1261), 245.5–6; no. 424 (1262), 281.15; no. 433 (1263), 286.34; no. 481 (1264), 311.8; no. 488 (1264), 315.1; no. 525 (1265), 333.26; no. 537 (1266), 337.43 – 338.1; SUB 4, no. 40 (1267), 37.44; no. 91 (1269), 73.23; no. 162 (1272), 117.32–33; Górecki, *Text*, 87 (n. 46), 100 (n. 160), 137 (nn. 196–197), 237 (nn. 109–110), 239–240 (nn. 124, 126), 241 (n. 135), 244 (nn. 148–150), 245 (n. 153).

[23] SUB 1, no. 210 (1221), 154; no. 225 (1223), 164; no. 254 (1225), 186; no. 281 (1227), 207; KDW 1, no. 191 (1236), 164; SUB 2, no. 49 (1233), 33.17–18, 20–21; no. 136 (1237), 89.15–17; no. 128 (1237), 83.36–37; no. 193 (1240), 122.26–29; no. 231 (1242), 140.12–16; no. 257 (1243), 154.35–39; SUB 3, no. 436 (1263), 287.45–46; no. 552 (1266), 345.44–47; Górecki, *Economy*, 198 (n. 18), 199 (n. 19), 201 (n. 27), 202, 213 (nn. 60–62), 215–20 (nn. 66–79), 226–8, 233 (n. 69), 237 (n. 3), 238–42 (nn. 4–24).

summoned for trial only "before" the courts of their own lords.[24] In this early period, such clauses distinguished between peasants of different status, above all the free (*liberi*) and the unfree (*ascriptitii*),[25] but not, at least not explicitly, in terms of ethnicity. We have every reason to think that this status distinction pertained to the Polish population. On the other hand, that ethnic difference was not, in itself, a criterion for allocation of jurisdiction. The rural population subject to seigneurial courts was, in a general and open-ended sense, both the indigenous – "Polish" – and the "German."

In the course of the 13th century, this jurisdictional norm evolved toward ethnic difference. By 1300, and permanently thereafter, in a rule expressed in substantially the same words, peasants acquired the right to "answer" as defendants, in various courts (above all their lord's, but also – to a streamlined degree – the ruler's), exclusively "according to" their own "law." Most provisions using this phrase concerned beneficiaries of "German law," who were assured of the right to litigate "according to German law," and were exempted from its alternative: usually expressed generically as "otherwise,"[26] sometimes more specifically as "Polish law," used in contrast to "German law."[27] Such clauses clearly presuppose that, between 1200 and 1300, "German law" and "Polish law" comprised alternative and logically equivalent legal systems. Yet, once again, we simply cannot know *what* happened in the courts where these two systems operated.

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[24] V.-W., 6, lines 94–96; KDW 1, no. 33 (1200), 41; SUB 1, no. 93 (1204), 66; K.Maz., no. 211–212 (1222), 208–11; no. 278 (1230), 302.14, 16, 24, 26–28, 303.2–3; KDW 1, no. 148 (1233), 129–30; no. 174 (1234), 151; no. 203 (1237), 172; no. 234 (1242), 196–7; K.Maz., no. 381 (1238–1247), 439.23–27; no. 407 (1241?), 482.12–13; no. 408 (1241), 486.7–11; no. 463 (1246), 554; Górecki, *Economy*, 163–8 (nn. 1–11), 170–80 (nn. 23–52).

[25] K.Maz., no. 211 (1222), 208.27–31; no. 212 (1222), 211.5–9, 19–21; no. 278 (1230), 302.14–16, 24, 303.2; KDW 1, no. 174 (1234), 151; no. 207 (1237), 172; no. 234 (1242), 196–7; K.Maz., no. 381 (1238–1247), 439.23–31; no. 407 (1241?), 482.12–13; no. 408 (1241), 486.7–11; no. 463 (1246), 554; Górecki, *Economy*, 165–70, 172–7, 180–2; Górecki, "Dynamiques sociales," 169–70.

[26] SUB 2, no. 83 (1234), 54.42–43; no. 203 (1241), 128.24; KDM 2, no. 439 (1253), 89; SUB 3, no. 292 (1259), 193.30–31; no. 293 (1259), 194.23–24; no. 375 (1261), 244.12; KDW 1, no. 430 (1267), 380; ZDM 4, no. 12 (1301), 19; no. 18 (1307), 25; KDM 1, no. 140 (1308), 169; KDM 2, no. 545 (1308), 212; N.K.Maz. 2, no. 145 (1317), 143; KDM 1, no. 155 (1318), 184–5; KDM 2, no. 579 (1320), 248; ZDM 4, no. 906 (1326), 50; KDM 2, no. 593 (1327), 263; KDM 1, no. 181 (1329), 215; no. 182 (1329), 216; KDM 2, no. 601 (1330), 274; KDM 1, no. 185 (1331), 220; ZDM 4, no. 33 (1334), 40; KDW 2, no. 1154 (1335), 481–2; KDM 1, no. 203 (1336), 241; KDM 2, no. 647–648 (1336), 20–1; KDM 3, no. 660–661 (1339), 36–7; KDM 1, no. 210 (1340), 249; N.K.Maz. 2, no. 241 (1340), 244; KDM 3, no. 668 (1342), 47; ZDM 4, no. 42 (1342), 54; KDM 3, no. 671 (1342), 51; ZDM 4, no. 930 (1344), 80; KDM 3, no. 677 (1345), 60; KDM 1, no. 222 (1347), 264; ZDM 4, no. 47–48 (1347), 60–1; no. 50 (1347), 65; KDM 3, no. 688 (1348), 72; ZDM 1, no. 53–54 (1348), 69–70; ZDM 4, no. 938 (1349), 88; KDM 1, no. 230 (1350), 273; N.K.Maz. 2, no. 298 (1350), 308; no. 302 (1350), 311; KDM 3, no. 693 (1351), 80; ZDM 4, no. 942 (1351), 91; KDM 3, no. 696 (1352), 84; no. 702 (1353), 90; KDM 1, no. 236 (1354), 281; KDM 3, no. 705–708 (1354), 95, 95–7, 99, 101; KDM 1, no. 238 (1354), 283; ZDM 1, no. 81 (1356), 105; KDM 3, no. 717–718 (1357), 112–3; no. 723 (1358), 119; KDW 6, no. 177 (1358), 199; ZDM 4, no. 960 (1359), 112; ZDM 1, no. 90–91 (1359), 115, 118; KDM 1, no. 255 (1360), 299; no. 258 (1360), 304; KDM 3, no. 738 (1360), 139; N.K.Maz. 3, no. 39 (1360), 51; KDM 1, no. 266 (1362), 315; KDW 3, no. 1474 (1362), 204–5; KDW 6, no. 198a (1362), 222; ZDM 1, no. 100 (1362), 130; no. 101–103 (1363), 132, 134–6; no. 112 (1364), 147; KDM 1, no. 275 (1364), 324; ZDM 4, no. 972 (1364), 126; KDW 3, no. 1551 (1365), 273–4; KDM 1, no. 283 (1366), 338; ZDM 4, no. 989 (1367), 142; no. 991 (1368), 144; KDM 1, no. 294 (1368), 351; KDW 3, no. 1606 (1368), 271; KDM 1, no. 303 (1369), 364; ZDM 1, no. 130 (1369), 168; no. 135 (1370), 173; KDM 1, no. 307 (1370), 369.

[27] SUB 2, no. 58 (1233), 37.11–12; SUB 4, no. 334 (1278), 222.18–19; KDW 6, no. 44 (1293), 54–5; ZDM 1, no. 33 (1334), 40; KDM 2, no. 647 (1336), 20; KDM 3, no. 696 (1352), 84.

As a result, over this early century, the phenomenon with which I began – the frontier, consisting of the two "laws," people subject to each, and courts where each operated – definitely existed. But my subject does not.

2. Evidence transformed

The subject springs rapidly into existence around 1280, with the emergence of a similarly detailed record of court cases on both sides of the ethnic divide. That record consists of stories about the course of litigation concerning the "Germans" and their "law" that are fully parallel in detail and texture with their "Polish" counterparts. Such stories appear in two types of source: the charter, continuous in format with the earlier documentation describing "Polish" litigation, but now reporting the same range of events about its "German" counterpart; and, new as a genre, the "town book" – an urban register, written by the authorities of a specific city or town, and recording (at least as an aspiration) all the legal transactions effected before those authorities, as those authorities sat in a judicial capacity – a court.[28] Those civic authorities were ruling bodies of "chartered" town or cities, inhabited by Germans, and "located" – formally established – "according to German law."[29] The new charters were issued, as before, by the Piast rulers; and, now in addition, by the same civic authorities that also began to produce the "town books."[30] To close this empirical loop, the Piast dukes and kings continued to produce charter records on that earlier subject – namely litigation concerning the "Poles" and their "law" – throughout the 14th century.

The earliest "town book" was compiled in Kraków. Although it may contain some earlier material, it begins with an entry dated 1301, so that, as a source, it is contemporaneous with the diplomatic record. It encompasses thousands of transactions, the vast majority rendered in the record as tiny notices, with absolutely minimally narrative bits of reportage.[31] While the authors of these entries consistently described themselves, and the sessions over which they presided, as a court, only a modest subset of the individual entries report judicial cases, that is, stories of specific disputes, parties, and subjects.[32]

[28] Bartoszewicz, *Urban Literacy*, 108–73.

[29] Knoll, "Urban Development"; Kamińska, *Lokacje*.

[30] SUB 4, no. 365 (1279), 242–3; SUB 5, no. 347 (1287), 270.33; no. 450 (1290), 343.29–30, 42–3; SUB 6, no. 39 (1291), 33.11–12; no. 45 (1292), 37.10–11; no. 52 (1292), 42.35–36; no. 52 (1292), 42.38, 43.15–16; no. 117 (1293), 97.37, 98.9–10; no. 257 (1296), 208.12–13; no. 269 (1296), 216.32–33; no. 276 (1296), 222.13–16, 34; no. 299 (1297), 239.30–31; no. 308 (1297), 246.15; no. 338 (1298), 266.6–7; no. 437 (1300), 339.10–11; no. 449 (1300), 350.19; KDKK, no. 113 (1306), 146; KDM 2, no. 562 (1315), 230; KDW 6, no. 87 (1315), 99; KDW 2, no. 1100 (1329), 434; no. 1123 (1333), 450; KDM 3, no. 650 (1337), 23; KDW 6, no. 169 (1355), 181; no. 171 (1356), 192; KDM 1, no. 253 (1358), 297; ZDM 4, no. 965 (1360), 118; KDM 1, no. 265 (1362), 313; KDM 3, no. 747 (1362), 148; ZDM 4, no. 968 (1362), 120; KDW 6, no. 207 (1363), 233; ZDM 1, no. 107 (1364), 139; KDM 1, no. 279 (1365), 331; ZDM 4, no. 982 (1365), 135; KDM 3, no. 804 (1367), 210; no. 808 (1368), 214; ZDM 4, no. 995 (1368), 147; KDM 3, no. 819 (1369), 228.

[31] NKRK 1; Bartoszewicz, *Urban Literacy*, 108–11 (nn. 118–27).

[32] NKRK 1, no. 1 (1300–1301), 3; no. 25 (1302), 6–7; no. 268–269 (1313), 29; no. 274b (1313), 30; no. 286 (1313), 31; no. 290 (1314), 32; no. 298 (1314), 33; no. 324 (1315), 35; no. 327–329 (1315), 35; no. 333 (1315), 36; no. 358 (1316), 38; no. 392 (1317), 41; no. 394 (1317), 41; no. 396 (1317), 41; no. 400 (1317),

To complicate this genre, some – even fewer – entries in the register are pre-existing charters, transcribed in full or abbreviated.[33]

Despite this slight generic hybridity, the evidence consists of a large number of stories narrating court cases that present us with closely comparable elements of process. Once identified, those elements place the courts at a "frontier." Toward that end, at the current stage of my research, I limit myself to a preliminary quest for what exactly took place, with whose participation, and with what consequences, in the course of litigation, as described by these stories; and for the similarities and differences of these phenomena in "Polish" and "German" courts, as specified and understood above.

Toward those ends, let me begin with the judges and courts before whom the litigation documented by my case studies (and stories) took place. Throughout the (approximate) century spanned by that material, in Poland those judges and courts, both "Polish" and "German," were part of a larger court framework. By that word I mean, following John Hudson,[34] the variety of courts present in a polity: their typology and classification; personnel – whether presiding over the court, or otherwise relevant to the proceedings, especially at the formal moments that comprised procedure; modes of reaching decisions, including, but not limited to, procedure; and physical setting, whether a specific, named locality, or a material feature, natural or built, open or enclosed, and typically (though not necessarily) associated with that named locality.

In medieval Poland that framework, considered in its entirety, was highly complex, marked by a mix of continuity, transition, and (perhaps most importantly) by an intersection in the activity of its personnel with power other than the judicial.[35] This subject

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42; no. 402 (1317), 42; no. 442 (1317), 45; no. 454 (1317), 46; no. 475–476 (1318), 48; no. 485 (1318), 49; no. 499 (1318), 50–1; no. 510 (1318), 51; no. 513–514 (1318), 52; no. 575 (1319), 57; no. 577 (1320), 58; no. 593 (1320), 59; no. 609 (1321), 61; no. 616–618 (1321), 61; no. 625 (1321), 62; no. 660–662 (1322), 65–6; no. 667 (1323), 66–7; no. 673–674 (1323), 67–8; no. 695 (1323), 70; no. 703 (1323), 71; no. 706–707 (1324), 72–3; no. 716b (1324), 73–4; no. 720 (1324), 74; no. 752 (1325), 77–8; no. 766 (1325), 79; no. 858 (1326), 86; no. 865 (1326), 86; no. 898–899 (1327), 89–90; no. 911 (1328), 91; no. 938 (1328), 93; no. 944 (1328), 93–94; no. 1009–1010 (1329), 99; no. 1026 (1329), 101; no. 1029–1030 (1330), 101–2; no. 1033 (1330), 103–4; no. 1036 (1330), 104; no. 1042 (1331), 105–6; no. 1045 (1331), 106; no. 1060 (1331), 108; no. 1064 (1331), 109; no. 1071 (1331), 109; no. 1073 (1332), 110; no. 1077 (1332), 110; no. 1080 (1332), 111; no. 1100–1101 (1332), 113–4; no. 1124 (1332), 116–7; no. 1135 (1333), 118–9; no. 1159 (1334), 121; no. 1171 (1335), 123; no. 1182–1183 (1335), 124–5; no. 1188 (1336), 126; no. 1218 (1337), 130; no. 1230 (1337), 132; no. 1233 (1337), 132–3; no. 1235 (1337), 133; no. 1253 (1338), 135; no. 1268 (1338), 137–8; no. 1296 (1339), 141; no. 1302 (1339), 142; no. 1362 (1340), 148; no. 1385 (1341), 151; no. 1397 (1341), 152–3; no. 1401 (1341), 153–4; no. 1486 (1343), 163–4; no. 1504 (1343), 165–6; no. 1541 (1345), 171–2; no. 1579 (1347), 177; no. 1589 (1348), 178–9; no. 1668 (1352), 186; no. 1684 (1357), 194; no. 1695–1697 (1361), 197–200.

[33] NKRK 1, no. 1 (1300–1301), 3; no. 25 (1302), 6–7; no. 290 (1314), 32; no. 569 (1319), 56; no. 661 (1322), 65; no. 695 (1323), 70; no. 703 (1323), 71; no. 1666 (1354), 190–191; no. 1705 (1368), 203–4.

[34] Hudson, *Formation*, 18–40.

[35] On this subject, the more recent Polish literature, from which I partly differ conceptually, includes: Bardach, *Historia*, 272–6, 278–80, 340–3, 345–61, 460–2, 477–84, 485–8; Uruszczak, *Historia*, 104–6; Makiłła, *Historia*, 73–4; Kallas, *Historia*, 26–8, 39, 49–51. Earlier: Piekosiński, "Sądownictwo"; Kutrzeba, "Sądy". My conceptual reservations concern the discernment, across this literature, of a highly institutional taxonomy of courts; and of the relationship among those courts, especially regarding appeals, removals, and other flows of substantive communication. In this article, I pull away from these two subjects, first, because they significantly exceed my subject; and because they, and their needed reassessment, belong in a larger monograph now in progress, to which the present article relates in other respects.

is enormous, developed in a correspondingly large body of literature, and yet, in my view, unevenly understood. This breadth and complexity of medieval Poland's courts, considered in their entirety, prompts a specification of the exact subject of this article, and of the documentation with which I am developing that subject here. In the prose that follows, I preview, and tentatively generalize about, only one subset of that framework: specifically those judges and those courts that appear, right on the face of the record, in my case studies, and in the stories they narrate – in the charters, and in the entries to the civic register of Kraków.

3. Court framework: the "Polish" side

Quite notable about the framework of Poland's courts – all of them, "Polish" and "German" – is a combination of long-term continuity and transition. One example is the language in which courts are described in the written record. Ubiquitously – with overwhelming frequency – the courts concerned with the indigenous, Polish population, and sessions of such courts, are noted with one relatively simple, technically unspecific word: "court" (*iudicium*)[36]; or, far less frequently, and apparently synonymously, "tribunal."[37] When further qualified, the "court" is placed with reference to its presiding agent, or: as "ours,"[38] or before us" (*coram nobis*),[39] or "in our presence" (*nostra*

[36] SUB 4, no. 411 (1281), 275; KDW 1, no. 561 (1286), 523–4; no. 564 (1286), 526; KDM 2, no. 506 (1287), 166–8; no. 509 (1287), 169–70; KDW 2, no. 673 (1291), 52; no. 684 (1292), 61–2; KDW 6, no. 49 (1295), 60–1; KDW 2, no. 759 (1297), 129–30; KDW 6, no. 65 (1301), 77; KDKK, no. 118 (1314), 152; KDM 1, no. 152 (1315), 181–2; KDW 2, no. 1033 (1322), 367; KDKK, no. 125 (1322), 162; no. 129 (1322), 165–6; KDW 2, no. 1034 (1323), 367; no. 1036 (1323), 368–9; no. 1055 (1325), 384–5; no. 1078 (1327), 412; KDW 6, no. 105 (1328), 119–21; KDM 3, no. 653 (1338), 27; KDKK, no. 166 (1339), 214–5; no. 167 (1339), 215; KDM 3, no. 657 (1339), 30–2; ZDM 4, no. 928 (1342), 77–8; KDM 3, no. 678 (1346), 61; no. 680 (1346), 62–3; no. 684 (1347), 66–7; ZDM 1, no. 55 (1348), 71–2; ZDM 4, no. 936 (1348), 86; KDKK, no. 192 (1351), 245; no. 198 (1353), 252; KDM 3, no. 700 (1353), 88; N.K.Maz. 2, no. 319 (1353), 334–5; KDKK, no. 200 (1354), 254; no. 205 (1350–1358), 262–3; KDM 1, no. 247 (1356), 291–2; KDM 3, no. 712 (1356), 105–6; KDKK, no. 213 (1358), 270–1; KDW 3, no. 1431 (1360), 162; KDKK, no. 224 (1361), 284; KDM 1, no. 260 (1361), 308; ZDM 4, no. 967 (1361), 119–20; KDKK, no. 227 (1362), 293; no. 228 (1362), 294; KDM 3, no. 750 (1362), 152; KDKK, no. 241 (1366), 308; KDM 3, no. 822 (1369), 231–2; ZDM 4, no. 1006 (1370), 159.

[37] KDM 2, no. 506 (1287), 168; no. 509 (1287), 169–70; KDW 6, no. 66 (1302), 77–8; KDKK, no. 119 (1318), 153; no. 129 (1322), 166; KDW 3, no. 1431 (1360), 162; KDM 3, no. 754 (1362), 157. Stein, *Legal Institutions*, 49–51.

[38] KDW 1, no. 561 (1286), 523–4; KDW 6, no. 49 (1295), 60–1; KDW 2, no. 759 (1297), 129–30; KDKK, no. 118 (1314), 152; KDW 6, no. 105 (1328), 119–21; ZDM 4, no. 936 (1348), 86; N.K.Maz. 2, no. 319 (1353), 334–5; KDKK, no. 200 (1354), 254; KDM 3, no. 712 (1356), 105–6; KDKK, no. 213 (1358), 271; ZDM 4, no. 967 (1361), 119–20; KDKK, no. 228 (1362), 294.

[39] N.K.Maz. 2, no. 64 (1281), 62; KDW 1, no. 553 (1285), 515; no. 564 (1286), 526; no. 571 (1286), 531–2; KDKK, no. 122a (1300), 157; KDW 6, no. 66 (1302), 77; KDKK, no. 119 (1318), 153; KDW 2, no. 1027 (1322), 362; KDKK, no. 125 (1322), 162; KDW 2, no. 1034 (1323), 367; no. 1036 (1323), 368; no. 1041 (1324), 372; KDKK, no. 133 (1324), 169–70 (x2); KDW 2, no. 1055 (1325), 384; KDW 6, no. 119 (1337), 133–4; KDM 3, no. 653 (1338), 27; no. 167 (1339), 215; ZDM 4, no. 928 (1342), 77–8; KDM 3, no. 680 (1346), 62; no. 684 (1347), 67; ZDM 1, no. 55 (1348), 71–2; KDM 3, no. 689 (1349), 72–3; KDKK, no. 192 (1351), 245–6; N.K.Maz. 2, no. 319 (1353), 334–5; KDKK, no. 200 (1354), 255; no. 206 (1356), 264; KDM

presencia).[40] With great frequency, that presiding judge was the ruler: the duke, after 1320 the king.[41] A conspicuously frequent "Polish" court was, and over time remained, a court *coram duce*, or *rege* – though, perhaps because that fact was so routine, the documents never describe it with this exact phrase.

Another frequent presider of "Polish" courts was a high ducal or royal official. This judge underwent a transition in the course of the 13th and 14th centuries. Early on, and to a degree thereafter, he was one of the following two highest ducal (later royal) officials: the palatine or the castellan.[42] Since the turn of the 13th and 14th centuries, we note, in addition, several new judges – or perhaps judges who, apart from their other roles or attributes, bore new titles. They include the "chancellor," the "chamberlain" (*camerarius*),[43] and most conspicuously, the "captain" (*capitaneus*, conventionally *starosta* in Polish). The "captain" is especially visible and important.[44] He first appears in 1301, early in the reigns of the two Přemýslid kings named of Václav, as "duke

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1, no. 244 (1356), 288–9; KDM 3, no. 712 (1356), 106; ZDM 1, no. 84 (1357), 109; ZDM 4, no. 954 (1357); KDKK, no. 213 (1358), 270–1; ZDM 1, no. 84 (1357), 109; ZDM 4, no. 954 (1357), 103; KDKK, no. 213 (1358); no. 221 (1360), 277–8; KDW 3, no. 1431 (1360), 162; KDKK, no. 224 (1361), 284; N.K.Maz. 3, no. 53 (1361), 65; ZDM 4, no. 967 (1361), 119; KDKK, no. 227 (1362), 293; no. 228 (1362), 293; KDM 3, no. 750 (1362), 152; KDKK, no. 231 (1363), 297; KDM 1, no. 268 (1363), 317; no. 270 (1363), 319; KDM 3, no. 756 (1363), 159; no. 761 (1363), 164; KDW 3, no. 1510 (1364), 236; KDM 1, no. 27 (1364), 322; no. 274 (1364), 323; KDKK, no. 238 (1365), 304; no. 240 (1366), 307; no. 241 (1366), 308; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234; no. 825 (1369), 235.

[40] KDW 1, no. 569 (1286), 529; KDM 2, no. 506 (1287), 166; no. 509 (1287), 169–70; KDM 3, no. 684 (1347), 66–7; KDW 6, no. 148 (1348), 166; ZDM 1, no. 62 (1350), 81; KDM 3, no. 698 (1352), 86; no. 712 (1356), 105; KDKK, no. 224 (1361), 284; KDM 3, no. 825 (1369), 235; no. 831 (1370), 241; N.K.Maz. 3, no. 110 (1370), 124; ZDM 4, no. 1006 (1370), 158.

[41] SUB 4, no. 411 (1281), 27; N.K.Maz. 2, no. 64 (1281), 62; KDW 1, no. 529 (1283), 493–4; no. 553 (1285), 515–7; N.K.Maz. 2, no. 74 (1285), 69; KDW 1, no. 561 (1286), 523–4; no. 564 (1286), 526; no. 571 (1286), 531–2; KDM 2, no. 506 (1287), 166–8; no. 509 (1287), 169–70; KDKK, no. 89 (1288), 123–4; KDM 2, no. 510 (1288), 170–1; KDW 2, no. 673 (1291), 51–2; no. 684 (1292), 61–2; no. 700 (1293), 75–6; SUB 6, no. 123 (1293), 103; KDW 2, no. 732 (1295), 102; no. 735 (1295), 104; no. 737 (1295), 106–7; no. 741 (1295), 112–3; KDW 6, no. 49 (1295), 60; KDW 2, no. 759 (1297), 129–30 (*dux regni*); SUB 6, no. 310 (1297), 248; KDW 6, no. 62 (1299), 74–5; no. 65 (1301), 77; KDKK, no. 121 (1320), 154–5; KDW 2, no. 1055 (1325), 384; KDW 6, no. 102 (1327), 116; no. 105 (1328), 119; ZDM 1, no. 29 (1328), 36; KDM 1, no. 180 (1329), 214; no. 188 (1332), 222; no. 199 (1335), 237; KDKK, no. 155 (1335), 199; KDW 6, no. 119 (1337), 133–4; KDKK, no. 164 (1338), 211; no. 166 (1339), 215; no. 167 (1339), 215; KDM 3, no. 657 (1339), 30–2; ZDM 4, no. 924 (1341), 68–9; no. 928 (1342), 76; KDW 6, no. 147 (1347), 166; no. 148 (1348), 166; ZDM 4, no. 936 (1348), 86; ZDM 1, no. 68 (1352), 88; KDKK, no. 198 (1353), 251; N.K.Maz. 2, no. 319 (1353), 334; KDW 6, no. 159 (1353), 180; KDKK, no. 205 (1350–1358), 262; KDM 1, no. 247 (1356), 291; ZDM 1, no. 84 (1357), 109; ZDM 4, no. 954 (1357), 103; KDKK, no. 213 (1358), 270–1; KDM 1, no. 260 (1361), 307; N.K.Maz. 3, no. 53 (1361), 65; KDW 3, no. 1510 (1364), 235–6; KDKK, no. 238 (1365), 304; KDM 1, no. 280 (1365), 334; no. 288 (1366), 343; KDM 3, no. 822 (1369), 231. Kallas, *Historia*, 26; Uruszczak, *Historia*, 104; Bardach, *Historia*, 273–4, 276, 483–4.

[42] KDW 1, no. 564 (1286), 526; KDM 2, no. 506 (1287), 166–8; KDW 2, no. 759 (1297), 130; KDW 6, no. 65 (1301), 77; no. 66 (1302), 77–8; KDW 2, no. 1027 (1322), 362; no. 1033 (1322), 366; no. 1041 (1324), 372–3; no. 1055 (1325), 384–5; no. 1036 (1323), 368; KDW 3, no. 1431 (1360), 162; N.K.Maz. 3, no. 53 (1361), 65–6; no. 59 (1363), 72. Kallas, *Historia*, 26–7, 49; Makiłła, *Historia*, 37, 158; Bardach, *Historia*, 274–5, 481–2.

[43] KDW 2, no. 759 (1297), 130; KDW 6, no. 66 (1302), 77–8; KDKK, no. 164 (1338), 212; ZDM 1, no. 84 (1357), 109; KDKK, no. 205 (1350–1358), 263; KDM 1, no. 288 (1366), 343–4; Uruszczak, *Historia*, 105; Bardach, *Historia*, 478, 482.

[44] Gąsiorowski, *Urzędnicy*, 145–260; Kurtyka, *Odrodzone*, 122–35; Gąsiorowski, "Wójt i starosta".

[and] captain of the Kingdom of Poland,"[45] apparently meaning a viceroy of his Czech superior – a use of this phrase entirely that seems unique to this document. Thereafter, the "captain" recurs across the reigns of the last two Piasts, Władysław and Casimir, in varied relation to the administrative rungs of Poland's political space: the "Kingdom" in its entirety,[46] its major provinces (former duchies),[47] the "land," and specific cities or towns.[48]

Meanwhile, by far the most ubiquitous presider of the indigenous courts, fully continuous across the 13th and 14th centuries, is – marked with that word in the singular – the "judge" (*iudex*), or relatively late and seldom, "sub-judge" (*subiudex*), an otherwise equivalent designation.[49] This usage brings us to an institutional distinction. While *judge* is a broad word, encompassing a range of additional classifications, the actor thus designated was typically subordinate to other holders of highest office.[50] On the other hand, when the ruler, the palatine, or the castellan appear in a judicial capacity, they are not identified, with that word, as "judges." "Judges" identified with that word, are also presented by their given names and other attributes. Those attributes are one of our clues to the range and relative position of "Polish" judges and courts.

One such attribute of people identified as "judge" is their subservient relationship to the ruler. A judge may be noted, from the ruler's point of view, as "ours,"[51] as "of the court" (*iudex curiae*), or, more explicitly, as "of our court" (*iudex curiae nostrae*).[52] In addition, "judges" are routinely associated with specific localities. Ubiquitous, and unchanging across the Piast period, is the placement of "judges" in cities or towns: a "judge of Poznań," "of Kraków," "of Sandomierz," "of Kalisz," or "of Gniezno," among other examples.[53] These references continue, and proliferate, in the reigns of Kings Władysław and Casimir, so that (together with many generations of historians of Poland's medieval institutions) we may conclude that one permanent part of the indigenous ("Polish") judicial network were courts presided by "judges" based in cities

[45] KDW 1, no. 65 (1301), 77: *dux capitaneus regni Polonie*.

[46] KDW 2, no. 1036 (1323), 368: *capitaneus regni Polonie*.

[47] KDW 2, no. 1041 (1324), 372–3; no. 1163 (1336), 491; KDW 3, no. 1431 (1360), 162.

[48] KDW 2, no. 1033 (1322), 366; no. 1034 (1323), 367; ZDM 1, no. 62 (1350), 81; KDM 3, no. 725 (1358), 122; ZDM 4, no. 961 (1359), 113–4; N.K.Maz. 3, no. 59 (1363), 72; Kallas, *Historia*, 49–50; Bardach, *Historia*, 460–3.

[49] KDM 1, no. 152 (1315), 182; KDKK, no. 164 (1338), 212; KDM 3, no. 670 (1342), 49; KDW 6, no. 148 (1348), 167; KDKK, no. 224 (1361), 284; KDKK, no. 224 (1361), 284; KDM 1, no. 288 (1366), 343–4; Kallas, *Historia*, 26; Uruszczak, *Historia*, 104–5; Bardach, *Historia*, 478.

[50] See Kurtyka, *Odrodzone*, 120.

[51] KDM 2, no. 509 (1287), 169; KDW 2, no. 673 (1291), 51–2; no. 735 (1295), 105; KDW 6, no. 49 (1295), 60–1; no. 102 (1327), 117; ZDM 4, no. 928 (1342), 76–8; N.K.Maz. 2, no. 319 (1353), 335; KDM 1, no. 260 (1361), 308; no. 288 (1366), 343–4.

[52] KDKK, no. 224 (1361), 284; KDM 1, no. 288 (1366), 343–4.

[53] KDW 1, no. 569 (1286), 530; KDW 2, no. 732 (1295), 102–3; no. 735 (1295), 105; KDW 6, no. 49 (1295), 60–1; no. 62 (1299), 74–5; KDKK, no. 118 (1314), 152; KDW 2, no. 1033 (1322), 367; KDKK, no. 129 (1322), 165–6; KDW 2, no. 1041 (1324), 373; KDKK, no. 133 (1324), 169–70; KDW 2, no. 1078 (1327), 412; KDW 6, no. 102 (1327), 117; KDM 1, no. 188 (1332), 223; KDW 2, no. 1163 (1336), 492; N.K.Maz. 2, no. 319 (1353), 335; KDM 3, no. 725 (1358), 122; KDW 3, no. 1431 (1360), 162; KDM 1, no. 260 (1361), 308; KDM 3, no. 725 (1358), 122; KDW 3, no. 1431 (1360), 162; KDM 1, no. 260 (1361), 308; ZDM 1, no. 109 (1364), 142–3.

and towns.[54] Much less frequent are references to "judges" of entire duchies, or, after the reunification of the Kingdom, of their successor units: "judges" of the major provinces, such as Greater or Lesser Poland, Cuiavia, or Masovia.[55]

Within the network of "judges," we note significant transitions during the reigns of the two kings. Occasionally under Władysław, more frequently under Casimir, "judges" were associated, explicitly through that word, with "the land" (*terra*). In this context, the word meant a substantial district, comprising some portion – occasionally all – of a former duchy, and specified as centered on that former duchy's one or two major towns: to use two examples, Gniezno or Poznań in Greater Poland, Kraków or Sandomierz in Lesser Poland.[56] "Judges" thus situated have prompted among historians of Poland's medieval statecraft a discernment of yet another institutional judicial network: of "judges" (and courts) "of the land."[57] During the same two reigns, these two territorially-specified courts – of a "castle," and of "the land" – each evolved into a simple, hierarchical composition, consisting of a "judge" and a "sub-judge," who jointly presided over the proceedings.[58] This shallow judicial hierarchy became routine under King Casimir, and remained permanent in medieval Poland thereafter.

Quite striking in the final decade of King Casimir's reign is the new, and frequent, designation of one type of "judge" as a "general judge" (*iudex generalis*), the epithet

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[54] These networks, and my prose here and below, require a short comment. My hesitancy in the words that "we may conclude" their existence marks that slight disagreement on my part with Poland's historiography about the court framework to which I allude in note 35 above. Polish historians have tended to infer axiomatically institutions from activity and space. To use three examples: reports of a "judge of" one of those cities, or "of the land" around them, or present in an assembly (*colloquium*), has, for generations now, prompted an unexamined inference of a series of formally differentiated courts: respectively, a "city" (or, rather, a "castle") "court" (*sąd grodzki*), a "land court" (*sąd ziemski*), and an "assembly court" (*sąd wiecowy*) – and the list continues. This is yet another huge subject different from mine now, to which will return; here, it requires alerting attention.

[55] KDW 6, no. 65 (1301), 77: *iudice Polonie*.

[56] KDW 2, no. 1034 (1323), 367; no. 1036 (1323), 368–9; KDKK, no. 166 (1339), 214; no. 167 (1339), 215; ZDM 1, no. 62 (1350), 81; KDM 1, no. 244 (1356), 288–9; KDKK, no. 227 (1362), 293; KDM 3, no. 754 (1362), 156; KDKK, no. 231 (1363), 297–8; KDM 1, no. 268 (1363), 317; no. 270 (1363), 319–20; KDM 3, no. 761 (1363), 164; KDKK, no. 238 (1365), 303; no. 240 (1366), 307; no. 241 (1366), 308; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234.

[57] This slightly cautious description of the "court of the land" (*sąd ziemski*) reflects my concers, signalled in note 35 above, about the historiographic institutional taxonomy of which it is a part, and which I intend to address elsewhere. In addition to note 35 and other literature cited throughout this article, see Uruszczak, *Historia*, 104; Kurtyka, *Odrodzone*, 124–7, 131–4.

[58] KDKK, no. 118 (1314), 152; no. 125 (1322), 161–2; KDM 3, no. 684 (1347), 66; ZDM 1, no. 55 (1348), 71; KDM 3, no. 689 (1349), 72–3; no. 698 (1352), 86; ZDM 1, no. 68 (1352), 88–9; KDM 3, no. 700 (1353), 88; KDKK, no. 200 (1354), 254–5; no. 205 (1350–58), 262–3; 206 (1356), 264; KDM 1, no. 244 (1356), 288–9; KDM 3, no. 712 (1356), 105–6; ZDM 4, no. 950 (1356), 100; KDM 1, no. 244 (1356), 288–9; KDM 3, no. 712 (1356), 105–6; ZDM 4, no. 950 (1356), 100; KDKK, no. 213 (1358), 270; no. 221 (1360), 277–8; KDM 1, no. 260 (1361), 308; ZDM 4, no. 967 (1361), 119; KDKK, no. 224 (1361), 284; KDM 1, no. 260 (1361), 308; KDM 3, no. 750 (1362), 152; no. 753 (1362), 155; KDKK, no. 227–228 (1362), 293–4; KDM 3, no. 750 (1362), 152; no. 753 (1362), 155; no. 754 (1362), 156; KDKK, no. 231 (1363), 297–8; KDM 1, no. 268 (1363), 317; no. 270 (1363), 319–20; KDM 3, no. 756 (1363), 159; no. 761 (1363), 164; N.K.Maz. 3, no. 59 (1363), 72; KDM 1, no. 273 (1364), 322–3; no. 274 (1364), 323–4; ZDM 4, no. 974 (1364), 128; KDKK, no. 237 (1365), 303; no. 238 (1365), 303; no. 240 (1366), 307; no. 241 (1366), 308; no. 289 (1366), 345; KDM 3, no. 821 (1369), 231; no. 824 (1369), 234; no. 825 (1369), 235; no. 831 (1370), 241; N.K.Maz. 3, no. 110 (1370), 124; ZDM 4, no. 1006 (1370), 158–9.

doubling as an adjective and a noun. As he appears in the records on which I am basing this study, the judge thus designated was specifically – and uniquely – part of the two-person hierarchical judicial pair noted above, but situated in one city and its district: the "judge and sub-judge of the land of Kraków."[59] The documentary pattern of qualifying the two men as "general" (implicitly a superlative or elevating word), and their connection with the most important city in the kingdom, Kraków, and with the expansive unit of territory called the "land," centered on that city, suggests an emergence, among the other strands of the judicial framework, of one distinctly high-level court – situated, spatially and conceptually, in Kraków.[60] Finally, and perhaps least surprisingly given their royal office, when Kings Władysław and Casimir referred to themselves as presiders of their own personal court, they added, to the other expressions of self-identification, extravagant epithets of their own "presence," "magnificence," and "majesty."[61]

Apart from their presiding agents, the personnel taking part in these judicial settings is much less visible in the record. Here I mean either people who in some sense joined the judge in the events leading up to the outcome – selection and interpretation of proof, issuance of a verdict, and pronouncement of a sanction or a compromise. The most recurrent group of that kind appears at cases presided by the ruler in person, who acted "before," or in the "presence of," "our barons" – a group always designated with that exact word, *barones*.[62] This group underwent terminological transition. In the 1360s, King Casimir placed near himself, in words identical to the "barons," "assessors" (*assessores*).[63] In this set of documents, the exact meanings of these two groups are difficult to specify. Neither the "barons" nor the "assessors" are enumerated individually, by name or by other attributes. We cannot be certain whether these were groups of different people, or whether this is a terminological shift designating the same group with a new word. The one clear pattern is mutual exclusion. "Assessors" never appear in the same documents – and therefore on the same occasions – as "barons" – so that, at least in the instances reported by the documents, the "barons" appear to have been replaced, a group, by "assessors."[64] In addition, the word *assessor* suggests a formalization the group surrounding the Polish king and he presided over his court; a transition consistent with the apparent proliferation of judges and courts during Casimir's reign.

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[59] KDM 3, no. 754 (1362), 156; KDKK, no. 231 (1363), 297; KDM 1, no. 268 (1363), 317; no. 270 (1363), 319–20; KDM 3, no. 761 (1363), 164; KDKK, no. 238 (1365), 303; no. 240 (1366), 307; no. 241 (1366), 308; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234.

[60] Perhaps one symptom of the distinctness of Lesser Poland in the ruling system of the reunited Kingdom, well noted by Kurtyka, *Odrodzone*, 118, 136–41, and elsewhere.

[61] ZDM 1, no. 29 (1328), 36–7; KDM 1, no. 199 (1335), 237–8; KDKK, no. 213 (1358), 270–1; KDM 1, no. 260 (1361), 307; N.K.Maz. 3, no. 53 (1361), 65; KDKK, no. 238 (1365), 305; KDM 1, no. 288 (1366), 343–4; KDM 3, no. 822 (1369), 232.

[62] KDW 1, no. 569 (1286), 530; no. 571 (1286), 531–2; KDM 2, no. 509 (1287), 169–70; KDKK, no. 89 (1288), 123–4; KDW 2, no. 673 (1291), 51; no. 684 (1292), 61; no. 732 (1295), 102; no. 735 (1295), 104–5; KDW 6, no. 49 (1295), 60; SUB 6, no. 310 (1297), 248; no. 62 (1299), 74; KDW 6, no. 90 (1319), 102; no. 102 (1327), 116; no. 105 (1328), 119–20; KDM 1, no. 180 (1329), 214; no. 188 (1332), 222; KDKK, no. 155 (1335), 199–200; ZDM 4, no. 928 (1342), 78; ZDM 1, no. 68 (1352), 88–9; KDKK, no. 198 (1353), 251; KDM 1, no. 260 (1361), 307; KDM 3, no. 822 (1369), 231.

[63] KDM 3, no. 753 (1362), 155; KDM 1, no. 268 (1363), 317–8; KDW 3, no. 1510 (1364), 235; ZDM 1, no. 109 (1364), 142; ZDM 4, no. 974 (1364), 128; KDKK, no. 237–238 (1365), 303–5.

[64] Kurtyka, *Odrodzone*, 128.

4. Court framework: the "German" side

On the other side of the ethnic divide, we see much similarity to the indigenous side, and difference in specifics. Like their indigenous counterpart, a "German" court is noted ubiquitously, with that word, as a "court" (*iudicium*)[65] – far less often, and synonymously, a "tribunal"[66] – and associated with a locality, usually through the expression, "court of [a] city," with the city's name in the genitive.[67] In sharp contrast with the "Polish" nomenclature, the noun *court* is almost always additionally specified with one of two technical adjectives: one referring to a formal process (*bannitum*),[68] the other to the existence of a litigated issue (*contestatum*).[69] Very occasionally, the former adjective was expressed in the German vernacular, *geheget*, instead of the usual Latin variant.[70]

Also in contrast to his indigenous counterparts, the presiding agent of a "German" court is, right from the earliest documentation, described by a range of words, each relatively technical – institutionalized, or at least differentiated; and collective, that is to say, marking out groups at least as often as single persons. When noted in the singular, the presiding agent is an "advocate" – always identified by name,[71] and, like one of his judicial Polish counterparts ("judges"), associated with a city or a town by means of its

[65] SUB 6, no. 269 (1296), 217; no. 276 (1296), 222; no. 308 (1297), 247; no. 310 (1297), 248; no. 337 (1298), 266; KDW 6, no. 87 (1315), 100; NKRK 1, no. 402 (1317), 42; no. 421 (1317), 44; no. 575 (1319), 57; no. 687 (1323), 69; no. 695 (1323), 70; no. 703 (1323), 71; no. 706 (1324), 72; no. 1010 (1329), 99; no. 1081 (1332), 111; no. 1124 (1332), 116; no. 1171 (1335), 123; no. 1385 (1341), 151; KDM 3, no. 650 (1337), 24; KDM 1, no. 253 (1358), 298.

[66] SUB 6, no. 257 (1296), 208; KDM 3, no. 650 (1337), 24.

[67] NKRK 1, no. 25 (1302), 7; no. 667 (1323), 66–7; no. 695 (1323), 70; no. 706 (1324), 72; no. 752 (1325), 78; no. 1010 (1329), 99; no. 1029 (1330), 102.

[68] SUB 6, no. 308 (1297), 247; NKRK 1, no. 25 (1302), 6–7; no. 87 (1315), 99–100; no. 402 (1317), 42; no. 575 (1319), 57; no. 667 (1323), 66–7; no. 687 (1323), 69; no. 703 (1323), 71; no. 706 (1324), 72; no. 752 (1325), 78; no. 1064 (1331), 109; no. 1010 (1329), 99; no. 1029 (1330), 102; no. 1080 (1332), 111; no. 1081 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116; no. 1135 (1333), 118; no. 1144 (1333), 120; no. 1171 (1335), 123; no. 1182 (1335), 124–5; no. 1183 (1335), 125; no. 1188 (1336), 126; KDM 3, no. 650 (1337), 23–4; NKRK 1, no. 1218 (1337), 130; no. 1235 (1337), 133; no. 1296 (1339), 141; no. 1302 (1339), 142; no. 1385 (1341), 151; no. 1401 (1341), 153–4; no. 1695 (1361), 198; no. 1697 (1362), 199; KDM 3, no. 747 (1362), 149; KDM 1, no. 265 (1362), 313; ZDM 1, no. 107 (1364), 139–40; ZDM 4, no. 982 (1365), 136; KDM 1, no. 279 (1365), 332.

[69] NKRK 1, no. 25 (1302), 7; no. 752 (1325), 78; no. 1081 (1332), 111; no. 1101 (1332), 113–4; no. 1385 (1341), 151.

[70] SUB 6, no. 337 (1298), 266: *iudicio quod geheget […] appellatur*.

[71] SUB 6, no. 269 (1296), 216; no. 276 (1296), 222; no. 337 (1298), 266; NKRK 1, no. (1302), 6–7; KDW 6, no. 87 (1315), 99; NKRK 1, no. 402 (1317), 42; no. 421 (1317), 44; no. 575 (1319), 57; no. 667 (1323), 66; no. 695 (1323), 70; no. 703 (1323), 71; no. 706 (1324), 72; no. 752 (1325), 77; no. 752 (1325), 77–8; no. 1010 (1329), 99; no. 1029 (1330), 101; no. 1080 (1332), 111; no. 1081 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116; no. 1124 (1332), 116–7; KDW 2, no. 1123 (1333), 450; NKRK 1, no. 1135 (1333), 118; no. 1144 (1333), 120; no. 1171 (1335), 123; no. 1182 (1335), 125; no. 1183 (1335), 125; no. 1188 (1336), 126; no. 1218 (1337), 130; no. 1296 (1339), 141; no. 1342 (1340), 146; no. 1385 (1341), 151; no. 1401 (1341), 153–4; no. 1695 (1361), 197; no. 1697 (1362), 199; KDM 3, no. 747 (1362), 148; no. 650 (1337), 23–4; KDM 1, no. 253 (1358), 297; no. 265 (1362), 313; ZDM 1, no. 107 (1364), 139–40; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331.

proper name, expressed in the genitive.[72] Again, in sharp contrast to anything we see in the "Polish" stories, that city or town was a community of German inhabitants – "citizens" (*cives*), expressly so called. When described in the plural, the presiding agent is, collectively, the "consuls,"[73] or, by far the most often, the "aldermen" (*scabini*), identically associated with a city or town.[74] The "aldermen" are further specified as the "seven aldermen,"[75] routinely enough that perhaps the "seven" were a formally and conceptually differentiated judicial panel – yet another collective "German" court.

In many instances, the two groups, "consuls" and "aldermen," appear jointly on the same occasions.[76] In a slight terminological convergence with the "Polish" courts, the presiding agent is sometimes identified as "judge" (*iudex*), but again – and also in contrast with the indigenous side – always with one added formal specification, "hereditary judge" (*iudex hereditarius*).[77] However, in this instance, terminological proliferation is illusory. *Hereditary judge* was either synonymous with *advocate*, or fully replaced *advocate* over time.[78] Thus, the variance in words designating the individual presider over a "German" court loops back to one, by far the most recurrent, actor: the advocate.

The relationship between the advocate and the two collective judicial agents, "consuls" and "aldermen," was remarkably consistent and continuous – I am tempted to say permanent – ever since their earliest appearance in the record. Usually, the advocate presided over the court jointly ("together with," *una cum*) the "consuls," the "aldermen," or both.[79] On rare occasion, we have no record of the advocate, so it seems that one or both of these groups presided – served as judge – collectively.[80] Least frequent are ex-

[72] SUB 6, no. 269 (1296), 216; no. 276 (1296), 222; no. 337 (1298), 266; NKRK 1, no. (1302), 6; KDW 6, no. 87 (1315), 99; NKRK 1, no. 695 (1323), 70; no. 1080 (1332), 111; no. 1101 (1332), 113–4; KDW 2, no. 1123 (1333), 450; KDW 3, no. 1188 (1336), 126; KDM 3, no. 650 (1337), 23–4; KDM 3, no. 747 (1362), 148; KDM 1, no. 253 (1358), 297; no. 265 (1362), 313; ZDM 1, no. 107 (1364), 139–40; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331.

[73] KDM 1, no. 178 (1329), 212–3; KDM 3, no. 747 (1362), 148.

[74] SUB 6, no. 308 (1297), 247; NKRK 1, no. 421 (1317), 44; no. 575 (1319), 57; no. 695 (1323), 70; no. 703 (1323), 71; no. 706 (1324), 72; no. 1010 (1329), 99; no. 1124 (1332), 117; no. 1171 (1335), 123; no. 1182 (1335), 125; no. 1183 (1335), 125; no. 1188 (1336), 126; no. 1235 (1337), 133; no. 1296 (1339), 141; no. 1342 (1340), 146; no. 1401 (1341), 153–4; no. 1695 (1361), 197; no. 1697 (1362), 199; KDM 3, no. 747 (1362), 148–9; no. 650 (1337), 23–4; KDM 1, no. 253 (1358), 297–8; no. 265 (1362), 313; ZDM 4, no. 982 (1365), 135–6; KDM 1, no. 279 (1365), 331.

[75] NKRK 1, no. 25 (1302), 6–7; no. 402 (1317), 42; no. 703 (1323), 71; no. 752 (1325), 77–8; no. 1010 (1329), 99; no. 1029 (1330), 101; no. 1080–1081 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116; no. 1135 (1333), 118; no. 1171 (1335), 123; no. 1218 (1337), 130; no. 1385 (1341), 151.

[76] SUB 6, no. 257 (1296), 208; no. 269 (1296), 216; NKRK 1, no. 25 (1302), 6–7; no. 1101 (1332), 113–4; no. 1135 (1333), 118.

[77] SUB 6, no. 123 (1293), 103; no. 308 (1297), 246; no. 310 (1297), 248; no. 337 (1298), 266.

[78] Górecki, *Text*, 237, 239–40.

[79] SUB 6, no. 269 (1296), 216; NKRK 1, no. 35 (1302), 6–7; SUB 6, no. 308 (1297), 247; NKRK 1, no. 421 (1317), 44; no. 575 (1319), 57; no. 703 (1323), 71; no. 752 (1325), 77–8; no. 1010 (1329), 99; no. 1029 (1330), 101; no. 1080–1081 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116; no. 1124 (1332), 116–7; no. 1135 (1333), 118; no. 1144 (1333), 120; no. 1171 (1335), 123; no. 1182 (1335), 125; no. 1183 (1335), 125; no. 1218 (1337), 130; no. 1296 (1339), 141; no. 1342 (1340), 146; no. 1385 (1341), 151; no. 1401 (1341), 153–4; no. 1695 (1361), 197; no. 1697 (1362), 199; KDM 3, no. 650 (1337), 23–4.

[80] SUB 6, no. 257 (1296), 208; no. 269 (1296), 216; KDM 1, no. 178 (1329), 212–3; NKRK 1, no. 706 (1324), 72; no. 1029 (1330), 102; no. 1135 (1333), 118; no. 1171 (1335), 123; KDM 3, no. 747 (1362), 148.

amples of the advocate presiding in the absence of either group – or, at least, without reportage of their presence in the written record.[81]

Analogously with their indigenous counterparts, in the course of the 14th century "German" courts evolved toward variety and hierarchy. Since the 1340s, a subset is identified a "provincial court," centered on ("of") a town or city, almost always Kraków.[82] This suggests a network of courts situated in this central place, out of which the court projected competence over a "province" – an area centered on, but also implicitly larger than, one city or town and its district.[83] A highly distinct part of that network was a single high court "of German law," situated in one part of that city: the royal "castle of Kraków" on Wawel Hill.[84] The court was presided by a judge whom the documents identify by titles drawn from the wide nomenclature present in "German" courts: "citizen of Kraków," and "advocate" – further amplified, as "judge and advocate," "supreme advocate," "advocate of German law," and as "judge and provincial advocate of German law" – all of it enhanced with adjectives expressing judicial superiority: the "highest" (*summus*) or the "supreme" (*supremus*).[85]

This judge is always described, with these words, as competent in "German law," and assisted by "aldermen" (*scabini*), "before," or "together with," whom he presided over litigation.[86] This judicial personnel, and the events before it, constituted a "formally assembled court" (*iudicium bannitum*),[87] a phrase that, as we have seen, specifically designated "German" courts. In one respect, however, he corresponds to the many "judges" situated on the indigenous side of the ethnic divide: his subordination to the ruler. Ubiquitously, he is identified, in these words exact word, as "deputed" for his role "by […] Casimir […] King of Poland."[88] In sum, this judge, and the personnel over whom he presided, were a distinct and new part of the proliferating framework of courts of "German law" in the Polish Kingdom.

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[81] SUB 6, no. 123 (1293), 103; no. 308 (1297), 246; no. 310 (1297), 248; no. 337 (1298), 266; KDW 6, no. 87 (1315), 99; NKRK 1, no. 402 (1317), 42; no. 421 (1317), 44; no. 667 (1323), 66; no. 695 (1323), 70; no. 752 (1325), 77.

[82] NKRK 1, no. 521 (1318), 53; no. 706 (1324), 72; no. 768 (1325), 79; no. 868 (1327), 87; no. 1138 (1333), 119; no. 1174 (1335), 124; no. 1194 (1336), 126–7; no. 1210 (1337), 129; KDM 3, no. 650 (1337), 23–4; NKRK 1, no. 1469 (1343), 162; no. 747 (1362), 148.

[83] Gąsiorowski, "Districtus," 66–73, 81; Gawlas, *O kształt*, passim.

[84] KDM 3, no. 650 (1337), 23; KDM 1, no. 253 (1358), 297; no. 265 (1362), 313; ZDM 1, no. 107 (1364), 139; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331. Among the large literature on this court, see Uruszczak, *Historia*, 106; Bardach, *Historia*, 280, 487–8; Łysiak, *Ius supremum*; Łysiak, Nehlsen-von Stryk, *Decreta iuris supremi*; Munsinger, "Text and Textualization".

[85] KDM 1, no. 253 (1358), 297; ZDM 1, no. 107 (1364), 139; KDM 1, no. 265 (1362), 313; ZDM 4, no. 982 (1365), 135.

[86] KDM 3, no. 650 (1337), 23; KDM 1, no. 253 (1358), 297; no. 265 (1362), 313; ZDM 1, no. 107 (1364), 140; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331.

[87] KDM 3, no. 650 (1337), 23; KDM 1, no. 265 (1362), 313; ZDM 1, no. 107 (1364), 140; ZDM 4, no. 982 (1365), 135); KDM 1, no. 279 (1365), 331.

[88] KDM 1, no. 253 (1358), 297; no. 265 (1362), 313; ZDM 1, no. 107 (1364), 140; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331.

5. Court framework: Other criteria of similarity and difference

Beneath their presiding agents, "Polish" courts elicited a rather open-ended vocabulary of collective activity, so that the court may be a "general gathering" (*congregatio generalis*),[89] occasionally further amplified as "the land" (*terra*),[90] that rather open-ended territorial unit from which the participants were recruited; or as an "assembly" (*colloquium*),[91] frequently further qualified as "general"[92] – an implied superlative that reflected a hierarchy of dignity or importance, not two formally, institutionally different types of court. In stories concerned with "German" courts, collective tags, likewise relatively infrequent, always referred to the civic community and its institutions, either through the usual civic classifications, "citizens"[93] or "community of citizens,"[94] or (very seldom), an abstract word for a court that is completely absent from "Polish" stories: *curia*.[95]

Within each side of the ethnic division, and across them, court sessions varied in their physical location. Most clearly, King Casimir's high court of "German law" always met in one location in the city of Kraków, the royal castle on Wawel Hill. The "German" court designated with the adjective "provincial," when indicated in terms of location, usually met in Kraków, but with no additional spatial specification. We presume, more or less on first principles, that the civic courts of Kraków and other "German" towns or cities were situated in some designated part of the urban fabric, but, in this set of documents, that location is not actually specified. "Polish" courts sat in a variety of locations, perhaps depending on their type and presidency. Courts presided by the duke or king took place wherever the ruler was in transit – sometimes at one of those "assemblies" (*colloquia*), "general" or otherwise,[96] in or near the principal cities, towns, or other localities, sometimes in more specific locations, such as a city's "castle" (*castrum*),[97] or a place "where we," the king, "were present for our hunt,"[98] or an ecclesiastical space: the "house of the monks" in Ląd, or the "orchard" or "cemetery," "of the [Dominicans]" in Kraków, for example.[99] Courts presided by subordinate ducal or royal agents – palatine, castellan, or "judge of" a specific

[89] KDW 1, no. 553 (1285), 1517.

[90] KDW 2, no. 1027 (1322), 362; no. 1033 (1322), 366–7; no. 1036 (1323), 368.

[91] KDW 2, no. 1027 (1322), 362; KDM 3, no. 750 (1362), 152; no. 753 (1362), 156.

[92] KDM 1, no. 188 (1332), 223; KDKK, no. 227 (1362), 293; KDM 3, no. 754 (1362), 157; KDKK, no. 231 (1363), 298; KDM 1, no. 268 (1363), 317–8; no. 270 (1363), 320; KDM 3, no. 756 (1363), 159; no. 761 (1363), 165; KDM 1, no. 274 (1364), 324; ZDM 4, no. 974 (1364), 128; KDKK, no. 237 (1365), 303; no. 238 (1365), 303–4; no. 240 (1366), 307; KDM 3, no. 824 (1369), 234; no. 825 (1369), 235; no. 831 (1370), 241.

[93] SUB 6, no. 117 (1293), 98; no. 257 (1296), 208; KDW 2, no. 1123 (1333), 450; KDM 3, no. 650 (1337), 23–4; KDM 1, no. 265 (1362), 313; ZDM 1, no. 107 (1364), 139; ZDM 4, no. 982 (1365), 135; KDM 1, no. 279 (1365), 331.

[94] SUB 6, no. 276 (1296), 222; no. 308 (1297), 246; KDM 1, no. 178 (1329), 212.

[95] NKRK 1, no. 706 (1324), 72.

[96] KDW 1, no. 553 (1285), 515–7; KDM 3, no. 753 (1362), 155–6; no. 756 (1363), 159; ZDM 4, no. 974 (1364), 128; KDKK, no. 237 (1365), 303; KDM 3, no. 825 (1369), 235; no. 831 (1370), 24.

[97] KDW 2, no. 732 (1295), 102–3; no. 741 (1295), 112–3; KDKK, no. 133 (1324), 169–70; ZDM 4, no. 954 (1357), 103.

[98] KDM 1, no. 280 (1365), 332.

[99] KDW 1, no. 564 (1286), 526; KDKK, no. 125 (1322), 161–2; no. 200 (1354), 254–5.

town or city – are consistently situated in the stories somewhere "in" a specific locality, without further elaboration of the space within the locality where the court was held.

Strongly similar across the ethnic divide – and in the various courts on each side of that divide – is the subject matter litigated. In all courts, "Polish" and "German," the cases overwhelmingly concerned conflict over property transactions: full alienations (gifts, sales, and exchanges), conditional alienations, and succession, both intestate and testamentary. What differed across the ethnic divide was the range and the conceptualization of the litigated property. "Polish" courts were concerned with landholdings, in their entirety or substantial fragments, reported by place-name or with specific attributes: an "inheritance,"[100] a village or estate (*villa*),[101] a "field,"[102] a "holding,"[103] a "hide,"[104] a "garden,"[105] a "meadow,"[106] a "lake,"[107] a "stream bank,"[108] a "forest,"[109] a "mill,"[110] a "tavern,"[111] "pastures,"[112] and the "boundaries" (*metas, granicies*, or *gades*) of such

[100] KDW 1, no. 553 (1285), 515–7; no. 561 (1286), 523–4; no. 569 (1286), 529–30; no. 571 (1286), 531–2; KDM 2, no. 506 (1287), 168; no. 509–510 (1287–1288), 169–71; KDW 2, no. 700 (1293), 75–6; no. 759 (1297), 129–30; KDM 1, no. 152 (1315), 181–2; KDKK, no. 119 (1318), 153; KDW 6, no. 90 (1319), 102; KDW 2, no. 1033 (1322), 366–7; no. 1034 (1323), 367; no. 1036 (1323), 369; no. 1078 (1327), 412; KDW 6, no. 102 (1327), 116–7; no. 105 (1328), 119–21; KDM 1, no. 180 (1329), 214; KDW 2, no. 1145 (1335), 471; KDKK, no. 166 (1339), 214–5; no. 167 (1339), 215; ZDM 4, no. 928 (1342), 76–8; KDM 3, no. 678 (1346), 61; no. 684 (1347), 66–7; KDW 6, no. 148 (1348), 166–7; ZDM 1, no. 62 (1350), 81; KDM 3, no. 698 (1352), 86; KDKK, no. 198 (1353), 251–2; KDM 3, no. 700 (1353), 88; KDKK, no. 200 (1354), 254–5; no. 205 (1350–1358), 262–3; no. 206 (1356), 264; ZDM 4, no. 954 (1357), 103; KDM 3, no. 712 (1356), 105–6; ZDM 4, no. 961 (1359), 113–5; KDW 3, no. 1431 (1360), 162; KDKK, no. 224 (1361), 284; KDM 3, no. 754 (1362), 156–7; KDKK, no. 231 (1363), 297–8; KDM 1, no. 268 (1363), 317–8; no. 270 (1363), 319–20; KDM 3, no. 761 (1363), 164–5; KDM 1, no. 274 (1364), 323–4; KDKK, no. 238 (1365), 303–4; no. 240 (1366), 307; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234.

[101] KDW 1, no. 529 (1283), 493–4; N.K.Maz. 2, no. 74 (1285), 69; KDW 1, no. 564 (1286), 526; KDKK, no. 89 (1288), 123–4; KDW 2, no. 732 (1295), 103; no. 737 (1295), 106–7; no. 741 (1295), 112–3; KDW 6, no. 49 (1295), 60–1; no. 62 (1299), 74–5; KDKK, no. 118 (1314), 152; KDM 2, no. 564 (1316), 232–3; KDKK, no. 125 (1322), 161–2; no. 164 (1338), 211–2; KDW 6, no. 148 (1348), 166–7; KDM 3, no. 698 (1352), 86; no. 700 (1353), 88; KDKK, no. 198 (1353), 251–2; KDM 1, no. 244 (1356), 288–9; no. 273 (1364), 322–3.

[102] ZDM 4, no. 924 (1341), 68–9; KDM 3, no. 670 (1342), 49; ZDM 1, no. 55 (1348), 71–2; ZDM 4, no. 954 (1357), 103; KDKK, no. 213 (1358), 270–1; no. 221 (1360), 277–8; KDM 1, no. 260 (1361), 307–8; KDM 3, no. 750 (1362), 152; no. 753 (1362), 155–6.

[103] KDW 2, no. 735 (1295), 104–5; ZDM 1, no. 55 (1348), 71–2; no. 62 (1350), 81; KDM 1, no. 244 (1356), 288–9; ZDM 4, no. 954 (1357), 103.

[104] KDW 1, no. 553 (1285), 515–7.

[105] KDW 1, no. 553 (1285), 515–7; KDKK, no. 192 (1351), 245–6.

[106] KDM 3, no. 689 (1349), 72–3; KDKK, no. 192 (1351), 245–6; ZDM 4, no. 954 (1357), 103; KDKK, no. 221 (1360), 277–8; KDM 3, no. 825 (1369), 235; no. 831 (1370), 241; ZDM 4, no. 1006 (1370), 158–9.

[107] KDW 2, no. 1041 (1324), 373; KDM 1, no. 244 (1356), 288–9.

[108] N.K.Maz. 3, no. 110 (1370), 124.

[109] KDKK, no. 121 (1320), 154–5; no. 122a (1320), 157; ZDM 1, no. 29 (1328), 36–7; KDM 3, no. 653 (1338), 27; ZDM 4, no. 974 (1364), 128; KDKK, no. 237 (1365), 303.

[110] KDW 2, no. 1163 (1336), 491–2; KDM 3, no. 670 (1342), 49; no. 680 (1346), 62–3; KDW 6, no. 147 (1347), 165–6; KDKK, no. 192 (1351), 245–6; N.K.Maz. 2, no. 319 (1353), 334–5; ZDM 4, no. 954 (1357), 103; KDM 3, no. 725 (1358), 122; KDKK, no. 221 (1360), 277–8; KDM 3, no. 756 (1363), 159.

[111] KDKK, no. 133 (1324), 170; no. 192 (1351), 245–6.

[112] ZDM 4, no. 950 (1356), 100.

units.[113] In their "German" counterparts, the contested landed property was usually the urban "lot" (*curia*), spatially and conceptually coupled "with an estate" (*cum fundo*)[114]; and, attached to these units, the lucrative parts of built urban space (butcher stalls, breweries, taverns, tanneries, weaving workshops), and their activities, revenues, rights, and prohibitions.[115] This contrast in litigated subject matter surely reflects the principally urban location of these courts, and the civic provenance of the documents and stories.

Other subjects reflect sharper differences between "Polish" and "German" courts. Conflicts in the former concerned subjects visible in the immunity charters: peasant status, especially freedom and its absence;[116] "breaches" by ducal agents of the "rights" (*iura*) promised to lords and peasants;[117] and "infliction" by those agents (and, implicitly, by others) of unowed "services," either enumerated one by one, or described generally as a breach of "liberties."[118] Insofar as I have discerned, nothing remotely comparable concerning personal status was litigated in "German" courts, while claims contesting "services" or "liberties" were rare. On the other hand, reported solely there were various kinds of claims concerning "village bailiffs" and "advocates."[119] This difference is understandable given the strict specificity of these two positions to the "Germans" and their communities, rural and urban.

6. Litigation: Preliminaries

And now, at long last, let me move to the course of litigation reported by this record, with specific attention to the significance of the ethnic divide, implied in the adjectives *Polish* and *German*, for that course. In broad contours, the sequence of steps conforms to patterns of medieval procedure and process recurrent throughout the Continent. In this respect, we have another overarching similarity across the supposed ethnic difference. It seems best to begin with those broad contours – activities that jointly comprised what Simon Roberts and Michael Palmer call the "processual shape" of disputing.[120]

Those activities began with an assertion that a dispute has arisen, and was underway. This moment is presented by a wide range of Latin words, all synonymous. While

[113] N.K.Maz. 2, no. 64 (1281), 62; KDW 2, no. 673 (1291), 51–2; KDM 2, no. 564 (1316), 232–3; KDKK, no. 164 (1338), 212; ZDM 1, no. 84 (1357), 109; ZDM 4, no. 961 (1359), 113–5; no. 967 (1361), 119–20; KDKK, no. 227 (1362), 293; no. 231 (1363), 297–8; KDM 1, no. 289 (1366), 345.

[114] NKRK 1, no. 25 (1302), 6–7; no. 687 (1323), 69; no. 695 (1323), 70; no. 706 (1324), 72.

[115] SUB 6, no. 308 (1297), 246–7; KDW 6, no. 87 (1315), 99–100; NKRK 1, no. 402 (1317), 42; no. 421 (1317), 44; no. 752 (1325), 77–8; KDM 1, no. 178 (1329), 212–3; NKRK 1, no. 1182 (1335), 124–5; no. 1302 (1339), 142; no. 1385 (1341), 151; KDW 6, no. 159 (1353), 179–80.

[116] KDKK, no. 155 (1335), 199–200; N.K.Maz. 3, no. 53 (1361), 65–6; KDM 1, no. 288 (1366), 343–4.

[117] KDW 2, no. 1055 (1325), 384–5; N.K.Maz. 3, no. 59 (1363), 72.

[118] KDW 6, no. 65 (1301), 77; no. 66 (1302), 77–8; KDKK, no. 121 (1320), 154–5; KDW 2, no. 1027 (1322), 362; no. 1163 (1336), 491–2; ZDM 4, no. 936 (1348), 86; KDKK, no. 192 (1351), 245–6; KDM 1, no. 280 (1365), 332–4; N.K.Maz. 3, no. 110 (1370), 124.

[119] NKRK 1, no. 703 (1323), 71; KDW 2, no. 1123 (1333), 450; KDM 3, no. 650 (1337), 23–4; KDM 1, no. 253 (1358), 297–8.

[120] Roberts, Palmer, *Dispute Processes*, 125–31, 172–6.

this range occurs on both sides of the ethnic divide, it varies slightly. Words describing „Polish" court cases always mark out the dispute in the noun form, as: "quarrel" (*quaerimonia*),[121] "issue" (*quaestio*),[122] "strife" (*lis*),[123] "difference" (*differentia*),[124] "controversy" (*controversia*),[125] "discord" (*discordia*),[126] and "cause" (*causa*).[127] The "German" counterparts, also nouns, are a partly overlapping, partly additional, cluster of synonyms: "quarrel" (*quaerimonia*),[128] "issue" (*quaestio*),[129] "strife" (*lis*),[130] "request" (*inpeticio*),[131] "disagreement" (*dissensio*),[132] "attack" (*impugnacio*),[133] "exhortation" (*allocucio*),[134] "debate" (*altercacio*),[135] "controversy" (*controversia*),[136] and "cause" (*causa*).[137] In addition, in the "German" stories, dispute is expressed in the form of a verb, as a brief but explicit report of action: that one party "proposed accusingly" (*querulose proposuerunt*),[138] "assert[ed]" (*asserens*),[139] "requested" (*petivit,*

[121] KDM 2, no. 506 (1287), 166; KDW 2, no. 673 (1291), 51–2; no. 737 (1295), 106–7; no. 741 (1295), 112; SUB 6, no. 310 (1297), 248; KDW 6, no. 90 (1319), 102; KDKK, no. 121 (1320), 154; KDW 2, no. 1027 (1322), 362; no. 1055 (1325), 384; ZDM 1, no. 62 (1350), 81; KDKK, no. 213 (1358), 271; N.K.Maz. 3, no. 53 (1361), 65–6.

[122] SUB 4, no. 411 (1281), 27; N.K.Maz. 2, no. 64 (1281), 62; KDW 1, no. 569 (1286), 529–30; KDM 2, no. 510 (1288), 170–1; KDW 2, no. 732 (1295), 102–3; KDKK, no. 99 (1295), 135–6; no. 122a (1300), 157; KDW 6, no. 66 (1302), 78; KDKK, no. 119 (1318), 153; KDW 6, no. 90 (1319), 102; KDKK, no. 129 (1322), 165; no. 133 (1324), 170; KDW 2, no. 1078 (1327), 412; KDM 1, no. 180 (1329), 214; KDW 6, no. 119 (1337), 133–4; ZDM 4, no. 924 (1341), 69; no. 928 (1342), 76; KDM 3, no. 680 (1346), 62; KDW 6, no. 148 (1348), 166–7; KDM 3, no. 689 (1349), 72; KDKK, no. 192 (1351), 245–6; no. 198 (1353), 251; KDM 1, no. 244 (1356), 288; ZDM 1, no. 84 (1357), 109; KDKK, no. 224 (1361), 284; KDM 1, no. 260 (1361), 307–8; ZDM 4, no. 967 (1361), 119–20; KDKK, no. 227 (1362), 293; KDM 3, no. 754 (1362), 156–7; KDKK, no. 231 (1363), 297–8; KDM 1, no. 268 (1363), 317–8; no. 270 (1363), 319–20; KDM 3, no. 761 (1363), 164–5; KDM 1, no. 273–274 (1364), 322–4; KDKK, no. 240–241 (1366), 307–8; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234; N.K.Maz. 3, no. 110 (1370), 124.

[123] KDW 1, no. 571 (1286), 531–2; KDM 1, no. 152 (1315), 181–2; KDW 2, no. 1041 (1324), 372–3; KDKK, no. 228 (1362), 293–4.

[124] KDW 1, no. 553 (1285), 515–7.

[125] KDKK, no. 89 (1288), 123; KDW 2, no. 1145 (1335), 471; KDM 3, no. 698 (1352), 86; N.K.Maz. 2, no. 319 (1353), 334–5; KDKK, no. 205 (1350–58), 262.

[126] SUB 6, no. 123 (1293), 104.

[127] SUB 4, no. 411 (1281), 27; KDM 2, no. 506 (1287), 168; KDW 2, no. 700 (1293), 75–6; KDW 6, no. 62 (1299), 74–5; KDKK, no. 118 (1314), 152; no. 125 (1322), 161; KDW 6, no. 105 (1328), 119–21; KDKK, no. 166–167 (1339), 214–5; KDM 3, no. 670 (1342), 49; KDKK, no. 192 (1351), 245–6; KDM 3, no. 725 (1358), 122.

[128] SUB 6, no. 310 (1297), 248; NKRK 1, no. 25 (1302), 7.

[129] KDW 6, no. 87 (1315), 99–100; KDM 1, no. 178 (1329), 212–3; NKRK 1, no. 1124 (1332), 117; KDM 3, no. 650 (1337), 23–4; KDM 1, no. 253 (1358), 297–8.

[130] SUB 6, no. 337 (1298), 266; NKRK 1, no. 1697 (1362), 199.

[131] SUB 6, no. 257 (1296), 208; NKRK 1, no. 25 (1302), 7; no. 421 (1317), 44.

[132] SUB 6, no. 337 (1298), 266.

[133] NKRK 1, no. 1029 (1330), 101–2.

[134] NKRK 1, no. 1081 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116–7; no. 1171 (1335), 123; no. 1183 (1335), 125.

[135] KDW 2, no. 1123 (1333), 450; NKRK 1, no. 1218 (1337), 130.

[136] NKRK 1, no. 1697 (1362), 199.

[137] SUB 6, no. 276 (1296), 222.

[138] SUB 6, no. 117 (1293), 97–8; no. 123 (1293), 103–4; no. 310 (1297), 248.

[139] SUB 6, no. 257 (1296), 208.

impetiverat),[140] "demand[ed]" (*postulantes*),[141] "disturb[ed]" (*inquietare*),[142] "attacked" (*impugnauerunt*),[143] or "exhort[ed]" (*allocutus*),[144] a claim against the other. This latter, verb variant is especially visible in stories reported by the civic court of Kraków in its "town book."

Next in the sequence of activity, the stories turn to four moments that either occurred simultaneously, or are at least not presented in the prose in any chronological sequence – so that, strictly speaking, we cannot quite discern which preceded, followed, or was simultaneous with which. Those moments include: the description, in the objective voice of the record, of the substance of the claim; the act, by one or both parties, of articulating that claim; the description, again in the objective voice, of the group setting within or before which the claim was raised, and the initial act of articulation was performed; and the summons of the accused party.

The articulation of the claim appears in the stories in two ways, both visible in all courts, whether "Polish" or "German." Most documents present that articulation in the objective voice, as a seamless part of the narration. A substantial minority, in addition, express the claim as an actual utterance by a party, in indirect speech, embedded in the narration. Sometimes, but by no means always, the claim is followed by the other party's response, likewise cast either in the objective voice, or as an utterance expressed in indirect speech. As far as I discern from my current reading of the documents, no story presents either a claim or a response in the form of direct speech – either by a party, or by anyone else.

Curiously, the least visible initial activity is the summons of the accused party. Words describing the fact, or act, of summoning, when they appear at all, are extremely simple and sparse. Moreover, regarding this subject, we have a stark difference on one side of the ethnic divide: utter silence. Quite simply, litigation conducted in "German" courts have left no written report of the summons at all. Here, stories about litigation simply imply the performance of that act, by means of the description of the substance of the claim itself. On the "Polish" side, the word describing the summons is always this one verb: "cite" (*cito, citavit*).[145] It appears ubiquitously, without synonyms. Occasionally, it is enhanced with other verbs, and those passages convey more explicitly active communication or effort by the summoning party: "call[ed] forth" (*voco, evoco*) the opponent,[146]

[140] SUB 6, no. 310 (1297), 248; NKRK 1, no. 25 (1302), 6; no. 703 (1323), 71; no. 706 (1324), 72; no. 1010 (1329), 99; no. 1188 (1336), 126; no. 1235 (1337), 133; no. 1302 (1339), 142; no. 1385 (1341), 151; no. 1401 (1341), 153; no. 1697 (1362), 200; no. 747 (1362), 148–9.

[141] SUB 6, no. 308 (1297), 246–7.

[142] NKRK 1, no. 1080 (1332), 111; no. 1401 (1341), 153–4.

[143] NKRK 1, no. 706 (1324), 72.

[144] NKRK 1, no. 25 (1302), 7; no. 402 (1317), 42; no. 421 (1317), 44; no. 695 (1323), 70; no. 706 (1324), 72; no. 752 (1325), 77–8; no. 1064 (1331), 109; no. 1081 (1332), 111; no. 1124 (1332), 116–7; no. 1144 (1333), 120; no. 1171 (1335), 123; no. 1183 (1335), 125; no. 1218 (1337), 130.

[145] N.K.Maz. 2, no. 74 (1285), 69; KDW 1, no. 564 (1286), 526; KDM 2, no. 506 (1287), 166–8; KDKK, no. 129 (1322), 165–6; KDM 3, no. 678 (1346), 61; ZDM 1, no. 55 (1348), 71–2; no. 62 (1350), 81; KDM 3, no. 698 (1352), 86; KDKK, no. 200 (1354), 254–5; ZDM 4, no. 950 (1356), 100; no. 954 (1357), 103; KDM 3, no. 756 (1363), 159; ZDM 4, no. 974 (1364), 128; KDM 1, no. 288 (1366), 344; KDM 3, no. 825 (1369), 235; no. 831 (1370), 241; ZDM 4, no. 1006 (1370), 158–9.

[146] KDM 2, no. 509 (1287), 169–70; KDKK, no. 89 (1288), 124.

or "attend[ed] to" (*procuro*)[147] the summons of the opponent. Such words are usually positioned in the texts next to the (indirect) speech acts that articulate the substance of the claim. In that sense they almost join the long and varied list of words meaning a quarrel, noted above.

Paradoxically, one reason why these opening steps of litigation are not narrated in clear chronological progression may be time itself. Recurrent at this opening stage is delay. The four moments are interspersed with references to a charged, challenging passage of time, during and at the completion of each moment, or at all of them cumulatively – so that things happen "at last," "finally," "in the end" (*tandem*),[148] and after unspecified, but reiterative intervening events that complicate each outcome: "after many quarrels" proceeding "to and fro,"[149] "revolv[ing] over many terms,"[150] and the like. As narrated in the stories, such references are most conspicuous right after the initial complaint, and one or both parties' appearance in court; and they recur, in varying degree, at later phases of the trial process. Quite striking is their "ethnic" specificity. A vast majority pertain to events taking place in the "Polish" courts. Only a handful of "German" stories report these kinds of delay.[151]

7. Litigation: Proof and its impact

In contrast, the steps comprising the trial that followed are presented in a clearer chronological segmented sequence. In that sequence, they included: the choice and presentation of proof; inference from that proof; the outcome – usually a verdict, less often a reconciliation between the parties; and, at the end, verbal and other modes of

[147] KDW 6, no. 105 (1328), 119–21; KDM 3, no. 698 (1352), 86; no. 700 (1353), 88; ZDM 4, no. 950 (1356), 100.

[148] KDM 2, no. 506 (1287), 167; no. 510 (1288), 170; KDW 6, no. 49 (1295), 61; KDW 2, no. 735 (1295), 104; no. 759 (1297), 130; SUB 6, no. 337 (1298), 266.13–14; KDW 6, no. 62 (1299), 74; KDM 2, no. 541 (1303), 207; KDKK, no. 118 (1314), 152; no. 119 (1318), 153; KDW 6, no. 90 (1319), 102; KDKK, no. 133 (1324), 169; N.K.Maz. 2, no. 167 (1324), 166; KDW 6, no. 102 (1327), 117; ZDM 1, no. 29(1328), 36; KDM 1, no. 180 (1329), 214; no. 199 (1335), 237; ZDM 4, no. 916 (1336), 59; KDM 3, no. 650 (1337), 23; KDKK, no. 166 (1339), 214; no. 167 (1339), 215; ZDM 4, no. 924 (1341), 69; KDM 3, no. 680 (1346), 62; KDW 6, no. 148 (1348), 167; ZDM 4, no. 936 (1348), 86; KDM 3, no. 698 (1352), 86; no. 700 (1353), 88; N.K.Maz. 2, no. 319 (1353), 334; KDM 3, no. 712 (1356), 105; ZDM 4, no. 950 (1356), 100; ZDM 1, no. 84 (1357), 109; KDM 1, no. 260 (1361), 307; ZDM 4, no. 967 (1361), 119; KDKK, no. 227 (1362), 293; KDM 1, no. 265 (1362), 313; KDM 3, no. 750 (1362), 152; no. 754 (1362), 156; no. 756 (1363), 159; no. 761 (1363), 164; ZDM 4, no. 974 (1364), 128; KDW 3, no. 1583 (1367), 302; KDM 3, no. 824 (1369), 234; no. 825 (1369), 235; no. 831 (1370), 241; N.K.Maz. 3, no. 110 (1370), 124; ZDM 4, no. 1006 (1370), 158.

[149] KDM 2, no. 510 (1288), 170; KDW 2, no. 735 (1295), 104; SUB 6, no. 337 (1298), 266.12–13; KDM 1, no. 180 (1329), 214; ZDM 4, no. 916 (1336), 59; KDW 6, no. 148 (1348), 167; KDM 3, no. 698 (1352), 86; no. 712 (1356), 105; ZDM 4, no. 974 (1364), 128.

[150] KDM 3, no. 650 (1337), 23; no. 698 (1352), 86; no. 700 (1353), 88; KDKK, no. 227 (1362), 293; KDM 3, no. 754 (1362), 156; no. 761 (1363), 164; KDW 3, no. 1583 (1367), 302; KDM 3, no. 824 (1369), 234.

[151] SUB 6, no. 337 (1298), 266.12–14; NKRK 1, no. 25 (1302), 6; no. 703 (1323), 71; no. 1218 (1337), 130; KDM 1, no. 265 (1362), 313.

assurance of finality of the outcome.[152] On a general level, proof was strikingly similar across the ethnic boundary. It consisted of two elements. The first was hearing and seeing: by, and of, people attesting to the contested events; and by displaying, viewing, and reading out loud written documents. The second was oath-taking, either in itself fully probative, or performed in support of these other, aural and visual, types of proof.

The particulars varied across the ethnic boundary. One difference is frequency. In "German" cases, reports of proof of any kind are sparse. Identified here, each in a few references, are: a "letter" (*littera*);[153] a "witness" – meant either as an act witnessing, *testimonium*,[154] or as a person, usually in plural, "witnesses," *testes*[155]; and "speak[ing]" (*dico*),[156] "see[ing] (*video*),"[157] or "hear[ing] (*audio*)"[158] a text or a human voice – all of it summed up as "testimony" or the "witness of truth."[159] Oath used as a self-standing proof is extremely rare.[160] Beyond such acknowledgments of the fact and the types of proof, the "German" court stories are silent on the actual use of proof, its significance, or its relationship to the ensuing verdict.

"Polish" courts present a much richer picture. The range of proofs is supplemented by numbers, frequency, and kinds of activity. One type of proof, speech, is repeatedly presented as a set of perceptual acts: "speaking in a live voice,"[161] "hear[ing]" (*audio*),[162] utterance by "witnesses" (*testes*)[163]; and another, the oath, as an act of swearing: *iuro*, or *iuramentum*.[164] On those occasions when the written document is explicitly described as proof, it is named by a range of words, either synonyms or (perhaps) a formal classification: "instrument" (*instrumentum*),[165] source of "support" (*munimentum*),[166] "let-

[152] Modes of assurance: Tabuteau, *Transfers*, 113, 334; Hudson, *Land, Law, and Lordship*, 157–72.

[153] SUB 6, no. 123 (1293), 103–4; no. 276 (1296), 222; NKRK 1, no. 1171 (1335), 123.

[154] SUB 6, no. 257 (1296), 208; no. 308 (1297), 247; KDW 6, no. 87 (1315), 100.

[155] KDW 2, no. 1123 (1333), 450.

[156] SUB 6, no. 117 (1293), 98; no. 276 (1296), 222; NKRK 1, no. 25 (1302), 6–7; no. 1124 (1332), 116–7.

[157] KDM 1, no. 265 (1362), 313.

[158] SUB 6, no. 117 (1293), 97–8; no. 257 (1296), 208; KDW 6, no. 87 (1315), 100.

[159] SUB 6, no. 257 (1296), 208.

[160] SUB 6, no. 308 (1297), 247; KDM 1, no. 265 (1362), 313.

[161] KDM 3, no. 750 (1362), 152.

[162] KDW 1 no. 569 (1286), 529–30; KDM 2, no. 506 (1287), 168; no. 509 (1287), 169–70; KDW 2, no. 684 (1292), 62; no. 732 (1295), 102–3; no. 737 (1295), 106–7; no. 741 (1295), 112–3; KDW 6, no. 66 (1302), 77–8; KDKK, no. 119 (1318), 153; no. 121 (1320), 154–5; KDW 2, no. 1034 (1323), 367; no. 1036 (1323), 368; KDKK, no. 192 (1351), 245–6; no. 831 (1370), 241.

[163] KDW 1, no. 529 (1283), 493–4; KDKK, no. 118 (1314), 152; no. 121 (1320), 154–5; ZDM 4, no. 936 (1348), 86; ZDM 1, no. 84 (1357), 109; ZDM 4, no. 967 (1361), 120; KDM 3, no. 756 (1363), 159; KDM 1, no. 274 (1364), 323–4; no. 288 (1366), 343–4; KDM 3, no. 824 (1369), 234.

[164] KDW 1, no. 529 (1283), 494; KDW 6, no. 49 (1295), 60–1; KDKK, no. 121 (1320), 154–5; no. 205 (1350–1358), 262–3; ZDM 4, no. 950 (1356), 100; KDKK, no. 213 (1358), 270–1; ZDM 4, no. 961 (1359), 113–5; KDW 3, no. 1510 (1364), 235–6; KDM 1, no. 280 (1365), 332–4; ZDM 4, no. 974 (1364), 128; KDM 1, no. 288 (1366), 343–4; ZDM 4, no. 1006 (1370), 158–9.

[165] SUB 4, no. 411 (1281), 27; KDM 2, no. 506 (1287), 167; KDW 2, no. 732 (1295), 102–3; KDW 6, no. 66 (1302), 78; KDKK, no. 119 (1318), 153; ZDM 1, no. 68 (1352), 88–9.

[166] KDW 1, no. 569 (1286), 529–30; KDW 6, no. 119 (1337), 133–4.

ter" (*littera*),[167] and, most often, "privilege" (*privilegium*).[168] On occasion, attention to the probative value of these materials is more explicit, with references to the act of "prov[ing]" (*probacio*), and to the perceptual or cognitive moments of its gathering and use: the act of "seeing" (*video*)[169]; or, to the conduct of an "inquiry" (*examen*), resulting in "knowledge" (*cognitio*) and "underst[anding]."[170] These references to activity and cognition raise, as recurring subjects, the importance of proof, the nature of its use, and, subsequently, its link with the verdict.

In addition, in the "Polish" stories, we learn more about the attesting people – the human sources of oral proof, a broad and varied population whom I have elsewhere called communities of legal memory: groups of people who possess knowledge pertinent to the prevention or resolution of dispute.[171] By far the best documented is the "neighborhood" (*vicinia*), a unit of space and people encompassing (notionally) several villages, who, in their forensic role, were compelled under oath to attest to, strengthen, or alter, a contested subject: most visibly, boundaries separating or enclosing villages or estates.[172] Other groups of this kind – "men" (*viri*), further qualified as "righteous," "discreet," or "old,"[173] or "knights" (*milites*), also sometimes qualified as "righteous,"[174] or "villagers" (*villani*)[175] – all seamlessly blend, along with the "neighborhood," in that same role into a large, only partly differentiated population of witnesses and oath-takers. In contrast, on the "German" side, communities of legal memory appear seldom, and, when present, they comprise the court itself. This occurs in cases when, in addition to their judicial capacity, "consuls," or "aldermen" (*scabini*), or some subgroups among them, are simultaneously reported as witnesses.[176]

The record – all of it – is perhaps surprisingly terse in bridging proof with the final outcome, especially the verdict. Usually, this part of the story is missing – *as if* the causal link between proof and outcome were self-evident, and required no more than a switch from narration to disposition. In some documents, the response to proof, while noted, is couched in highly general language of right and wrong: as the court discerned that one party "prevailed" over, or "was more just," or closer to "law" (or to "right"), than the other – or, on the contrary, as it "lost," or lacked "justice," "law," or

[167] SUB 6, no. 123 (1293), 103–4; KDW 6, no. 147 (1347), 165–6; KDKK, no. 192 (1351), 245; N.K.Maz. 2, no. 319 (1353), 335; KDKK, no. 200 (1354), 254–5; ZDM 4, no. 954 (1357), 103; KDM 3, no. 821 (1369), 231.

[168] KDW 2, no. 673 (1291), 51–2; no. 700 (1293), 75–6; KDKK, no. 122a (1300), 157; KDW 6, no. 65 (1301), 77; KDW 2, no. 1055 (1325), 384–5; KDKK, no. 155 (1335), 199–200; KDM 3, no. 657 (1339), 30–2; N.K.Maz. 2, no. 319 (1353), 334–5; KDM 3, no. 754 (1362), 156–7; KDM 1, no. 270 (1363), 319–20; KDM 3, no. 761 (1363), 164–5; ZDM 1, no. 109 (1364), 142.

[169] KDM 1, no. 199 (1335), 238; KDW 6, no. 119 (1337), 133; ZDM 4, no. 954 (1357), 103; no. 753 (1362), 155–6; KDM 1, no. 270 (1363), 320; ZDM 4, no. 1006 (1370), 158–9.

[170] KDM 1, no. 199 (1335), 238; KDKK, no. 200 (1354), 254–5; KDM 1, no. 270 (1363), 320.

[171] Górecki, "Communities"; Górecki, *Text*, 81–108.

[172] KDKK, no. 164 (1338), 211–2; KDW 6, no. 49 (1295), 60–1; ZDM 4, no. 924 (1341), 68–9; Matuszewski, *Poszukiwania*.

[173] KDKK, no. 118 (1314), 152; no. 121 (1320), 154–5; KDM 3, no. 653 (1338), 27; ZDM 4, no. 961 (1359), 113–5; N.K.Maz. 3, no. 53 (1361), 65–6.

[174] KDW 6, no. 148 (1348), 166; KDKK, no. 121 (1320), 154–5; KDW 2, no. 1027 (1322), 362; ZDM 4, no. 967 (1361), 119–20; N.K.Maz. 3, no. 59 (1363), 72.

[175] ZDM 1, no. 29 (1328), 36–7.

[176] KDW 6, no. 87 (1315), 99–100; NKRK 1, no. 1124 (1332), 117; KDM 3, no. 650 (1337), 24.

"right."[177] In a yet smaller numbers of instances, the link is more explicit: as when one party managed to "prove," or "present proof," more or less successfully than the other, or "sufficiently";[178] or, on the contrary, as a party refused to present proof or otherwise failed in its presentation;[179] or, as a party failed to appear at the stage of the proceedings when (implicitly or explicitly) proof was expected;[180] or, finally, as a party asserted, contested, or otherwise quibbled about, the elements or the course of proof.[181] Such references to proof are strongly normative, but general.

Within this varied but rather weakly patterned record, several elements stand out. One is an ethnic-related difference. While the stories are sparse on both sides of the ethnic divide, in the "German" stories that sparseness is much more pronounced. On the other hand, a small subset of "Polish" stories do treat the transition from proof to outcome in unusual detail.[182] In these instances, the explanation may be their subject matter: two concern personal status. Others display unusually close attention to the performance and significance of three types of proof: the written document – its existence, classification, legibility, continued validity and reliability, and other textual qualities;[183] the oath;[184] and, perhaps most importantly, the oral, aural, and remembered modes, consisting of a combination of witnessing, inquest, and oath, as performed by those communities of legal knowledge, above all the "neighborhood," as well as by "elders," "knights," and other groups.[185] Those unusual, relatively rich patterns of linkage between proof and outcome are lodged firmly on the "Polish" side of the ethnic divide.

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[177] KDW 2, no. 741 (1295), 112; KDM 1, no. 152 (1315), 181; KDM 2, no. 564 (1316), 232; KDW 2, no. 1078 (1327), 412; KDW 6, no. 148 (1348), 167; ZDM 4, no. 967 (1361), 119; KDM 3, no. 756 (1363), 159; KDW 3, no. 1510 (1364), 236.

[178] SUB 6, no. 308 (1297), 246.33–34, 37–8; KDKK, no. 122a (1320), 157; KDM 3, no. 650 (1337), 23; ZDM 1, no. 55 (1348), 71; ZDM 4, no. 936 (1348), 86; ZDM 1, no. 84 (1357), 109; KDKK, no. 231 (1363), 297; no. 240 (1366), 307; KDM 3, no. 821 (1369), 231.

[179] KDW 1, no. 529 (1283), 493; KDM 2, no. 506 (1287), 167; KDKK, no. 118 (1314), 152; NKRK 1, no. 695 (1323), 70; no. 706 (1324), 72; KDW 2, no. 1163 (1336), 492; KDKK, no. 166–167 (1339), 214–5; KDM 3, no. 684 (1347), 66; ZDM 4, no. 950 (1356), 100; KDKK, no. 228 (1362), 294; KDM 3, no. 747 (1362), 149; no. 750 (1362), 152; N.K.Maz. 3, no. 59 (1363), 72; ZDM 4, no. 974 (1364), 128; KDM 3, no. 824 (1369), 234.

[180] KDW 2, no. 1033 (1322), 366; KDKK, no. 129 (1322), 166.

[181] KDW 1, no. 529 (1283), 493; KDM 2, no. 509 (1287), 169.

[182] KDW 2, no. 1055 (1325), 384; KDM 1, no. 199 (1335), 237; ZDM 4, no. 961 (1359), 114; KDM 1, no. 288 (1366), 343–4.

[183] SUB 4, no. 411 (1281), 275.23–25, 27–30; SUB 6, no. 123 (1293), 103.35–37, 104.1, 3–4; no. 276 (1296), 222.20–22; KDW 6, no. 65 (1301), 77; KDM 1, no. 147 (1311), 176–7; KDKK, no. 119 (1318), 153; NKRK 1, no. 1171 (1335), 123; KDM 3, no. 657 (1339), 31; KDW 6, no. 147 (1347), 165; KDKK, no. 192 (1351), 245; ZDM 1, no. 68 (1352), 88; N.K.Maz. 2, no. 319 (1353), 334; KDKK, no. 200 (1354), 254; ZDM 4, no. 954 (1357), 103; KDM 3, no. 754 (1362), 156; KDM 1, no. 270 (1363), 319; KDM 3, no. 761 (1363), 164; ZDM 1, no. 109 (1364), 143; KDM 3, no. 821 (1369), 231.

[184] SUB 6, no. 308 (1297), 246.33–34; KDKK, no. 213 (1358), 270; ZDM 4, no. 961 (1359), 114; N.K.Maz. 3, no. 53 (1361), 65–6; KDM 1, no. 265 (1362), 313; KDW 3, no. 1510 (1364), 236; ZDM 4, no. 1006 (1370), 158.

[185] KDW 6, no. 49 (1295), 61; KDKK, no. 118 (1314), 152; no. 121 (1320), 155; KDW 2, no. 1027 (1322), 362; ZDM 1, no. 29 (1328), 36–7; KDKK, no. 164 (1338), 212; ZDM 4, no. 924 (1341), 69; KDW 3, no. 1431 (1360), 162; N.K.Maz. 3, no. 53 (1361), 65–6; ZDM 4, no. 967 (1361), 119; N.K.Maz. 3, no. 59 (1363), 72; KDW 3, no. 1510 (1364), 236; KDM 1, no. 280 (1365), 333.

8. Litigation: Invocation of norms

Intriguingly, not all court cases culminated with – or, in fact, included – proof. A modest but significant subset of the stories, concerning both "Polish" and "German" courts, explain the final outcome quite differently: with an invocation of a norm.[186] That act was an acknowledgment, at some point in the course of litigation, of a rule or some other strongly normative material. The stories attribute such acknowledgment either personally to the presiding judge, or impersonally through the text of the story itself, in its narrations or dispositions. The normative material consisted of: statutes; other rules that were formal and explicit, but not expressed as statutes; and, most often, the "law" itself, described with the word, *ius* – in the singular, or plural, *iura*, refracting into a variety of "laws," some with the same broad meaning as the singular, others more specific.[187] Statute was always marked with a precise word – "edict" (*edictum*), "statute" (*statutum*), or "constitution" (*constitutio*) – and sometimes further amplified as "general" (*generalis*), or as territorially specific, such as a "statute," or "statutes," "of the land" (*statuta terrae*). That plural variant suggests an awareness, on the part of the authors of the record and of the participants in litigation, of legislation as an abstract, generalized phenomenon – as well as a body of individual statutory enactments.

References to statute share three patterns. First, they appear exclusively in "Polish" court cases. Second, they occur specifically in claims to landholdings – those relatively simple property issues that, as we have seen, recur throughout, and absolutely predominate in the record. Third, they are fully explicit: the existence of a statute, its content, and its relevance to the case, are plainly asserted. In 1285, 1354, and again in 1366, the duke of Masovia and "the judge and the sub-judge of Kraków" declared in favor of the parties "according to the edict of our general constitution," "in view of the general statute [issued] by […] King [Casimir] and his barons," and "according to the statutes of the land" – and, in each of these cases, explicitly recited the rules contained in those statutes.[188]

Related to statute, but distinct from it, is a formal rule – invoked in the process of litigation in the same place, and with the same dispositive force, as statute. An especially recurrent rule is the importance of long passage of time to the rise and existence of a right to a landholding – what we might, with slight anachronism, call full title.[189] Invocations of this rule range from the implicit to the explicit.[190] Invoked implicitly, the rule appears simply as a segment of a story, in which the fact that a party's "possession" has been „long," has spanned a "length of time," or has lasted "from time of old, the contrary of which does not exist in human memory," is promptly followed by a verdict in that party's favor.[191]

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[186] Comaroff, Roberts, *Rules and Processes*; White, "Inheritances"; Górecki, "Historian".

[187] Górecki, "Irreducible Ambiguity," 432–7.

[188] N.K.Maz. 2, no. 74 (1285), 69; KDKK, no. 200 (1354), 255; KDM 1, no. 289 (1366), 345.

[189] Bardach, *Historia*, 293–4, 297, 300, 302–4; Uruszczak, *Historia*, 117–8; Górecki, "Historian," 482–3, 485–7 (nn. 25, 28–29, 31), 492, 496, 504–6 (n. 96), 520, 522.

[190] Comaroff, Roberts, *Rules and Processes*, 96–7, 262 (n. 19); White, "Inheritances," 79; Górecki, "Historian," 483–4 (nn. 19–20), 490.

[191] SUB 6, no. 308 (1297), 246.32–33; ZDM 4, no. 924 (1341), 69; KDM 3, no. 822 (1369), 232.

In addition to such references, the explicit invocation of this rule designated the rule with a formal name, or referred to a statute containing the rule, or both. Over time, the rule acquired a name – prescription – a word long conventional in Roman law and its medieval adaptations, that described (among its other meanings) a secure – in their sense, full – right to a landholding, that had arisen from its possession over a requisite passage of time.[192] First visible in Poland in the 14th century, this word solidified into a routine reference during King Casimir's reign – as, in a closely bunched group of mid-century stories, the "judge" and "subjudge" of Kraków, or the king, observed a party's assertion of title "by prescription," or a party's possession of a landholding as a "prescription, long duration, that is, antiquity," a "prescription and long duration," "a prescription, that is, long duration" – in one such document, in three reiterative phrases – and, in another document, bunching the formal word, "prescription," with retention of a landholding "since time of old […] such that the contrary […] does not exist in human memory" – and once again in the same document, a "prescription of years."[193]

In other instances, prescription was expressly linked to statute. Relatively early, in 1285, Duke Conrad of Masovia explained a party's loss with the "edict" contained in his "general constitution," mandating that "a prescription of three years […] results in an eternal impediment to hereditary action."[194] Later, in Casimir's reign, in 1345 and 1366, Kraków's "judge" and "subjudge" began by noting that "the general […] statute of the […] king […] warns" claimants "that whoever [seeks] a judgment [of] redemption of [an] inheritance, ought to redeem it within a year and six weeks."[195] Next, they reported that one party "had held" the contested "inheritance over […] five years." Finally, "upon hearing about this prescription," effective "according to the statutes of the land," the two judges adjudicated accordingly.[196] These are all sharp and explicit explanations of the judgment as an outcome of this rule.

Implicit or explicit, these invocations were crisply dispositive. As told by the stories, the appearance in the narration of a "statute," a "constitution," or a formal rule, was always followed, promptly and smoothly, by an outcome cast as an entirely unproblematic, self-evident application of the rule, the resulting verdict, and termination of the case. Prescription was dispositive with an unusual visibility. In cases where the word occurs, by itself or in conjunction with a statute, the rule determined – and, in the story, fully explained – the outcome: which occurred "by reason of prescription."[197] However, whether or not the actual word was used, the circumstances comprising it and its outcome were clear. After a party possessed a contested landholding across a requisite length of time, that fact, as such, appears to have overridden, quashed, or mooted, any other basis for a claim to the landholding.

Apart from these sharply defined sources, the most ubiquitous norm invoked in court cases was the "law" (*ius*), marked out with that word. In contrast to statutes or formal rules, references to law, thus meant, appear in "Polish" and in "German" courts. Their

[192] Dondorp, Ibbetson, Schrage, *Limitation and Prescription*, 1–188; Bardach, *Historia*, 302.
[193] KDKK, no. 192 (1351), 245–6; no. 198 (1353), 251; no. 231 (1363), 297; no. 240 (1366), 307.
[194] N.K.Maz. 2, no. 74 (1285), 69.
[195] KDKK, no. 200 (1354), 255.
[196] KDM 1, no. 289 (1366), 345.
[197] KDKK, no. 192 (1351), 245–6; no. 198 (1353), 251; no. 231 (1363), 297; no. 240 (1366), 307.

ethnic significance is best reflected by ubiquitous appearances of semantically parallel classifications of "law" through the adjectives, *German* and *Polish*. As noted earlier, that dichotomy long antedated the 14th century, and my present subject. When that subject emerges, the meanings of "law" (*ius*) become more textured. In "Polish" court stories, reference to an indigenous, "Polish" law spans a range of formulations or expressions. Curiously, mention of "Polish law" (*ius Polonicum*), with those words, is relatively late and rare. The phrase appears in two stories, in 1346 and 1361. A "judge" and "subjudge" of Kraków, and then of Sandomierz, observed that litigation about a mill was initiated "by a judicial summons, according to the form of Polish law," and that a boundary around a landholding was ascertained "according to Polish law."[198] These phrases refer to summons and proof. As employed here, the "Polish law" meant procedure, in a sense that was both precise and narrow.

More general in meaning is the appearance of the word *ius* as part of an expression that (more or less) implies indigeneity, but without marking it with a words explicitly referring to ethnicity, such as the "Poles," or "Polish." That expression is "law of the land" (*ius terrae*). In 1322 and ten years later, a judge (simultaneously "palatine of Poznań" and "captain of the Kingdom of Poland"), and King Casimir, declared it "contrary to the common law of the land" for a group of Polish peasants to claim free status,[199] and described the correct performance of a property transaction "according to the law and custom of our land of Kraków."[200] Here, we revisit "the land." In the first story, "the land" meant a conceptually undifferentiated space, across which, and to whose inhabitants, "the law" was, in some sense, "common" – substantively distinct, inherent in the "land," and pervasive. In the second story, "the land" was, in addition, anchored at one centrally important city of the kingdom, Kraków. In both stories, the "law of the land" in general, and the "law and custom of the land of Kraków" in particular, were dispositive of the outcome.

On the "German" side, references to the law as *ius* are likewise infrequent. Here, even more than is the case on the "Polish" side, the stories fully decouple the noun "law" (*ius*) from ethnic-specific adjectives, and instead limit the classification in terms of "law" to a specific city. Records of the Kraków civic court refer to "the law and custom of the city of Kraków," or "the law of the city." Around that core, the expression varies in attention to the normative force of that "law" – as grounded in time (the "law and custom as […] observed until right now"), or in some specific course of action, imposed on and followed by a party: "as the law of the city demands and requires."[201] Elsewhere, a dispute about the production and sale of cloth in Strzegom was resolved in 1279 with Duke Bolko's declaration that that city's weavers and sellers "ought to remain [subject to] all the laws […] they had [enjoyed] since the original establishment of the city," and that they should be „maintain[ed] in all their laws."[202] In this instance, the "laws" were specific to the city, insofar as its "establishment" (*locatio*) meant the creation of a local, formally differentiated legal régime, entailing settlement, land use, and lordship. This is the sense in which Bolko was here invoking the "laws" of Strzegom. These

[198] KDM 3, no. 680 (1346), 62; ZDM 4, no. 967 (1361), 119.
[199] KDW 2, no. 1027 (1322), 362. On Miłoszka's, case, Górecki, *Economy*, 168–70, 187.
[200] ZDM 4, no. 928 (1342), 77.
[201] NKRK 1, no. 1036 (1330), 104; no. 1039 (1330), 105; no. 1690 (1356), 195.
[202] SUB 6, no. 310 (1297), 248.11–14.

cases place "German law" squarely in the civic space: "the laws" in Strzegom, and "the laws" – or equivalently "laws and customs" – "of Kraków." With very few exceptions (to which I will return in the concluding section), this – some specific city or town, in Piast Poland – was the orienting locus of meaning of "German law," as reflected in one phenomenon: the course of court cases, and the stories narrating that course.

9. Litigation: Outcomes

In all courts, the verdict appears as the definitive, final event in the trial. Also common is the synonymous use of the words *verdict* and *sentence* – with either word meaning the ascertainment of the merits of a case, and not (in contrast to the meaning of *sentence* in English), the assignment of the penalty. The ethnic-related difference concerns the numbers, frequency, and range of vocabulary used for this final step. Here again, the "German" record is sparse. When present at all, stories report the verdict either in verb form – the act and the completion of "adjudicating"[203] – or, in noun form, as a "sentence,"[204] usually qualified with an adjective emphasizing finality, "definitive."[205] Outcomes of "Polish" cases are expressed with similar words, that however appear more frequently in verb form: as the act and the completion of "adjudicating,"[206] "confirming,"[207] or "corroborating"[208] the outcome. Synonymous in these courts, too, is the noun form:

[203] SUB 6, no. 257 (1296), 208; KDM 3, no. 650 (1337), 24; no. 747 (1362), 149.

[204] SUB 6, no. 257 (1296), 208; NKRK 1, no. 1124 (1332), 17; KDM 3, no. 650 (1337), 24; no. 747 (1362), 148–9.

[205] NKRK 1, no. 25 (1302), 6–7; no. 695 (1323), 70; no. 1010 (1329), 99; NKRK 1, no. 706 (1324), 72; no. 1385 (1341), 151.

[206] KDW 1, no. 553 (1285), 515–7; no. 561 (1286), 523–4; no. 564 (1286), 526; no. 569 (1286), 529–30; no. 571 (1286), 532; KDM 2, no. 506 (1287), 166; no. 509 (1287), 170; KDW 2, no. 673 (1291), 52; no. 732 (1295), 102–3; no. 735 (1295), 104–5; no. 737 (1295), 106–7; no. 741 (1295), 112–3; KDW 6, no. 49 (1295), 60–1; no. 62 (1299), 74; KDM 1, no. 152 (1315), 181–2; KDKK, no. 119 (1318), 153; KDW 6, no. 90 (1319), 102; KDKK, no. 122a (1320), 157; KDW 2, no. 1033 (1322), 366–7; no. 1034 (1323), 367; no. 1036 (1323), 368–9; KDW 6, no. 102 (1327), 116–7; no. 105 (1328), 119–21; KDM 1, no. 199 (1335), 238; KDW 2, no. 1163 (1336), 491–2; KDKK, no. 166 (1339), 214–5; no. 167 (1339), 215; KDM 3, no. 670 (1342), 49; no. 680 (1346), 63; KDW 6, no. 148 (1348), 166; ZDM 1, no. 55 (1348), 72; KDKK, no. 192 (1351), 245–6; KDM 3, no. 698 (1352), 86; KDKK, no. 198 (1353), 251; KDM 3, no. 700 (1353), 88; KDKK, no. 200 (1354), 254–5; KDM 1, no. 244 (1356), 288–9; ZDM 4, no. 950 (1356), 100; ZDM 1, no. 84 (1357), 109; KDKK, no. 213 (1358), 271; no. 221 (1360), 277–8; KDW 3, no. 1431 (1360), 162; KDKK, no. 224 (1361), 284; KDM 1, no. 260 (1361), 307–8; N.K.Maz. 3, no. 53 (1361), 66; KDKK, no. 228 (1362), 293–4; KDM 3, no. 750 (1362), 152; no. 754 (1362), 157; KDKK, no. 231 (1363), 297–8; KDM 1, no. 270 (1363), 319–20; KDM 3, no. 756 (1363), 159; no. 761 (1363), 165; KDM 1, no. 273 (1364), 322–3; no. 274 (1364), 323–4; ZDM 4, no. 974 (1364), 128; KDKK, no. 240 (1366), 307; no. 241 (1366), 308; KDM 1, no. 289 (1366), 345; KDM 3, no. 824 (1369), 234; no. 825 (1369), 235; no. 831 (1370), 241; N.K.Maz. 3, no. 110 (1370), 124; ZDM 4, no. 1006 (1370), 158–9.

[207] SUB 4, no. 411 (1281), 27; SUB 6, no. 123 (1293), 104; KDKK, no. 121 (1320), 154; KDM 1, no. 199 (1335), 238; KDW 6, no. 119 (1337), 134; KDKK, no. 164 (1338), 211–2; KDM 3, no. 657 (1339), 32; KDW 6, no. 148 (1348), 167; ZDM 1, no. 68 (1352), 88–9; N.K.Maz. 2, no. 319 (1353), 334–5; KDM 1, no. 260 (1361), 308; KDKK, no. 238 (1365), 304; KDM 1, no. 280 (1365), 332–4; no. 288 (1366), 343–4.

[208] KDW 2, no. 735 (1295), 104–5; KDM 3, no. 689 (1349), 72–3; KDM 1, no. 247 (1356), 292; no. 268 (1363), 317–8; ZDM 1, no. 109 (1364), 142–3.

"sentence,"[209] additionally cast as "definitive,"[210] or used in a grammatical variant that enhanced some other word for judgment.[211]

Also across the ethnic divide, the outcome is presented as unequivocally clear and final. The verdict is always presented as a full loss by one party and a full victory by the other, with a strong rhetorical emphasis on the loss.[212] That message is almost always reinforced, in immediately adjacent phrases, with explicit assurances of irreversibility.[213] Those are either general, standardized expressions – imposing "silence" on the losing party and its successors regarding the resolved matter[214] – or specific acts, effected at present[215] or in the future, such as warranty of the outcome against a resurgence of claims.[216] Many cases report an additional act by the losing party: an explicit renunciation of the claim.[217] Complicating that last step is its flexibility in the chronology of court cases, as narrated. While in the stories such renunciations usually appear at final outcome, in conjunction with the verdict, they are quite often reported earlier in the process – as part of the outcome that is wholly alternative to a judicial verdict, namely reconciliation.

With that outcome, we once again note essential similarities in "Polish" and "German" courts. On both sides, the words describing reconciliation vary, but across the same range. They take the form of nouns referring to activity: joint action by the parties. "Polish" stories present that activity through the synonyms: "agreement" (*concordia*),[218] "composition" (*composicio*),[219] "arrangement" or "disposition" (*ordinatio*),[220] "union" (*unyo*),[221] and "compromise" (*compromissum*);[222] and, occasionally, variants of these nouns in verb

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[209] SUB 4, no. 411 (1281), 27; KDW 2, no. 673 (1291), 51; no. 732 (1295), 102–3; no. 1027 (1322), 362; KDW 6, no. 148 (1348), 166–7; KDKK, no. 198 (1353), 251–2; KDM 1, no. 260 (1361), 308.

[210] KDW 1, no. 569 (1286), 529–30; KDM 2, no. 510 (1288), 170–1; KDKK, no. 119 (1318), 153; KDW 6, no. 119 (1337), 133–4; KDKK, no. 213 (1358), 270.

[211] KDW 2, no. 1034 (1323), 367; KDM 1, no. 199 (1335), 237; KDW 2, no. 1163 (1336), 492; KDW 6, no. 119 (1337), 133–4; KDM 3, no. 657 (1339), 30–2; KDM 3, no. 754 (1362), 156–7; no. 761 (1363), 164–5.

[212] Polish: KDKK, no. 129 (1322), 165–6; KDM 3, no. 678 (1346), 61; KDM 3, no. 684 (1347), 66; KDM 1, no. 260 (1361), 307; German: NKRK 1, no. 402 (1317), 42.

[213] Polish: KDKK, no. 99 (1295), 135; KDW 6, no. 66 (1302), 77–8; no. 159 (1353), 179; KDM 3, no. 725 (1358), 122; German: SUB 6, no. 310 (1297), 248; NKRK 1, no. 421 (1317), 44; no. 1029 (1330), 101–2; no. 1171 (1335), 123; no. 1697 (1362), 200.

[214] KDKK, no. 119 (1318), 153; KDM 3, no. 680 (1346), 63; KDM 3, no. 698 (1352), 86; KDKK, no. 221 (1360), 278; KDM 3, no. 750 (1362), 152; KDKK, no. 231 (1363), 297; KDM 3, no. 756 (1363), 159; KDKK, no. 240 (1366), 307.

[215] KDW 2, no. 1027 (1322), 362; no. 1055 (1325), 384.

[216] KDKK, no. 205 (1350–58), 263; KDM 3, no. 754 (1362), 157; no. 761 (1363), 164–5.

[217] Polish: KDW 1, no. 529 (1283), 493–4; KDM 2, no. 509 (1287), 169; KDKK, no. 125 (1322), 161–2; KDW 2, no. 1041 (1324), 372–3; no. 1078 (1327), 412; ZDM 4, no. 928 (1342), 78; German: NKRK 1, no. 575 (1319), 57; no. 687 (1323), 69; no. 1135 (1333), 118; no. 1171 (1335), 123; no. 1218 (1337), 130; no. 1235 (1337), 133.

[218] KDM 2, no. 506 (1287), 166–8; KDKK, no. 89 (1288), 123; KDW 2, no. 700 (1293), 76; KDM 1, no. 180 (1329), 214; no. 188 (1332), 222–3; ZDM 4, no. 928 (1342), 76–8; KDKK, no. 205 (1350–1358), 262–3; KDM 3, no. 753 (1362), 155–6; KDKK, no. 237 (1365), 303.

[219] KDM 2, no. 506 (1287), 168; no. 564 (1316), 233; KDW 6, no. 159 (1353), 180; KDKK, no. 205 (1350–1358), 262–3; no. 238 (1365), 303.

[220] KDKK, no. 99 (1295), 135–6; KDM 2, no. 564 (1316), 233; KDW 6, no. 159 (1353), 180; KDKK, no. 205 (1350–1358), 262; KDM 3, no. 712 (1356), 106.

[221] KDW 2, no. 1145 (1335), 471.

[222] KDKK, no. 99 (1295), 136.

form.[223] Layered with these tags is a more descriptive or metaphorical vocabulary, such as that a dispute was "lulled" (*sopita*), "cut off by root and branch" (*stirpitus amputare*), or that the parties reconciled "amongst themselves" (*inter se*).[224] Reconciliation is also achieved "for the good of the peace" (*pro bono pacis*), or in a "friendly manner" (*amicabiliter*).[225]

In "German" stories, reconciliation is marked by a similar, yet sparser vocabulary. Nouns describing the outcome include: "agreement" (*concordia*),[226] "composition" (*composicio*),[227] "arrangement" (or "disposition" – *ordinatio*),[228] and, in one instance, an expression absent from the "Polish" repertoire, "arbitrated judgment" (*arbitrium*).[229] In addition, we have two such references in verb form,[230] and observations that the parties "compromised" (*compromisserunt*).[231] Some outcomes are further described as "friendly" (*amicabilem*), or effected "in a friendly manner" (*amicabiliter*).[232] References to achieving "peace," with that word, are rare, and, in contrast to "Polish" counterparts, do not make up one standardized phrase.[233] Also rare on the "German" side is the metaphorical reference to "lulling" (*sopita*) a dispute.[234] Finally – to confuse matters perhaps, just a little bit – on both sides, reconciliation is – again, seldom, yet in equal measure – described with words that resemble the outcome of adjudication: a verdict, or a "judgment."[235]

In one respect, the final outcomes differed across the ethnic divide. Records of "Polish" court cases sometimes present reconciliation as one turn in a sequence of events that had begun, in its earlier phases, as adjudication. In these instances, that turn took place either before the court proceedings began – thereby preempting adjudication altogether – or while those proceedings were underway. No such processual switch is

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[223] KDKK, no. 89 (1288), 124; no. 99 (1295), 135–6; no. 133 (1324), 169; KDW 6, no. 119 (1337), 133–4; no. 159 (1353), 179–80; KDM 1, no. 247 (1356), 291; KDKK, no. 227 (1362), 293.

[224] KDM 2, no. 506 (1287), 166–8; KDKK, no. 89 (1288), 123–4; no. 205 (1350–1358), 262–3; KDM 3, no. 753 (1362), 155–6; KDKK, no. 238 (1365), 303–4.

[225] KDKK, no. 89 (1288), 123–4; KDW 2, no. 700 (1293), 75; KDM 2, no. 564 (1316), 232–3; KDM 1, no. 180 (1329), 214; ZDM 4, no. 928 (1342), 76–8; KDKK, no. 205 (1350–1358), 262–3; no. 238 (1365), 303.

[226] SUB 6, no. 337 (1298), 266; KDM 1, no. 178 (1329), 212–3; NKRK 1, no. 1101 (1332), 113–4; no. 1144 (1333), 120; no. 1235 (1337), 133; no. 1342 (1340), 146; no. 1401 (1341), 153; no. 1695 (1361), 197–8; no. 1697 (1362), 199–200.

[227] SUB 6, no. 269 (1296), 217; NKRK 1, no. 667 (1323), 67; no. 1029 (1330), 101–2; no. 1080 (1332), 111; no. 1182 (1335), 124.

[228] SUB 6, no. 117 (1293), 98; no. 123 (1293), 103; KDM 1, no. 178 (1329), 212–3; NKRK 1, no. 1029 (1330), 101–2; no. 1080 (1332), 111; no. 1101 (1332), 114; no. 1124 (1332), 116–7; no. 1296 (1339), 141.

[229] SUB 6, no. 276 (1296), 222.

[230] NKRK 1, no. 667 (1323), 66; KDW 2, no. 1123 (1333), 450.

[231] SUB 6, no. 276 (1296), 222.

[232] SUB 6, no. 337 (1298), 266; NKRK 1, no. 667 (1323), 66; no. 1029 (1330), 101; no. 1080 (1332), 111; no. 1101 (1332), 113–4; no. 1124 (1332), 116; KDW 2, no. 1123 (1333), 450; NKRK 1, no. 1135 (1333), 119; no. 1144 (1333), 120; no. 1235 (1337), 133; no. 1401 (1341), 153; no. 1697 (1362), 199; no. 703 (1323).

[233] SUB 6, no. 117 (1293), 97; NKRK 1, no. 1124 (1332), 116.

[234] SUB 6, no. 117 (1293), 97; NKRK 1, no. 703 (1323), 71; KDM 1, no. 178 (1329), 212; NKRK 1, no. 1081 (1332), 111; KDW 2, no. 1123 (1333), 450; NKRK 1, no. 1135 (1333), 119; no. 1183 (1335), 125; no. 1697 (1362), 199–200.

[235] Polish: KDW 1, no. 571 (1286), 531–2; KDM 2, no. 506 (1287), 166–8; ZDM 4, no. 928 (1342), 76–8; KDW 6, no. 159 (1353), 179–80; German: SUB 6, no. 117 (1293), 98; no. 123 (1293), 103–4; NKRK 1, no. 667 (1323), 66–7; no. 1124 (1332), 116–7; KDW 2, no. 1123 (1333), 450.

reported in "German" court records. The latter present reconciliation as a matter of fact and an outcome, without explanation of the parties' turn to it, or without its placement in a longer course of events. Thus, in the "German" context, we simply do not know why, or at which moment in the judicial dispute, that step was taken.

Also as with the verdict, an important message on both sides of the divide is the finality of the resolution achieved through reconciliation. When such language accompanies reconciliation, it is infrequent in comparison to adjudication. When present, that language took one of two forms. The first was a story of a concession or a withdrawal, an act effected by one or both parties, expressed through several synonyms, all of them verbs: "ceded" (*cessit*),[236] "renounced" (*renunciauit*),[237] or "resigned" (*resignauerunt*). The second was a semantically more robust marker of temporal permanence, so that, in addition to those other words, the outcome was pronounced "inviolable" (*inviolabilem*), a "final arrangement" or „disposition" (*finalem ordinacionem*), or to be "observe[d] forever" (*perpetuo obseruare*).[238] In my best reading of this evidence, reconciliation was not additionally enhanced by promises of active formal protection, such as warranty.

Likewise on both sides, reconciliation is sometimes cast in moral language, extending beyond general references to "peace." The moral message took the form of a concern with the infliction of needless hardship, either by one party on the other, or more abstractly, as an issue intrinsic to litigation. Of this concern, we have several examples, cutting across the ethnic divide. In one case, litigated in a "Polish" court, both "parties" moved to reconcile, "wishing to impose the end on the […] matter." In another, the claimant made the choice to relent, "in order that" the bishop of Kraków "and his church may no longer be engrossed by the […] hardships" imposed by continuation of the case. Occasionally, this moral dimension became even more explicit, as one claimant "took recourse to his conscience, and discerned the truth of the matter," and as two parties were "brought back to [their] conscience, and returned to the way of salvation."[239] In one "German" case, the parties reconciled, "wishing to make way for peace"; in another, they "proposed […] that […] from now they ought to be good and genuine friends."[240]

Viewed cumulatively, these moments of ethical attention should be put in perspective. This moral discourse is exceedingly rare, both in the overall corpus of court cases, and among the stories of reconciliation. It does not rise, directly or by implication, to the level of explicit, positive preference on anyone's part for reconciliation, over litigation – that premium of "love" over "law" visible in some other regions of medieval Europe.[241] Cumulatively, this documentary modesty of extrajudicial, peacemaking outcomes is consistent with my impression, described elsewhere, of a positive preference among

[236] Polish: N.K.Maz. 2, no. 64 (1281), 62; KDW 1, no. 571 (1286), 531; KDKK, no. 125 (1322), 162; no. 227 (1362), 293.

[237] Polish: KDKK, no. 227 (1362), 293; German: NKRK 1, no. 1101 (1332), 113; no. 1135 (1333), 118; no. 1342 (1340), 146.

[238] Polish: ZDM 4, no. 928 (1342), 76–8; German: NKRK 1, no. 1029 (1330), 101; no. 1081 (1332), 111; no. 1144 (1333), 120; no. 1697 (1362), 200.

[239] KDKK, no. 99 (1295), 135; no. 118 (1314), 152; no. 125 (1322), 161; no. 133 (1324), 169.

[240] SUB 6, no. 117 (1293), 97; NKRK 1, no. 1697 (1362), 199–200.

[241] Clanchy, "Law and Love".

litigants in medieval Poland for adversarial and judicial outcomes over compromise, "loving" or otherwise, whether in "Polish" or in "German" courts.[242]

10. Back to the frontier

As reflected in these court stories, the frontier, understood in the literal sense as a space of separation, is elusive. This is because we can almost never be sure of the precise physical spaces in which our cases happened; and whether ethnic difference maps onto spatial difference, and if so, how. Instead, the stories present us with the court as an abstract, figurative "frontier." Relations involving that frontier reflect a pattern that is both simple and permanent: the remarkable interplay of similarity and difference in the processes that occurred in all courts, across and within each side of that putative ethnic divide. Over the course of the 14th century, we have above all a multiplicity of courts. Differences among them are in some respects sharp and clearly marked, in others subsumed under an overall framework of similarity.

As reflected by these stories, the "frontier" is most visible in that small subset of cases where the attributes most clearly specific to either the "Polish" or the "German" courts were present in the same judicial space and course of litigation. Those attributes were litigation involving people whom we can fairly securely classify as "Germans," or subject matters specific to them, under the presidency, over a part or the full course of a case, of a "Polish" judge. Especially visible in this capacity was the Piast ruler, sitting in his personal court. In some instances, he limited himself to removing such cases, right at their outset, to a "German" court – as when, in 1293 and 1297, Duke Bolko passed the litigation involving the "citizens," "weavers, and cloth workers" of Münsterberg and of Strzegom, and initiated by the parties directly "before us," on to "German" courts: the courts of those two cities, their "advocate" and "aldermen."[243]

At other times, the ruler retained such cases in his personal court over their full course. In 1285 and in 1311, Dukes Przemysł II and Władysław the Short presided, respectively, "before myself […] in the general assembly" near Poznań, and "in the assembly near Wiślica," over disputes involving, in one case, a "knight" and a "village bailiff" about a village "located according to German law," and, in the other, two "sons" of the "advocate of Sandomierz," about succession by the sons to that office.[244] Each dispute was resolved by the ruler's decision, narrated with the usual terseness: the contested rural space was "adjudicated […] by hereditary right," "in the knight's favor," while "the advocacy of […] Sandomierz" was confirmed for the sons "by right and hereditary succession," and restored to them "with every right […] and full use."[245]

Such cases were also adjudicated by high royal officials – who overlap with the many "judges" (*iudices*) otherwise documented throughout the "Polish" courts. In 1336,

[242] Górecki, "Violence," 98–9; Górecki, *Text*, 177–8.
[243] SUB 6, no. 123 (1293), 103.24–28; no. 310 (1297), 248.8–10.
[244] KDW 1, no. 553 (1285), 515–7; KDM 1, no. 147 (1311), 176–7.
[245] KDW 1, no. 553 (1285), 516; KDM 1, no. 147 (1311), 176.

"Nicholas palatine of Poznań and captain of the land of [Greater] Poland, and Nicholas, judge of Gniezno and Kalisz" reported a claim by a "village bailiff" against the archbishop of Gniezno, regarding a "mill" that "belonged to his bailiwick" – meaning, that it was part of the estate attached to his office.[246] Originally, the bailiff had initiated the claim in the king's personal court ("summoned" the archbishop "before […] Casimir"), voiced his claim, and "the archbishop contested it" right there, before the king. At this point, the judges report, "the king committed the case to us, to be judicially resolved."[247] The case proceeded to its conclusion and verdict entirely before the two Nicholases, with no further role by the king, concluding or confirming.

Slightly more complicated were court proceedings that remained on one side or the other of the ethnic divide – over their course, simultaneously, or in sequence, or in alternation. An example occurs in a charter of 1329 (unusual in that it was issued by one of the parties), reporting a conflict between "[u]s, the consuls and community of citizens of Kraków," and "the citizens of Sącz," about "the conduct of boats and […] carts with merchandise toward Toruń," a city situated to the north. The authors attributed the entire conduct of the dispute to King Władysław, in person. At the start, "the matter was raised before […] Władysław," who specified the plan for its resolution: a compromise, so "that this matter may be put to rest […] by […] the mediation of […] Spicymierz […] palatine of Kraków." From this point onward, the action fully devolved onto this mediator, who, "by the king's mandate […] decreed, between us and them," a mode of transport satisfactory to the two contesting "citizens." At its end, the story loops back to Władysław, now cast as the final actor, in seamless conjunction with the civic population: "We, the citizens of Kraków [and] of Sącz, promised […] to observe the resolution […] thus achieved with the king's cooperation"[248]

This case sits neatly on both sides of the ethnic divide. Clearly "German" were the two parties to the dispute: the "citizens," "consuls," and "community" of Kraków, and their counterparts in Sącz. Also affected, not as a party but as part of the subject matter, was the third city, Toruń, the destination of the contested commercial activity. In contrast, the subject matter itself was not clearly ethnic-specific. We have a modicum of evidence that conflict over transport of commodities by boat or cart between specific localities, was of concern to the indigenous, "Polish," population and its "law."[249] However, in this instance, given the "German" profile of the three cities affected, that subject may, in addition, have been understood and approached in terms specific to "German law." However, here I must return to caution. As usual, we do not know the formal, substantive basis, "German" or otherwise, behind this case or its resolution, and therefore the ethnic specificity of this subject matter, if any, in this instance. Generally speaking, the subject was of concern both to Poles and to Germans. In this regard, this case bridged the "frontier."

On the other hand, the course of resolution falls strongly on the indigenous side: a sequence richly documented in "Polish" courts. Litigation never left the direct, personal court of Duke Władysław. He played a central, driving role in designing and mandating

[246] Górecki, *Economy*, 210–3, 218–9, 225–6, 240; Górecki, *Text*, 135, 147–8, 187–8, 205–12.
[247] KDW 2, no. 1163 (1336), 491–2.
[248] KDM 1, no. 178 (1329), 212.
[249] Górecki, *Economy*, 53, 58–61.

the sequence of steps in the case. This centrality of the duke matches the strong role of the "Polish" judge in presiding over court cases. The role culminated with Władysław's decision regarding the ultimate disposal of the case: the replacement of judgment by reconciliation; and the selection of the person who performed that role. As we have seen, conciliatory dispute resolution spanned both sides of the ethnic divide. In this instance, the facilitator who "decreed" the terms was Polish (judging from his name), and held perhaps the highest Polish office subordinate to the king, palatine of Lesser Poland.

And now, in this context, a brief glance back to an earlier subject: invocation of norms. An important variant of interethnic encounter, across this "frontier," was reference to "German law" by the Piast ruler in his personal court. The stories that are the basis of this study give us three examples. In 1311 and in 1315, Duke Władysław the Short capped resolutions of property disputes with grants to the winning parties of two variants (or perhaps: two semantic formulations) of that "law." One was "the German law of Środa, and the law of the highest court" (or perhaps, "of the highest market"), in that city – a "law" which the duke "gave" to the prevailing party, and extended over the contested landholding, after the litigation itself had run its course.[250] The second variant emerged in a case concerning "German" litigants and subject matter. Two "sons" of an "advocate of Sandomierz" claimed succession to the "advocacy of the city." After a verdict in their favor, Władysław "gave […] the [prevailing] advocates" revenue "from […] the stalls […] of the city […] of Sandomierz, established according to the law of Magdeburg."[251]

The third, most notable, variant occurs in a case presided by King Casimir in 1356. At issue was a dispute among a group of Kraków's "citizens" over succession to a piece of urban property. At the king's direction, the case was passed on to two groups of intermediaries, for a conciliatory resolution. One group certainly, and perhaps both of them, included "citizens" of Kraków. As narrated in the story, the basis for that resolution was German law; and the intermediaries were at the center of its application. In its preliminary decision, the first group "decreed" that the second group must resolve the dispute "according to that law." Toward that end, the first group specified, and explained to the second group, the meaning of that "law." Members of the first group "examined […] the tripartite law of Magdeburg – provincial, feudal, [and] municipal – and were thereby adequately informed" about its substance, which they passed onto the second group.[252] That knowledge – as ascertained and expressed by one group, and passed on to the other – was dispositive. Immediately after this sequence of events, the story concludes, now again in the king's name, with a declaration of rightful devolution of property, consistent with the "ascertainment" of the "tripartite law of Magdeburg."

This third case opens for us important further perspectives on the law as a "frontier." First, it is yet another encounter, in the same space, of elements situated on the two sides of the ethnic divide. The case was initiated in the (permanently) most important "Polish" court: the king in person. The subject matter and the parties – urban landed property, and "citizens of Kraków" – were specific to the most visible "German" court: the court of a city. The resolution hinged on "German law," in this instance specified as the "law of Magdeburg." That reference, with Magdeburg, moves us to the highest tier of

[250] KDM 1, no. 152 (1315), 181.
[251] KDM 1, no. 147 (1311), 177.
[252] KDM 1, no. 247 (1356), 291.

"German law," understood (back then, and by us today) as a macroregional network of places, substance, and knowledge. Its further classification as "tripartite" – "provincial," "feudal," and "municipal" – resembles the internal division of the great, similarly macroregional early compilation of "German law," the *Sachsenspiegel*, into what looks like two of these three major areas.

Second, in this instance "German law" is presented, with an unusual degree of explicitness and clarity, as a subject of knowledge. That knowledge was possessed, in general terms, and recognized as pertinent for more specific reasons, by the king and the others comprising the court situated before him. At that more specific or expert level, it was possessed by the two groups of facilitators: the first tasked with fully articulating it – in court, as one of the events narrated in the story – the second with applying it to this specific case, and thereby generating the final outcome. The story logically, necessarily implies that the "law of Magdeburg" and its three parts were available to everyone concerned with this case – on site, as cognitively shared knowledge, or as written and readily available text, or both.

Third, the case is a brilliantly tidy example of one kind of dynamic that may (or may not) happen across any "frontier": diffusion, that is, transfer across a cultural gradient.[253] In this case, what was transferred was knowledge itself. Here we have an appearance, before, and with an active participation by, the Polish king, of a "German" set of rules, accessible cognitively and perhaps in writing; marshaled and transferred in the court proceedings; and, finally, applied across the ethnic gradient, to the German "citizens" of Kraków, regarding a subject otherwise widely present in its civic courts. The story necessarily implies learning and expertise in that "law," and both presumes and describes its diffusion, across space and human minds, ultimately – in a very long, very sparsely documented loop – from Magdeburg to Kraków.

Tidy as this symptom of diffusion may be, it immediately prompts a disclaimer. What it shows us is, in the current empirical context, extremely rare. My present study is based on stories of what happened in court cases. Among those stories, this document is, to my knowledge, a unique record of an actual moment of diffusion of "German law," in any of its substantive meanings. It is the only story that refers to "German law" at this combination of breadth, specificity, internal classification, reference to the city of Magdeburg, and reportage of active consultation. Thus, it seems important not to generalize this instance as somehow paradigmatic of what happened across the two sides of the ethnic divide – at least, *not* on the basis of *those* stories. Yet, even within these stories, this reference to "German law," rare as it is, has a context. We have here one exceptionally vivid encounter between a range of elements that mark out the indigenous from the foreign – back then, and for us today.

[253] See about diffusion, Górecki, "Ambiguous Beginnings," 197–9; Górecki, "Medieval Poland in Its World," 157–8, 164–70.

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