THE SACHSENSPIEGEL: A PRELIMINARY STUDY

FOR A TRANSLATION

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By

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* * * * * * *

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He who commands that law should rule may thus be regarded as commanding that God and reason alone should rule; he who commands that a man should rule adds the character of the beast. Appetite has that character, and high spirit, too, perverts the holders of office, even when they are the best of men. Law as the pure voice of God and reason may thus be defined as Reason free from all passion.

Aristotle

The foundation of any society, at any age, and in any place may be found in its law. The quest for order, security, peace, and liberty is most prominent in the rational attempts of man to organize his community. It is to this unceasing effort that the Saxom lawyer Eike von Repchow dedicated his life. Raised in an environment which was singularly conscious of its legal traditions, he endeavored to codify those very practices which his society considered to be its most valued possessions.

His works are not only the monumental evidences of an ancient legal system; they are also reminders of man's ever-present desire to create the best of all possible worlds. The environment may have changed, but the questions which Eike sought to answer some seven hundred years ago still need to be answered today. In the final analysis the appeal to order and to the law must be the basis upon which all our attempted solutions rest.

\(^1\)Politics, 3 1287a
CHAPTER I

INTRODUCTION

The European World from 1150 to 1250

It is perhaps a truism to proclaim that the period of European history from 1150 to 1250 is one of the most exciting, confusing, controversial, and decisive moments in the history of the Middle Ages. Yet without this realization no adequate comment about this period can be made. The scope of this paper does not permit the complete study of this era, but a thorough understanding of the Sachsenspiegel and the efforts of its author requires at least an outline of the historical, political, and constitutional picture of this century. Empire and papacy struggled for supremacy in Europe; France and England sought to create their respective governments out of the heritage of the past. Men vacillated between old ideas and new concepts, seeking to discover the proper transition between the two. Thus Eike von Repgow's labors mirror this changing world, mixing the archaic ways of his people with the new visions of the coming century.

1 For the purposes of this introduction reference will be made to Geoffrey Barraclough, Origins of Modern Germany (Oxford: Basil Blackwell, 1947) as the best English work on the German Middle Ages, and to Karl Hampe, Das Hochmittelalter, edited by Gerd Tellenbach (5th ed.; Köln-Graz: Böhlau Verlag, 1963) as a recent and thorough German text on the medieval period. For a review of the older literature see the Cambridge Medieval History (7 vols; New York: The Macmillan Company, 1926).
These hundred years represent not only the age of Henry II of England, Louis VII of France, Frederick I Barbarossa, and Henry the Lion but also the age of their sons – Richard and John of England, Philip Augustus of France, Henry VI, Philip of Swabia, and Otto of Brunswick. All these men in one way or another were affected by Innocent III, spiritual son of Gregory VII, who applied his great strength, his mighty will, and his superior ability to the task of bringing to fruition the idea of the Papal monarchy – the rule of the City of God on Earth. And finally this is the era of Frederick II, that Sicilian wonder of the world, who wrote, perhaps unwillingly, the epilogue to a period of history which was to be a foreshadowing of things to come.\(^2\)

Needless to say, the twelfth century was probably the most formative period of all the European states. Henry I and Henry II laid the foundations of the English legal system which later blossomed into the Parliamentary government. The kings of France reconquered their realm castle by castle, and thereby established their concept of the state as a royal bureaucracy. In the Holy Roman Empire the Hohenstaufen ruler Frederick I sought to discard the last remnants of the confusion that had attended the Investiture Controversy. He

\(^2\)It would be impossible to list here all the biographies done of these important figures of this period. Much work has been done on the Angevin kings as well as the Capetians. Unfortunately the larger German biographies of Barbarossa and his sons are usually a hundred years old. Useful chapters and shorter studies can be found in Karl Hampe, Herrschergestalten des deutschen Mittelalters (rev. ed.; Heidelberg: Quelle und Meyer, 1955). For Innocent III see Sidney R. Packard, Europe and the Church under Innocent III (New York: Henry Holt and Company, 1927); Reinhold Schneider, Innozenz der Dritte (Köln: J. Hegner, 1960); Helene Tillman, Papst Innozenz III (Bonn: Ludwig Röhrscheid, 1954).
attempted to establish a better imperial government by introducing a stricter feudalism, systematizing the imperial bureaucracy with the ministeriales, and expanding the Hausmacht of the Hohenstaufen, applying these ideas with as much vigor as the king of France and hoping to achieve similar results.

Although the monarchies of the twelfth and thirteenth centuries shared many problems, the empire had two peculiar ones to cope with. One of these was the ancient attempt to establish a certain imperial hegemony over the rest of Europe which had some disastrous consequences for Germany. The other was the continuous and direct ecclesiastical or rather papal interference into purely German matters. The addition of these two problems to the already crucial situation arising from Hohenstaufen internal reform and princely reaction to it brought about a violent confusion in the thirteenth century from which the imperial constitution would never fully recover.

See Karl Bosl, Die Reichsministerialität der Salier und Staufer (2 vols.; "Schriften der Monumenta Germaniae Historica," No. 10; Stuttgart: Hiersemann Verlag, 1950-51); also Dietrich von Gladiis, Beiträge zur Geschichte der staufischen Reichsministerialität (Berlin: Verlag Emil Ebering, 1934) on the tremendous influence of the ministeriales in German affairs.

Hermann Heimpel, Kaiser Friedrich Barbarossa und die Wende der staufischen Zeit (Strassburg: Huenenberyverlag, 1942).

See Peter Rassow, Honor Imperii: Die neue Politik Friedrich Barbarossas - 1152-1159 (München: R. Oldenbourg, 1940).

So Theodor Mayer, Karl Heilig, und Carl Erdmann, Kaisertum und Herrscher gewalt im Zeitalter Friedrich I: Studien zur politischen und Verfassungsgeschichte des hohen Mittelalters (Leipzig: K.W. Hiersemann, 1944), p. 444: "Darin lag die Tragödie der deutschen Entwicklung, dass das Reich wegen seiner hegemonialen Stellung über die eigenen Grenzen hinaus auf gebiete greifen musste, die es nicht dauernd halten konnte und die damit eine überschwere Last für das Reich bildeten, unter der es schliesslich zusammenbrach."
Historians have argued for over a hundred years whether Germany's ventures into imperial politics were an achievement or a blunder. At this time it is not necessary to completely outline the controversy. However, one should be aware of several factors concerning the imperial idea which would support the contention that it was neither a blunder nor an achievement, but rather a well-planned policy, particularly as far as Italy was concerned, which had a good chance of success.

A primary factor in this consideration must be the motives and the desires of the emperors themselves. No German ruler before 1190 consciously sought to despoil his country by going to Italy. The Ottonian and Salian emperors show no such intent nor did Barbarossa. Although the Hohenstaufen considered Italy and Burgundy important adjuncts of the German territory proper, his constitutional reforms indicated an overriding concern with German internal matters. Such measures as his radical reform of German feudalism were but the beginning. To attribute Barbarossa's failures to his Italian policies seems hardly justifiable.

Barbarossa's unsuccessful measures regarding liegeancy in the feudal system and the addition of large territories to the royal domain

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7For a thorough review of the issues attending the question of imperial politics and their interesting side-issues in the unification of Germany in the nineteenth century see Friedrich Richard Schneider (ed.), Universalsstaat oder Nationalstaat, Macht und Ende des ersten deutschen Reiches; die Streitfragen von Heinrich von Sybel und Julius Ficker zur deutschen Kaiserpolitik des Mittelalters (2d ed.; Innsbruck: Universitäts-Verlag, 1943).

serve as examples of constitutional contradictions.\textsuperscript{9} France and England faced these same problems and eventually solved them. Germany's failure to do so has often been blamed upon the elective nature of her monarchy. Certainly the elective procedure could and did weaken royal power, but a strong personality could overcome these obstacles. Also upon occasion German princes would and did support their elective monarch. However, these princes were frequently susceptible to various personal appeals, appeals to ambition, to power, and to money, which led to the formation of the territorial states and the collapse of imperial authority.\textsuperscript{10}

What is of tremendous importance in this reversal of Germany's fortunes is external interference. This interference assumed a clerical character. This church-state conflict appeared in all European nations. In England it led to the murder of Becket, in France Philip Augustus was bothered by the Danish marriage and excommunication, while in Spain papal objection to a marriage alliance prevented the organization of a more unified Spain.\textsuperscript{11}

\textsuperscript{9}One of the most celebrated cases in the attempt of the German ruler to establish a strong monarchy in the empire concerns the trial and exile of Henry the Lion, Duke of Saxony and Bavaria. It has often been said that the dramatic events surrounding the trial of 1180 produced some startling changes in the relationship between monarch and princely subject, which seriously diminished the central authority. Certainly the seeds for these changes had long been planted, perhaps as far back as the Ottonian creation of the empire. See Madelyn U. Bergen, "When the Lion fell; the struggle between Frederick Barbarossa and Henry the Lion," (unpublished Master's thesis, Department of History, University of Arizona, 1963) for the constitutional and legal aspects of this case.

\textsuperscript{10}Just how sordid these ambitions could be and how easy it was to use them in a calculated appeal is shown by Charles C. Bayley, \textit{The Formation of the German College of Electors in the thirteenth century} (Toronto: University of Toronto Press, 1949), pp. 3-54.

\textsuperscript{11}Hampe, \textit{Hochmittelalter}, pp. 342-43.
If clerical or more precisely papal interference was annoying to the western states, it was fatal to the empire. The concept of the Sacrum Imperium coupled with the consecrated nature of the imperial office found small favor with the Roman pontiff who had similar schemes to achieve overlordship in Europe. Under Barbarossa the essentially destructive qualities of this struggle were kept in abeyance. His long fight with Alexander III ended in a draw, and the Peace of Venice of 1177 even scored a diplomatic victory for the emperor. Moreover, in the Peace of Constance of 1183, he came to terms with the Italian city-states, thereby depriving the pope of his natural allies.

The old Italian policies were not the stumbling blocks in the German development; the acquisition of Sicily decidedly was. When Henry VI married Constance of Sicily and later assumed her inheritance, he ventured into a morass of trouble from which the empire never freed itself. Chief opponent of the emperor's Sicilian policies was the pope. The papal states, the Patrimonium Petri, were located in the center of Italy. The Lombard and Tuscan cities faced their northern frontier, and the South was occupied by Naples and Sicily. The Norman rulers of the Southern kingdoms were papal vassals. This relationship would no longer exist if the Roman emperor became the ruler of the South as Henry VI eventually did.

The directing force of papal policy was the prevention of the encirclement of papal territory by a vigorous and well organized empire.

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12See Friedrich Heer, Die Tragödie des heiligen Reiches (Wien: Europa Verlag, 1952) for an interesting discussion of this idea.

13Barraclough, Origins, p. 198.
The Hohenstaufen rulers never accomplished the task of integrating the empire, but neither did they come to terms with the papacy. Henry VI has been blamed for many of the failures of the empire. However, his work cannot be adequately assessed as his reign was very short and the range of his ambitions will remain a matter of speculation. Henry seemed to involve himself in imperial matters rather than German affairs, thus departing sharply from his father's policies. He did not in any case come to some agreement with the papacy, creating thereby barriers which his successors could not remove.\(^\text{14}\)

With Henry's death in 1197 the grandiose schemes for imperial integration came to a halt. Sicily remained in the hands of the empress Constance who turned back to a Norman policy. Her son Frederick II was the ward and also the vassal of the pope, and the attempts of the Reichsministerial Markward von Annweiler, who had been Henry's trusted lieutenant in Sicily, to hold the South for the empire met with failure.\(^\text{15}\)

Innocent III, who had become pope in 1198, deserved the major credit for the papal successes. He found the crisis in imperial affairs greatly to his advantage, since the election gave him a good chance to interfere.\(^\text{16}\) Theoretically the child Frederick of Sicily

\(^\text{14}\) Ibid., pp. 203-04.

\(^\text{15}\) Hampe, Hochmittelalter, p. 318.

\(^\text{16}\) See Heinrich Mitteis, Deutsche Rechtsgeschichte, edited and enlarged by Heinz Lieberich (7th ed.; München: C.H. Beck'sche Verlagsbuchhandlung, 1961), pp. 95-100 for a discussion of royal elections in the German monarchy. See also Barraclough, Origins, pp. 206-07. For Innocent III's ideas on the matter of imperial elections and the Hohenstaufen answers to it, see the Registrum super negotio imperii, reprinted in Migne, Patri. Latina, CCXVI.
was the new ruler, but the princes of Germany feared a long minority and persuaded Philip of Swabia, Henry VI's younger brother, to become king. A Hohenstaufen with his philosophy of imperial independence on the German throne was a danger to the papacy and Innocent III proceeded to destroy it.\(^\text{17}\) To achieve his ends, he stirred up war between France and England and did not hesitate to support an anti-king in Germany.

The ensuing civil war between Philip of Swabia and the anti-king Otto of Brunswick had certain ominous sounds for the future.\(^\text{18}\) One can observe an ever growing tendency by the opposition parties to seek support from the papacy which was usually - quite willing too - forthcoming. Otto of Brunswick was nothing more than a pawn in Innocent's power structure. Yet the pope did not dictate the outcome of this game, for Philip of Swabia was murdered in 1208 and Otto IV was generally accepted as his successor.

Innocent III gained very little by the success of his candidate. Not only did Otto continue Philip's plans for imperial reconstruction at home, but he went further. Otto clearly aimed at making Sicily once more a part of the empire, the very thing that Innocent had wanted to prevent. The pope, however, did not find it difficult to withdraw his favor from the headstrong emperor. He found his justification in English affairs, and settled the matter through French help.\(^\text{19}\) At the

\(^\text{17}\)"To get his way, in short, to enforce his own conception of the relations of church and state, Innocent was prepared not only to destroy the internal peace of Germany, but also to set the states of Europe at war with one another." Barracough, Origins, p. 207.

\(^\text{18}\)Ibid., pp. 209-10.

\(^\text{19}\)Ibid., pp. 211-14.
battle of Bouvines of 1214, the English and Welf forces lost decisively and Frederick of Sicily, now the papal candidate for the German crown, became emperor in 1215.

Frederick II began a new chapter in the history of the empire. To the young Sicilian, Germany did not represent the vital center of his realm. Consequently he neglected matters there, and his two great charters of liberties to the ecclesiastical and lay princes secured for them at law what they had formerly claimed only upon tradition or force. Frederick's reign also had few advantages in the eyes of the papacy. Innocent III did not live to feel Hohenstaufen antagonism, but his successors, mainly Gregory IX, came into sharp conflict with Frederick's ideas of an independent empire. Heedless of any agonies he was creating, the pope interfered numerous times in German affairs. His actions in

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20. Eike von Repchow in his chronicle gives the following account of this important battle: "Darna vor de keiser over Rin unde schop ene herevard uppe den konig van Vrankerike mit des greven Ferrandes helpe van Vlanderen. De konig Philippus van Vrankrike quam wider unde stridde mit eme, unde de keiser ward segelos unde gelosede mit groten not, unde greve Ferrant ward gevangen unde mit eme menich edele man." Sächsische Weltchronik (edited by Ludwig Weiland, Monumenta Germaniae historica, Deutsche Chroniken II), c. 349.


the election campaign of the anti-kings Henry Raspe and William of Holland were but examples of extreme short-sightedness and an inability to view the issues objectively. If much of the blame for this great decline rested with the German nobility in their greed and lust for power, much of it also rested with the Roman pontiffs in their unwillingness to realize that in their ambitious drive to world supremacy they destroyed a nation.

Eike von Repchow: His Life and Personality

A man's motives, desires, and ideas play a decisive part in his intellectual growth. His social and educational background determines his outlook upon life and the society around him. When he presents his thoughts in a book or any other intellectual or artistic endeavor, it is only natural that the influences which shaped his career form an important foundation from which he will view his surroundings. The student of any such work must therefore become acquainted with the philosophy and background of its creator; the deeper the student wished to probe, the more vital this acquaintance becomes.

Since few modern authors wish to remain in obscurity behind their works, such investigation is comparatively easy in our age. During the Middle Ages such obvious inclinations to fame are less frequently observed. Instead chronicles and charters have often come down to us

\[2^4\] See above page 5, note 10. Also see Barraclough, *Origins*, pp. 219-46 and Hampe, *Hochmittelalter*, pp. 371-413 for a discussion of Frederick II and the *Endkampf der Universalmächte*. 
without any known author. Even if an author could be found, information about him was usually scarce. Eike von Repchow (Repgow, Repgau) falls into this category. Although he left a two-volume law-book, the Sachsenspiegel, and a history, the Sächsische Weltchronik, any conclusive knowledge about his life and career is difficult to find. No chronicle mentioned his name. He appeared as a witness in six legal charters between 1209 and 1233, all of which dealt with civil actions and none of which showed any of his knowledge of the law. He mentioned himself by name several times in his prefaces. Thus his personality must be found in his books, a task made difficult by the fairly impersonal nature of a regional-national history and the compilation of customary and feudal laws. But occasionally the author revealed himself to the reader, and the reader finds it tempting to conjecture about this man.

Today we would say that Eike was a lawyer. We know that Eike appeared as witness in some legal proceedings. According to this scant evidence it seems reasonable to assume that his appearance was in the capacity of a legal adviser. His clients were some of the highest ranking noblemen of northeastern Germany: Dietrich von Meissen,25

25Dietrich von Meissen was the youngest son of Otto von Meissen (who died 1190). After his father's death he came into conflict with his brother Albrecht, who demanded the lion's share of the family inheritance as the oldest son. With Albrecht's death in 1195, Dietrich did not come into immediate possession of the inheritance, but found himself in trouble with the emperor Henry VI over the nature of Meissen in relationship to the empire. Philip of Swabia finally gave Meissen to Dietrich in 1197. This alliance with the Hohenstaufen, however, was only temporary. Dietrich was bothered by Philip's friendship with Ottocar of Bohemia, the hereditary enemy of the Meissen Mark. Thus Dietrich turned to support Otto of Brunswick. After 1218 he sought to establish friendships with the Hohenstaufens, particularly Frederick II. See Rudolf Köttschke and Hellmut Kretzschmer, Sächsische Geschichte (Frankfurt: Verlag Weidlich, 1965), pp. 76ff.
Heinrich von Alhalt, Herman and Ludwig von Thüringen, also perhaps the Markgrafen von Brandenburg. That Eike had some kind of special relationship with Graf Hoyer von Falkenstein can be deduced from the

26 Heinrich I, Graf von Ascharien and Fürst von Anhalt, was a son of Duke Bernard of Saxony. In 1212 Heinrich received the family possessions of Anhalt. In 1219 the prince was excommunicated in his fight with abbot Gernot of Nienburg, but was later released (1221). He also acted as guardian for the brothers Johann I and Otto III von Brandenburg. Heinrich was initially allied to Philip of Swabia, and later to Otto of Brunswick. Not until 1218 did Heinrich recognize Frederick II as his sovereign. In 1223 Heinrich helped Hoyer von Falkenstein to get rid of the abbess Sophia of Quedlinburg; in 1238 he was with Frederick II in Italy. In 1245 he retired from active rule, dying sometime between May of 1251 or 1252. See Otto von Heinemann, "Heinrich I," Allgemeine Deutsche Biographie, edited by the historische Commission der kgl. Akademie der Wissenschaften (Leipzig: Dunker and Humblot, 1880), II, 449-50.

27 Hermann von Thüringen became Landgraf in 1190 and held that position until his death on April 25, 1217. Henry VI had attempted to confiscate Thüringen as a royal fief, but Hermann was eventually allowed to take possession. Throughout his entire career, Hermann played a skillful game of politics between Hohenstaufens and Welfs. One of his sons, Henry Raspe, would become an anti-king; another son, Ludwig, was the husband of Elizabeth of Hungary, better known as St. Elizabeth. It was during the reign of Hermann that the fabled Sängerkrieg took place at the Wartburg. See Friedrich Mess, "Wartburgkrieg und Sachsenspiegel," Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung (hereafter referred to as ZSRG), LXXIV (1957), 241-56. See also Eduard August Winkelmann, "Hermann von Thüringen," Allgemeine Deutsche Biographie, XII, 155-57.

28 See above note 26.

29 Hoyer von Falkenstein was Eike von Repchow's closest associate during his rather hectic life. Whether or not Eike was a vassal or even a ministeriale of Hoyer's is not known. The Falkenstein castle is located on the river Selke. The family had possession of the county of Billingshohe. In addition to that position Hoyer was also Stiftsvogt (advocate) of the abbey of Quedlinburg, a position he executed with firmness and not without trouble. (See Sächsische Weltchronik, c. 364). Hoyer's name appears on numerous charters, occasionally together with his friend Eike. One such charter was issued on July 17, 1231 in Fulda by king Henry VII and concerned a gift to the monastery Berge. In 1254 a comes Hogerus de Valkenstein is given a pension through the archbishop of Magdeburg and the monastery Berge. See Friedrich Winter, "Eiko von Repchow und der Sachsenspiegel," Forschungen zur Deutschen Geschichte, XIV (1874), 345.
fact that he dedicated the Sachsenpiegel to the count. This nobleman was a powerful "dynast" in the territory around Quedlinburg where he was the advocate of the abbey. Perhaps Eike had received a fief from the count or he may have been a friend and legal adviser. The conjecture that Eike at some time in his career became the count's ministeriale is not in keeping with his view on life. First, Eike believed serfdom or even the idea of any servile relationship to be a gross injustice, and second, he wrote very little about the customs

30 The term Vogt as a legal officer of some importance appears numerous times in the Sachsenpiegel. Often this refers to the institution of the Stiftvogt or "advocate of the abbey," a position which Hoyer von Falkenstein held in the Abbey Quedlinburg. In the case of a large and important abbey as Quedlinburg, this was a powerful position. This practice was not confined to Saxony. The advocacy had grown out of the eleven-century investiture controversy which had deprived many lay lords of the actual control of clerical foundations which had once been endowed by their families. Theodor Mayer in his discussion of the dukes of Zähringen (Geoffrey Barraclough, Medieval Germany (Oxford: Blackwell, 1938), II, 185) described the institution: "He failed, in other word, to bring the advocacy under monastic control... a division of powers was now introduced: ... but secular matters - in other words, the exercise of governmental authority over the monastery's lands and subjects - remained in the hands of the proprietary lord in his capacity as hereditary advocate of the monastery. But if the advocate, whose task it was to protect and represent the house before the secular authorities, was himself the possessor of the secular authority, his tenure of the advocacy meant neither more nor less than the incorporation of the monastic territories in the advocate's own lordship."

31 The abbey of Quedlinburg was a royal foundation, created in 932 by Henry I. It consisted of a nunnery and the Church of St. Peter. Later parts of the Quedlinburg royal castle were added, and there was also a monastery. The abbess of Quedlinburg was an imperial Reichsfürst, a tenant-in-chief, and one of those ladies who were permitted to have the Heerschild due to their position. Many famous royal ladies, among them sisters and daughters of Otto I and others, were abbesses in Quedlinburg. By the thirteenth century, the position was mainly filled by aristocratic ladies from Saxony, Thüringen and the march regions.

of the ministeriales at all. Thus it seems highly unlikely that Eike had a ministeriale-position in relationship to Hoyer von Falkenstein.

Eike's exact birth and death dates are unknown. His first appearance occurs in a charter in 1209. In order for him to be a witness, he would have to be of age, therefore his birth may be placed around 1180. The last time his name appears was 1233. It is not certain how long he lived after that date. Some scholars maintain that Eike became a monk after 1233. However, no evidence to either prove or disprove this contention can be found.

Very little is known about Eike's family. They were probably of Low Saxon origin and had migrated into the Mark-regions during the twelfth century. The village Reppichau, from which the family took its name, is located between Dessau, Aken, and Köthen, between Elbe and Saale, close to Magdeburg and the cities of the Harz. The family

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33 III 42, 2.


owned a house in Magdeburg, and other references to members of the family have appeared.

Nothing is known about Eike's youth. A time of study at either the Magdeburg or Halberstadt cathedral school cannot be proven; but it is certainly possible and even probable. Eike's education was definitely superior for a layman of his rank; his general background, his knowledge of history and literature, is similar to that of a Walther von der Vogelweide or a Wolfram von Eschenbach. He was well versed in biblical literature, although much of it came through the readings of sermons rather than the Bible itself.

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36 The Repchow house in Magdeburg is mentioned in the Urkundenbuch der Stadt Magdeburg, vol. I, No. 88. See Müllenberg, Eike von Repgow, p. 399.

37 Winter, Eiko von Repchow, pp. 305-06 has compiled the evidence about Eike's ancestors since their appearance in Gau Serimunt. The presence of an Eiko et Arnolt de Ryeochowe at a placitum of Markgraf Albrecht von Brandenburg at Wörlitz in 1156 shows that at least one of them was a Schöffne at the county court. A document of 1159 deals with the transferral of property to Magdeburg for certain remission in the payment of tithes to the archbishop. It is evident in the charter that the lords of Repgow owed their properties in Repphau as free allods, since they grant 1 1/2 hides to the archbishop entirely out of themselves and without the permission of any lord.

38 See Müllenberg, Eike von Repgow, pp. 391-92; Thieme, Eike von Repchow, pp. 193-94.

39 Guido Kisch, Sachsenspiegel and Bible (Notre Dame, Indiana, 1941) has done an excellent job in bringing together most of the possible biblical sources which Eike alluded to in the Sachsenspiegel. Sten Gagner, "Sachsenspiegel und Speculum ecclesiae," Niederdeutsche Mitteilungen, III (1947), 82-102, feels that Kisch carried his work too far. Gagner thinks that Eike did not use the Bible at all as a source, but rather sermons and other clerical writings. Gagner finds the Speculum ecclesiae of Honorius of Autun and a German collection of sermons from the twelfth century called the Benedictheuer Predigt- sammlung two very possible sources which Eike consulted during his work.
Although there are references to Canon Law, his quotations often seem to come from secondary sources rather than primary ones. Thus, his classical and clerical education was not equivalent to that of many of his contemporaries. Yet in many ways this proved to be an advantage. Eike described the German law of his time with a vital understanding which could not have been gleamed from learned books in Latin. It could only come from years of intimate practical experience. However, Eike was thoroughly familiar with past historical works as well as those of his own time. Thus a sense of authoritative knowledge breathes through the Sächsische Weltchronik and adds a flavor to its sentences comparable to that found in Otto von Freising's works.

On Christmas Day of 1199 Philip of Swabia held a great Diet at Magdeburg at which time Eike might have met some of the great men of his era, among them Walther von der Vogelweide who gave a stirring account of these festivities in one of his political Lieder. By contrast Eike's description of the festivities is short and to the point. Relating lengthy stories was not his style.

Eike von Repchow's position at the courts of the various princes, his knowledge of legal matters, and the available evidence suggests a

40 Gagner, Sachsenspiegel, p. 103.
41 Eike mentioned the 1199 Diet of Philip in the Sächsische Weltchronik. It has been speculated that this was probably his first acquaintance with the world of important people. Since his family had a house in Magdeburg, he could have been there. He could not have been more than 19 years old, however. See Müllenberg, Eike von Repchow, p. 397; also Thieme, Eike von Repchow, p. 190.
42 "De konig Philippus hadde ok enen groten hof to Maideburch dar he kronet ging mit simem wiwe." That is all Eike writes about this memorable occasion in the Sächsische Weltchronik, c. 343.
man with a gentry background, a representative of that class of the lower nobility which he referred to as schöffener frei in the Sachsenspiegel. It is not quite certain whether this term applied to an official position as a juror or a doomsman or a whole class of people. Judging from Eike's description and testimony in the laws, both are acceptable. There is no proof to determine whether Eike was or was not a Schöffner, but he did belong to a family where such an office could be held. Therefore his concern with the law appears to follow family tradition.

Evidence of Eike's activities outside of his works is extremely rare. There are six documents which list his name among the witnesses to the proceedings they describe. None indicate an official position for Eike, but all suggest that the knowledgeable jurist was a welcome guest at legal proceedings.

The first document concerns the gift of a castle to a church. The action took place at Mettine (in Gau Serimunt) in the year 1209. The Burggrafen Johann and Walter von Giebichenstein gave to the church of Nienburg their castle Spören, and the charter was drawn up under the judgeship of Friedrich von Krosigk who substituted for the count.

43 What exactly is meant by the term schöffener frei is not agreed upon by historians. Further explanation will be made of this problem in the section dealing with the nature of thirteenth-century society according to the Sachsenspiegel.

44 Speculation on this issue has been going on for a long time. See Möllenberg, Eike von Repgow, pp. 399-402; Thieme, Eike von Repchow, p. 191.


In 1215 Eike was at the castle Lippehne with Fürst Heinrich I von Anhalt. The charter concerned some manors which the prince granted to the collegiate foundation of Coswig with the consent of Graf Hoyer von Falkenstein who held these manors in fief. The document had the following witnesses: the nobiles viri Hogerus de Valkensten, Odelricus de Vredeberge, Johannes de Gniz, Wernerus de Suselitz, Conradus Mackecherf, Heico de Repechowe, Bertramus et Balduinus de Thornowe. The rest of the witnesses were ministeriales. Conradus de Waldesere, Alberus de Rozelowe, Wedego de Richowe, Teodericus de Nithlawe, Tymo de Plezege, Arnoldus et Rugoldus de Redere, Gerardus et Theodericus fratres eius, Gunzelinus de Blanzeke, Luderus et Hartwicus de Scheniz, Bodo de Reine, Alexander Unholde, Johannes advocatus de Coswich et Otto prefectus euisdem loci.

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47 The collegiate foundation of Coswig seems to have been founded by the Falkenstein family. Indeed the property given to the foundation in this charter was a fief belonging to Graf Hoyer. See Winter, Eiko von Repchow, pp. 309-10.
Some years later, in 1218, Eike was again with Markgraf Dietrich von Meissen, this time at Grimma.48 Here the Markgraf granted to the monastery of Altzelle49 some manors. The charter was witnessed by the following: Otto praefectus de Donin, Johannes de Lubin, Ekehardus de Duchere, Theodericus de Sladebach, Otto de Vleburch, Gevehardus de Zurbek, Fridericus de Turgowe, Albertus de Stebenach et Petrus filium eius, Fridehelmus de Rogats, Tymo de Rogats, Heike de Ripchowe, Theodericus Filia and Johannes de Uthusen.

In 1219, the next year, Eike was with Heinrich I von Anhalt when the prince granted some privileges to the canons of Goslar.50 The witnesses included Comes Hoyerus de Valkensten, borchgravius Hermannus de Wetin, Heinricus de Gniz, Conradus Maketserf, Conradus Slichting, Hugoldus de Reder, Eico de Repechowe, Conra dus dapifer de Welsleve, Olricus dapifer de Hekelinge, Conradus de Mandere, magister Waltherus de Aken, Estwinus vicodominus, Rudolfus canonicus.

The surroundings of the next charter are quite different. Here Eike was present with the Landgraf Ludwig von Thüringen at the Landding


49The monastery Altzelle was founded by Markgraf Otto von Meissen upon the request of his wife Hedwig. It was a Cistercian monastery and became free of the proprietary rule in 1162. See Kötzschke and Kretzschmer, Sächsische Geschicht, pp. 75-6.

50Cod. dipl. Anhalt. II, No. 32; also Urkundenbuch der Stadt Goslar, I, No. 400 as quoted in Müllerberg, Eike von Repgow, p. 404.
at Delitzsch in the year 1224. The Landgraf granted a charter to the monastery of Altzelle and the following names appeared as witnesses: Theodericus praepositus de Monte Sereno et Jacobus capellanus suis, Wrezlaus filium regis Boemiae, Meinherus burchgravius Mienensis, Hogerus de Wundeberg, Wolferus de Pezne, Gevehardus de Zurbeke, Hermannus de Sconenburg, Eico de Ribecowe, Conradus de Landesberg, Fridericus et Marus et Wernerus frater eius, Albertus de Bele.

The last charter which bears Eike's name was issued in 1233 at Salbke iuxta pontem, when the Markgrafen Johann and Otto von Brandenburg granted to the monastery of Berge their inheritance and allod at Billingsdorf. The court was held under the direction of Graf Bederich von Dornburg (who was the regular judge in that county called Mühlingen), and the Schöfffen of the court were present. There are many witnesses and they appear in groups according to their rank. The illustres viri included consanguinei nostri (that is, the two Markgrafen), Henricus comes Ascharie, Henricus et Bernardus filii ipsius, Willebrandus maioris ecclesie Magdeburgensis prepositus, Theodericus


52. Wrezlaus of Bohemia was the brother of King Wenzel and had been expelled by his brother. It has been suggested that Eike's unkind position vis-a-vis the Bohemian rulers was prompted by his meeting with this prince. See Mitteis, Deutsche Rechtsgeschichte, p. 99.

de Dobin; these are followed by the nobiles: Theodericus de Treban, comes Conradus de Regensten, Albertus de Arnsten. These witnesses are followed by the Schöffen, the scabini eiusdem comitiae: Henricus scultatus, Conradus de Cothne, Bernardus de Eckeardushorp, Hinricus Leo, Hinricus de Bigere, Burchardus et Hardovicus fratres de Wellesleve, and Heidenricus preco (beadle). The by himself, Eiko de Repchowe. He is followed by the fideles nostri, the ministeriales of the Markgrafen: Henricus et filii ipsius de Stendale Johannes et Henricus, Gozwinus de Boisenebure, Alvericcus de Kirchowe, Herwicus de Wellen, Willkinus de Turnove, Bertramus de Swaneberch, Burchardus de Irchesleve, Engilhardus de Hvethorp, Engilboldus et Johannes filii ipsius de Slevenitz, Liudgerus et Theodericus et Henricus de Weddighe, Johannes de Haldegestorpe.

These charters clearly identify Eike von Repchow as a living person, but they say very little about his career. Some scholars have assumed that Eike held an office as Schöffe and assigned him this position in the county of Hoyer von Falkenstein. The place at Salbke (referred to in the 1233 charter) had been selected because of the reference to Billingsdorf. (Hoyer von Falkenstein's county was called Billingshohe.) Apparently the two names have been confused. The charter itself disproves this contention since Bederich von Dornburg and not Hoyer von Falkenstein was count at Salbke and the regular place of court was actually at Mühlingen. 55 Hoyer von Falkenstein did have the county

54This belief was held particularly by Carl Gustav Homeyer, the nineteenth century editor of various Sachsenspiegel editions. It has since then been rejected by scholars. See above note 44.

of Billingshohe which his family had held since at least 1142.\textsuperscript{56} There is no evidence to indicate that Eike ever acted as Schöffe for Hoyer at Billingshohe.

It is highly unlikely that Eike was a Schöffe at all. He is not named among those witnesses identified as Schöffen; usually he appears among the nobiles or by himself. A reasonable conjecture would be that Eike appeared in court and participated in its actions in the capacity of a legal adviser to the Anhalt or Meissen princes or the others in whose charters he is mentioned. He is definitely not one of the ministeriales. Rather than surrender his independence and essential freedom, he would and did change patrons.

What kind of a man was Eike von Repchow? This question is extremely difficult to answer because the evidence about his life is almost nonexistent. We must seek his character through his works. This task would be just as difficult as an attempt to characterize a lawyer by examination of his legal briefs. However, the word "I" appears occasionally\textsuperscript{57} and value judgments are made which provide some insight into Eike's personality.

A prominent character trait of Eike's is his insistence upon the truth. Truth, to Eike, was synonymous with law and both found their origin in God. His regard for truth pervades the entire Sachsenspiegel. It lends a certain comforting authority to the chronicle; it provides the dominant note in the prologue of the Landrecht where the author

\textsuperscript{56}Ibid., pp. 405-07.

\textsuperscript{57}As in III 42,3.
speaks directly to the reader, revealing his hopes as well as his fears. The image of the hart cornered by the hounds is an appropriate analogy to illustrate how others may malign and distort his works. His wistful comment that "all the learning and truth in the world would never please everyone equally" revealed him as a man cognizant of human nature. Apparently there were many well-wishing friends and acquaintances who had an idea or request for the author and wished that he would enter it into the body of the law. Eike answered these "special pleaders" in terms of whether or not the law was fair to the majority. Eike spared no one. He was as demanding of himself as he was of his enemies. He requested rigorous examination of his works to determine errors and omissions. He advised good men to search for the lawful action and to be ruled by reason rather than emotion.

Coupled with this unerring sense of truth and unflinching honesty was an uncompromising sense of justice. Eike admitted freely what he

58"... Here I stand truly like a hart who was cornered by the hounds ..." Sachsenspiegel, Preface, lines 89-90.

59"... I cannot gain and will not get the thanks of all men for what I've said, no man yet heard my book who was not ill pleased by some of it ..." Ibid., lines 65-68.

60"... This law is not what I myself have thought but what from olden days have brought our forefathers good and true ..." Ibid., lines 151-53.

61"... if then from them and their kind better law he can find then I say, that he with speed should their wise counsel heed ..." Ibid., lines 205-08.

62The references are far too numerous to bring them all. Note particularly his lists of crimes and punishments in II 13,1-7.
did not know. He became thoroughly annoyed at odd perversions of the law. The phrase "some people say" and his terse answer "that is not so!" appear numerous times in the Sachsenspiegel.

In spite of his regard for uncompromising justice regardless of circumstances, Eike was essentially a compassionate man. The thirteenth century society with its utter disregard for individual human rights as opposed by property rights was a harsh age. Eike sought to mitigate fear and anguish by stressing protective measures. He advocated humane treatment of the orphaned child who found itself the pawn of guardians fighting over its property. He granted to the pregnant widow the right to remain in her husband's house until the child was born.

Time precludes presenting many other examples of Eike's compassionate nature. Suffice it to say that Eike's compassion found its basis in his sense of equity.

Another dominant quality of Eike's personality was his practical bent. He emphasized the practical, even in the more formal ideas of his law-book. A good example of this is his description of the weary traveler whose horse is collapsing from hunger. If this man cuts some grain from a field nearby, he should not be accused of stealing.

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63 As for instance in III 64,3.
64 He used this phrase particularly scornful in III 42,3.
65 Again references are numerous; see III 8.
66 I 11; I 23,2. See also Thieme, Eike von Repchow, p. 198.
67 III 38,2.
68 II 68.
The question of Eike's religious background has already been touched upon. We do not know whether he finally entered a monastery. However, there is much evidence in his works which argues against it. A great deal of his work exhibits an anti-clerical bias. His comments on the validity of the Donation of Constantine and the effects of excommunication show this clearly. Eike also paid little attention in his chronicle to so important a man as Innocent III. Eike assigned the papacy what he believed to be its proper place in the world order, but he was essentially an imperialist. He accepted the old Gelasian theory of the two swords, which stated that the emperor and the pope each received the sword of power directly from God. He thus denied the papal view that the emperor received the sword indirectly from God through the papacy. Additional evidence to support the contention that Eike was somewhat anti-clerical in his writings is revealed by the

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69 See above note 34, page 14.

70 Sächsische Weltchronik, c. 78.

71 III 63, 2.

72 Eike was rather scanty on Innocent III. In the Sächsische Weltchronik he mentioned the Lateran Council of 1215, but was only interested in certain changes of the law of consanguinity which the papacy had made. He wrote in c. 356. "Bi des keiser Otten tiden hadde de paves Innocencius en grot concilium to Rome, dar alle bishope unde alle abbede und prelate waren gesamenet von Dudischer tungen unde van Welscher. Dar worden verleget twee sibbe, dat men in der vieten wol bruden mot, alse men er dede in der seveden. Na pavene Innocencius ward Honorius paves." Eike made the same comment about the papal decree in the Landrecht I 3; he did not approve of the change.

73 See I 1. See also Wilhelm Levison, "Die mittelalterliche Lehre von den beiden Schwertern," Deutsches Archiv, IX (1951), 14-42.
fact that several of the *Sachsenspiegel*’s sentences were declared heretical by a papal bull. Still, Eike’s anti-clerical bias in no way interfered with his own religious nature. This religious nature found expression in prayer, and in frequent admonitions to his fellow men to honor God. This is quite evident in the lovely *Textus Prologus;* the same may be said for his explanation about peace on holy days.

Eike’s keen wit found expression throughout the *Sachsenspiegel.* His wit evokes a quiet chuckle, a quick smile, and a kind and forgiving glance at men’s foibles. Thus his description of the attire of the combatants in an ordeal by battle, though straightforward and quite proper, is presented with a touch of humor. The same may be said about his lists of compensation payments for animals, or his description of branches that hang into a neighbor’s garden, or the proper location of the oven and other outbuildings.

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74 In the year 1374 the Augustinian monk Johannes Klenkok persuaded Pope Gregory XI to issue the bull "Salvator generis humani" which declared fourteen sentences, the so-called *Articuli reprobati,* heretical and condemned them. See Thieme, *Eike von Repchow,* pp. 198-99.

75 "... God has called us to Him, we should keep His law and His commandments ..." *Sachsenspiegel,* *Textus Prologus.*

76 II 66,2.

77 I 63,1-5.

78 III 51,1-2.

79 II 53,1-2.

80 II 51,1-3.
Merely a short acquaintance with Eike von Repchow's works suffices to reveal a man of complex personality, vast intellectual ability, keen wit, and organizational prowess. The compilation of some thousand laws into an orderly whole with scant repetition testifies to a mind of extraordinary mental capacity and a diligence for work which is admirable. In addition to these difficulties, Eike found himself on the frontier of a new idea – writing a law-book in German instead of the customary Latin. It is thus not at all surprising to read that he set out to do this task with a sense of reluctance, and that it took much gentle persuasion on the part of Hoyer von Falkenstein to get his friend to begin his work. Where it was written will remain a mystery. Quedlinburg appears to be a good choice since one of the older manuscripts was found there; Hoyer's castle Falkenstein in the Harz Mountains could be another choice. The task took many years to complete, and the manuscripts offer much evidence of editing which Eike undertook, particularly in the Landrecht. The Lehnrecht has fewer additions; it is quite possible that death prevented the author from a similar revision.

81 Eike's reluctance to write his law-book in German is quite evident in the Preface, lines 261-80. Equally convincing is his statement at the close of the Lehnrecht 78,2-3.

82 Quedlinburg seems a good choice because of the manuscript which was written there. However, this is not a necessary conjecture. See Eike von Repchow, Sachsenspiegel: Landrecht, edited by Karl August Eckhardt (2d ed.; "Historisches Institut des Werralandes" Germanenrechte, Neue Folge; Göttingen: Musterschmidt Verlag, 1955), pp. 28-30.

83 Julius Wolff in his novel Der Sachsenspiegel chose this lovely though somewhat fictitious arrangement.

84 Thieme, Eike von Repchow, pp. 192-93.
The Place of the Sachsenspiegel in the Legal Literature of Medieval Germany

Among the many legal writings of the thirteenth century the Sachsenspiegel held a most unusual place. In scope, philosophy, thoroughness, and influence, it can only be compared to such writings as Henry de Bracton's *Tractatus de legibus et consuetudinibus Angliae* and Philippe de Beaumanoir's *Coutumes de Beauvaisis*. Moreover, it was the first law-book ever written in German. Its author, the Saxon nobleman Eike von Repgow, created in his work a unified whole consisting of traditions, current practices, and revolutionary ideas. He furthermore was responsible for the creation of a legal language in German which gave the traditional courts a terminology to use as well as a strong set of precedents to appeal to against the rising tide of Roman law in Germany.

The Sachsenspiegel is a two-volume law-book of considerable size. Its first volume, the *Landrecht*, presents a thorough, if not always quite orderly, discussion of laws and practices which were used in the courts of northern Germany. It includes provisions about inheritance, family customs, the procedure of the various trials, and the criminal law. It also includes an interesting discussion of the power of the crown and the constitutional nature of the German state.

The second volume, the *Lehnrecht*, is a similar compilation. But here the matters of inheritance, criminal law, and other forms of legal behavior are described strictly in relationship to the feudal class – the Ritter. Thus the *Lehnrecht* deals with the narrow limits of one rank of society and its legal business, while the *Landrecht* uses a
wider approach by including all ranks of society. However, town laws and the customs of groups like the ministeriales are not considered.

Underlying these practical legal concerns is a definite philosophy of justice, a concept of the state, a religious point of view, and a regard for traditions which connect the otherwise rather disjointed material into a unit. Eike von Repchow not only put down the legal practices of his time, but he also sought to deal with the basic social and constitutional problems of his age. The answers he proposed frequently were quite revolutionary. They expressed the author's private opinions which made him a legal philosopher rather than just a compiler of laws. One historian has compared Eike to Plato in the way he judged reality by its ideas and the concrete instance by its corresponding universal. Thus Eike formed certain ideas which were highly normative, and these ideas exerted tremendous influence upon later legal development.

But the major influence of the Sachsenspiegel did not come through its philosophical ideas; rather it was based upon its general appraisal of the procedures of the law. The Landrecht alone has 675 sentences of law; the Lehnrecht possesses 327 laws. The author had ordered the Landrecht into an eight-fold patters, first

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85Mitteis, Deutsche Rechtsgeschichte, p. 173.

discussing inheritance, then family rights, next procedure at court, the court system, the criminal laws, the laws of the royal peace, further procedural matters, and lastly the public or constitutional law. This order is not always observed, for there are numerous interpolations found in marginal corrections and editions. The *Lehnrecht* follows a similar pattern.

The language of the *Sachsenspiegel* is Middle Low German, whose major appeal is aural. The author employed stylistic devices such as alliteration to enhance his language. It is not clear in what dialect the original was written. There can be no doubt, however, that Eike's mother tongue was Middle Low German, to be more specific "Eastfalian" (Ostfälisch). There has been much discussion whether the language of the original was "Eastfalian" or not. Our early manuscripts are written in a central German dialect or in Low German. Homeyer's classical edition, to give one example, used the Low German Berlin manuscript (En) from the year 1369. In the manuscript on which Eckhardt based his edition Middle Central German characteristics predominate, but many words occur in a Low German phonology. Eckhardt changed the Middle German to Low German whenever the same word appeared in Low German in the manuscript.

Eike von Repchow wrote the earliest version of the *Sachsenspiegel* in Latin, but this has not survived. It is quite possible that the

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87 *Landfriedensgesetze*

88 These observations on the language are made with the German text in mind. It is of course impossible to render all its precision and pleasing qualities into English.
The Sachsenspiegel had a marked impact. It was the first of the Rechtsbücher to be written in German. Although it was primarily written as a practical handbook for judges, it became the first great work of legal theory in the German language. By the fourteenth century the Sachsenspiegel had acquired the status of royal legislation in the courts, while its origins as a private compilation as well as its authorship had almost been forgotten. Numerous town laws such as that of Magdeburg were based upon the Sachsenspiegel, and from Magdeburg the Saxon law spread far into the newly opened eastern regions.

In the fourteenth and fifteenth centuries several men made elaborate glosses to the law-book. Johann von Buch, a Hofrichter in Brandenburg, who had studied at the University of Bologna, made the first of these in 1325, attempting in his work to correlate the Sachsenspiegel with Roman and Canon Law. He later followed his gloss by two expository volumes, the Richtsteig Landrechts and the Richtsteig Lehnrechts. In 1375 another Landrecht gloss was written in Brandenburg by an unknown author; it is called the altmärkische Glosses.

89 For a detailed discussion of the dates when Eike wrote his work, see the section on the manuscripts and editions of the Sachsenspiegel.

At the end of the fourteenth century, Nikolas Worm, a city official of Görlitz, edited von Buch's gloss. In the middle of the fifteenth century the Ratsherr Brandt von Tzerstede of the city of Lüneburg and the Professor Dietrich von Bocksdorff of Leipzig added further glosses. The Lehnrecht was annotated as early as the fourteenth century.

These glosses and various other translations of the Sachsen­spiegel provided the basic law for the northern European continent. They formed what later became the so-called Sachsenrecht. In Prussia the Sachsen­spiegel Landrecht formed the basic law until 1794, and in Saxony until 1863. In Holstein, Lauenburg, Anhalt, and Thüringen it remained a subsidiary code until the issuing of the German Bürgergesetz of 1900.

However, some individuals did not believe that the Sachsen­spiegel deserved the high reputation it enjoyed. A prominent opponent of the law was Johann Klenkok, a fourteenth century Augustinian monk who wrote several learned dissertations attacking the Sachsen­spiegel. Klenkok received support from Pope Gregory XI who in 1374 issued a bull "Salvator humani generis" which described fourteen articles of the Sachsen­spiegel as "... falsa, temeraria, iniquia, et iniusta." The

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91See Wolf, Rechtsdenker, pp. 24-6.


93Ibid; p. 574.
attack was apparently directed against several articles dealing with the inability of monks and nuns to inherit family property. Klenkok's efforts, however, appeared to have little effect.

The fact that the Sachsenspiegel was such a great influence upon subsequent German legal literature may be attributed to its originality. Although he claimed to write down ancient laws, Eike actually recorded the current practices of the law. Thus scholars have found that the Sachsenspiegel shows relatively little evidence of direct borrowing from other written works.94

What sources did Eike use in his writings? Probably one of his major sources was the Bible. In some instance, as in III 42, direct borrowing from the Bible may be observed, but more frequently the reference consists only of a few words taken out of their context and incorporated into his text. Eike's biblical references reflect a second-hand knowledge of biblical material rather than direct quotation. This is typical of much of medieval writing.95 Other sources include the Decretals of Gratian whose organization Eike may have taken as an example. His literary sources may have included Widukind of Corvey's Res Gestae Saxonica, Rudolf von Fulda's Translatio S. Alexandri, the


95Gagner, Sachsenspiegel, pp. 89-98 discusses at some length the relationship of Eike's work and that of the Speculum ecclesiae of Honorius of Autun, which might have served the Saxon as his model. It becomes increasingly evident that Eike used such a collection of sermons or the like in his work rather than the Bible itself as Kisch, Sachsenspiegel and Bible, believed.
Poeta Saxo, the Annolied, Nithard's History, the Summa of Bernard of Pavia, and a gloss of the Compilatio prima. He may also have used Honorius of Autun's Gemma animae and his Speculum ecclesiae. All these literary sources occur infrequently throughout the laws.

Eike also used the Landfriedensgesetze of the Hohenstaufen rulers as source material for his law-books. However, it is highly improbable that Eike had complete copies of these laws in front of him when he wrote the Sachsenspiegel. Although he referred to sixteen pieces of legislation, the ratio is small when compared to the total number of 1002 laws.


97The legislation identified by Eckhardt in his edition of the Sachsenspiegel text include the following:

1. Concordat of Worms of 1122
2. Constitutio de pace tenenda of 1152
3. Constitutio de iure feudorum of November 1158
4. Rheinfrankischer Landfrieden of February 18, 1179.
5. Constitutio contra incendiarios of December 29, 1186
6. Sententia de filiis ministerialium et liberarum of July 14, 1190
7. Sententia de ministerialibus de teloneis, de bannitione of January 13, 1209.
8. Sententia de immunitate civitatum of July 22, 1218
9. Confoederatio cum principibus ecclesiasticis of April 21, 1220
10. Constitutio in basilica B. Petri of November 22, 1220
11. Sächsischer Landfrieden of September 11, 1221
12. Constitutio contra haereticos Lombardiae of March 1224
13. Treuga Heinrici of July 1224
14. Sententia de Cambio et imaginibus denariorum of April 30, 1231
15. Sententia de iure statuum terrae of May 1, 1231
16. Constitutio in favorum principum of May 1, 1232

The Mainzer Landfrieden of August 15-29, 1235 may not have been used by Eike directly, but as it included many of the earlier provisions and laws, references may be made to it also. The text of these laws may be found in the Monumenta Germaniae historica, Leges, Sectio IV: Constitutiones et acta publica, vol. I and II.
In addition to the above named sources, an occasional reference was made to the Corpus Iuris Civilis. However, the earlier comment stating that Eike used very few sources is still true. This gives his book an authority, a surety of expression, and an originality rarely exhibited by works of a similar nature.

This last judgment may be confirmed by comparison with the other law-books in Germany during the thirteenth century which were written in the vernacular and were compilations of local customs. These other thirteenth century law-books were written at least fifty years after the Sachsenspiegel. Most of their authors were clergymen, whose pronouncements included an odd mixture of German laws, Roman and Canon laws, and local practices. In general, these various components are not well integrated and the relatively smooth flow of language and thought observed in the Sachsenspiegel is missing in these legal writings.98

Most of these later law-books were written by southern Germans. The earliest book was the so-called Deutschnspiegel which was partially based upon a translation of the Sachsenspiegel into Middle High German. The author of this law-book sought to fit the laws of the Saxon work to the local practices in Bavaria, but he only half succeeded. This author also incorporated numerous other legal sources such as the town laws of Augsburg, the Lex Alamannorum, imperial legislation, Roman and Canon law into his work. The book was written about 1274 or 1275. It had little practical importance in legal circles, but it was

98Fehr, Rechtsgeschichte, p. 142; Planitz, Rechtsgeschichte, pp. 139-41.
highly influential in the creation of the so-called Schwabenspiegel, the best-known of the southern German legal works.99

The Schwabenspiegel or the Kaiserliche Land- und Lehnrecht was written about 1275.100 Since the earlier versions of this work have been lost, only later editions are available for scholars. The book was written by a clergyman, possibly a minorite brother living in Augsburg, who was a champion of the Church. His knowledge of the Sachsenspiegel came through the Deutschenspiegel and perhaps that older Augsburg translation of the Saxon law. Numerous other sources besides the Deutschenspiegel were also consulted. These included capitularies, Landfriedensgesetze, Roman and Canon law, and the writings and sermons of the minorite brothers David of Augsburg and Berthold of Regensburg. But the author lacked the resourcefulness and genius of Eike von Repchow to form a unit out of the various ideas. Although he purported to give the constitutional and legal concepts of the entire empire, his actual work was confined to southern Germany.101

Regardless of these faults the Schwabenspiegel enjoyed considerable success in southern Germany. The following books borrowed

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99Fehr, Rechtsgeschichte, p. 141.


from the Schwabenspiegel. They include the Rechtsbuch of Ruprecht von Freising of 1328, the Oberbayrische Landrecht of Louis the Bavarian of 1335, and the Stadtrecht of Munich. The Schwabenspiegel was also translated into French and Czech.

The last of the law-books was the Frankenspiegel or the Kleine Kaiserrecht which originated about 1328 or 1338 in Hessen. It was a compilation of laws into four books: the court system, civil and criminal law, the laws of the ministeriales, and the Stadtrecht. Highly anti-papal, it was actually part of the polemical literature arising at the court of Louis the Bavarian. Many of its laws were taken directly from the Schwabenspiegel. 102

Manuscripts and Editions of the Sachsenspiegel

Any work of great historical importance such as the Sachsenspiegel challenges us not only to an investigation of what it says, but also of how it says it, and through what stages of development it went to assume its present character. This paper is not meant to be a definitive study of the philological material and an investigation of the manuscripts and their development; rather the emphasis is placed upon a usable rendition of the German text into English. Discussion of the work will deal mainly with its legal and constitutional aspects rather than with linguistic ones. However, a short discussion of the manuscripts and their history as well as some comments upon recent German editions and my methods of translation may be useful here.

102 Planitz, Rechtsgeschichte, p. 141; Fehr, Rechtsgeschichte, p. 141.
As to questions of textual criticism and language, I am highly indebted to Karl August Eckhardt, the German editor of the works. His editions form the basis for the translation. In addition to his first edition (published in the 1930's), Dr. Eckhardt had also prepared several extensive studies about the Sachsenspiegel, all of which appeared in the Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen, Philologisch-Historische Klasse and are usually referred to as Rechtsbücherstudien II and III. This discussion is based mainly upon those Rechtsbücherstudien plus some new material found in the prefaces to Eckhardt's second edition of the Sachsenspiegel. (This translation is based upon the second edition.)

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Eike von Repchow had written the Sachsenspiegel first in Latin, as he tells us in his preface to the German text. This version has not come down to us although a Latin Lehnrecht, the Auctor vetus de beneficiis, might have used it, as did the Görlitzer Rechtsbuch. The disappearance of the Latin Sachsenspiegel as such is probably due to the author himself. It was undoubtedly little more than a rough draft, and was not known in many circles. It is quite probable that Eike destroyed any copies of it after he had finished the German text.

The first German text (Order Ia) was written about 1224 to 1227, as it does use the Treuga Heinrici of July 1224. It must have been completed before 1227 since it has no knowledge of the excommunication of Frederick II of September 29, 1227, as this excommunication runs counter to Article III 57,1. Eike's second edition (Order Ib) comes probably about 1230-31, as its versions find inclusion in Eike's other work, the Sächsische Weltchronik, which was finished about 1231.

A third edition (Order Ic) was brought out by someone else, presumably after 1233. Evidence points to the fact that it was based upon the first edition. It also left out the author's name.

The fourth German edition (Order IIa) according to Eckhardt was written about 1270 in the vicinity of Magdeburg. This fourth

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106"... when into Latin it he had brought
without help and knowledge true,
now this would too hard prove
to bring into German it,
but finally he started this ..." Preface, lines 274-78.
109Eckhardt, Rechtsbücherstudien III, pp. 60-70.
edition is a thorough revision, which however includes mainly the Landrecht, where it adds between 1/6 to 1/3 of the text. Philipp Heck in an interesting discussion has come up with some significant arguments why this version should be credited to Eike himself, which he could have made between 1231 and 1235. I am inclined to agree with Heck's point of view, which seems also to have been accepted by a very recent biographer of the jurist. The main argument here consists of the point that the very thoroughness of the revision and its whole tone does not sound like a stranger trying to rework a book already thirty years old. It seems somewhat far-fetched to assume that two men within the space of thirty years would work - independently of each other - with the same thought patterns on the same book.


111 Thieme, Eike von Repchow, pp. 192-3.

112 Heck, Eike von Repchow, pp. 33-4. "Bei unserem Problem wird die Annahme der Verschiedenheit dadurch noch unwahrscheinlicher, dass die beiden Männer ihre seltenen Fähigkeiten an denselben Rechtsbuch betätigt haben und dass der zweite sich mit grosser Harntückigkeit für den ersten ausgab." Thieme, Eike von Repchow, pp. 192-3 voices the thought that lack of knowledge of certain imperial edicts does not immediately exclude the author's activities at that time as many special laws were never circulated in the far reaches of the empire. In agreement with Heck, he writes: "Angesicht der im allgemeinen recht subalternen und unselbändigen Haltung der meisten Schreiber und Bearbeiter in jener Zeit, wie sie selbst in den ein halbes Jahrhundert später aus wesentlich anderem Geist entstandenen süddeutschen Rechtsbüchern uns entgegentritt, ist es kaum zu glauben, dass sich ein zweiter Verfasser gefunden haben sollte, der den Sachsenspiegel so kongenial und ohne jede Wiederholung um nahezu ein Sechseel seines Umfanges erweitert habe. Viel eher hat Eike also selbst, solange er lebte ... an seinem Werk jene Zusätze angebracht."
An interesting side issue is presented by part of the preface, "On the Origins of the Lords." The author was probably not Eike, although it was written during his lifetime, between 1232 and 1235.113

All later editions, including the Latin translations (Class III) and the glosses of Johann von Buch and his successors (Class IV) are based upon this fourth edition (Order IIa) with occasional references to earlier versions.

According to Eckhardt, the manuscript development of the Sachsenspiegel between 1224 and 1330 would take the following picture.114

113 Eckhardt, Rechtsbücherstudien III, pp. 76-80.
Numerous manuscript copies and fragments of the Sachsenspiegel have been collected, and the major deposits fall into the following categories.\(^{115}\)

I. The first German edition (Order Ia) is found in Q - Quedlinburg, Stifts- und Gymnasial-Bibliothek, which has disappeared in 1945.\(^{116}\) N - Nürnberg, Germanisches Museum; B - Bremen, Staatsbibliothek; J (formerly Mz) - Mainz, Dombibliothek - burned in 1793, but retained in a copy in Celle, Bibliothek des Oberlandesgerichts. There also are numerous Dutch versions.

II. The second German edition (Order Ib) is found in the fragment Bg - Braunschweig, Stadtbibliothek; the Sachsenspiegel-excerpts Mg - Magdeburg, Breslauer Rechtsweisung of 1261, and Dsp - Deutschenspiegel a law-book based upon a medieval High German translation (Augsburg) which has not survived.

III. To the third German edition (Order Ic) belong manuscripts M - München, Staatsbibliothek; D - Dessau, Herzogliche Bibliothek, lost since 1945; H(Hg) - Haag, Königliche Bibliothek; K - Calcar, Stadtarchiv. Lehnrecht manuscripts only: Ca - Celle, Bibliothek des Oberlandesgerichtes; Ms - Münster, Universitätsbibliothek, destroyed; the fragments Fr and Fa - Frankfurt a/M, Stadtbibliothek. Also from Ic came the Lsp - Livländischer Spiegel of 1322-37 and Zw - Zwickauer Rechtsbuch of 1348-58.

\(^{115}\) The discussion of some of the manuscripts and their place of deposit is taken from Eike von Repchow, Sachsenspiegel: Landrecht (2d ed.), pp. 26-8.

\(^{116}\) Eckhardt had made a copy of the Quedlinburg manuscript in 1933 so that he could use it in the second edition. See Rechtsbücher-studien III, pp. 6-21.
IV. There are also several very beautiful illustrated manuscripts of the Sachsenspiegel like the Heidelberger Handschrift of 1290-95 which was probably based upon a Göttingen original of about 1279-88, and also the more familiar Dresdener Bilderhandschrift.\footnote{Karl von Amira, Sachsenspiegel: Die Dresdener Bilderhandschrift (2vols; Leipzig: K.W. Hiersemann, 1902-26.)}

Historical scholars have been interested in the Sachsenspiegel for a considerable time. This is not at all surprising when one remembers that these laws were a part of the common legal systems until quite recently. In 1732 a historian named Carl Wilhelm Gaertner brought out an edition of the Landrecht.\footnote{Eike von Repgow, Sachsen-Spiegel oder Das Sächsische Landrecht (Leipzig, 1732).} The dean of the Sachsenspiegel editors, however, is Carl Gustav Homeyer.\footnote{Born in Wolgast on August 18, 1795 and died in Berlin on October 20, 1874. See Eike von Repchow, Sachsenspiegel: Landrecht (2d ed.), pp. 9-18 for Heinrich Brunner's memorial to Homeyer, taken from Nachruf in den Preussischen Jahrbüchern, XXXVI (1875), 18ff, and reprinted in Abhandlungen zur Rechtsgeschichte, II (1931), 433ff.} His two monumental works on the Sachsenspiegel\footnote{Carl Gustav Homeyer, Des Sachsenspiegels erster Teil oder das Sächsische Landrecht (3d ed.; Berlin, 1861). Carl August Homeyer, Des Sachsenspiegels zweiter Teil nebst verwandten Rechtsbüchern, Vol. I: Das Sächsische Lehnrecht und der Richtsteig Lehnrechts (Berlin, 1843. Vol. II: Der Auctor vetus de beneficiis, Das Görlitzer Rechtsbuch, und Das System des Lehnrechtes (Berlin: F. Dümmler, 1844.)} have since become the guide for subsequent scholars.

Although in a medieval form of German, the language of the Sachsenspiegel is concise and uncomplicated and quite readable. Thus it did not seem necessary to render it into modern German until this century. In 1936 and 1939 Hans Christoph Hirsch brought out such a translation.
which tried to retain the tone and rhythm of the original medieval language. The two volumes are illustrated from the Dresdener Bilderhandschrift. My translation used Hirsch’s work as a check to the proper understanding of the Middle Low German.

As has already been mentioned, my English translation was made from Eckhardt’s second edition, which more specifically contains his compilation of Order Ia (Eike’s original text) with Order Ib, Order Ic, Order IIa, and some lesser additions. I have taken the liberty of translating the different additions together with the original as a continuous whole in order to create a smoother English rendition. The avowed purpose of this translator is to give the English reader of the Sachsenspiegel a usable translation, one that can be used by other constitutional historians.

Whenever possible I have endeavored to use the English term which best describes a technical German term. There are, however, several legal expressions which proved untranslatable so far. They will appear in the German throughout the text of the law and explanations are found in either the introductions or the footnotes. The same rule has been observed in reference to names, places, and titles (except for king, emperor, and pope).


122 For example the Sachsenspiegel subtitles Landrecht and Lehnrecht fall into this category. Although Lehnrecht may easily be translated as “feudal law,” the term Landrecht is far more difficult to change. Words like territorial, customary, or common law are all usable but not quite correct. Therefore the two subtitles will be used in their original form – or better the modern German version – in the paper.
The tools for translation consisted of Eckhardt's excellent glossaries based on those of Alfred Hübner. These are found in the Sachsenspiegel: Lehnrecht second edition. In addition, Grimm's Deutsches Wörterbuch, Richard Schröder, Eberhard von Künssberg, et al., Deutsches Rechtswörterbuch, and Trübners Deutsches Wörterbuch were consulted for the German words and their proper meaning. The New Cassell's German Dictionary was used to aid in the translation from German to English.

A final word must be said about the reference notation of the Sachsenspiegel. The Landrecht is divided into three books, each into separate articles subdivided into paragraphs. Lehnrecht has only one book, divided into articles and subdivided into paragraphs. Thus a Landrecht notation would look like this: Ssp. (Sachsenspiegel) Ldr. (Landrecht) I (volume) 60 (article), 2 (paragraph) or Ssp Ldr I 60,2. A Lehnrecht notation would look like this: Ssp. (Sachsenspiegel) Lnr (Lehnrecht) 72 (article), 2 (paragraph) or Ssp Lnr 72,2. Frequently the Sachsenspiegel, Landrecht, and Lehnrecht abbreviations are dropped, since the two volumes can be differentiated by the book notation. Thus the Landrecht notation is written as I 60,2 and the Lehnrecht notation as 72,2.

In addition to these divisions the Sachsenspiegel is also divided into 320 articles of which the Landrecht has 1 to 180 and the Lehnrecht 181 to 320. These divisions are completely independent of the above explained notations, but they represent the older division as found in the Quedlinburg manuscript and related sources. The paragraph notation was used in Homeyer's classical edition and is based upon later manuscripts. It was also used by the glossators.
The Nature of Society in Thirteenth-Century Saxony

The Sachsenspiegel is a detailed account of how society and law functioned in thirteenth-century Saxony. Its author, Eike von Repchow, appraised his surroundings in a logical and impersonal manner. His ability to generalize from the particular instances he himself saw or participated in and his philosophic outlook regarding the nature of law and justice provides his work with uniformity and clarity.\textsuperscript{123}

Philosophy and history

Although Eike von Repchow did not include many philosophic statements in his book, he did allude to a few philosophical principles which laid the foundation for the work. Most of these ideas were not original with Eike, but he used them well to give a meaningful basis to the Sachsenspiegel.

The church-state relationship was a very controversial problem during Eike's life-time, and one he considered to be of paramount importance. Thus he discussed this problem in the first paragraph the Landrecht. The Gelasian theory of the two swords formed the basis for Eike's discourse in which he proved himself to be a strong supporter of the empire by denying any superior power to the papacy.\textsuperscript{124} He concurred with the tradition that the emperor must hold the pope's stirrups, but he explained this was done only to prevent the saddle from slipping, and it was not a sign of inferiority (I 1). In other words pope and emperor should help each other (III 63,1), neither could claim superiority.

\textsuperscript{123}This analysis of thirteenth-century northern Germany will deal only with the laws of the Landrecht.

\textsuperscript{124}See above page 25, note 73.
After discussing the empire and the papacy, Eike turned to eschatological matters. He spoke of the six ages of the world and the coming of the seventh (I 3,1). He also referred to the theory of the four empires (III 44,1), stressing Rome's importance not only as the final secular empire, but also as the seat of St. Peter's successors. He might have read this account in the Annalied.

But the law deals not only with empire, but also and primarily with men. Eike sought to establish the relationship of man and God. Thus he declared that God had created all men in his own image (III 42,1) and had granted them power over the animals. Yet man also lived in a material world and thus was subject to both church and state influences. Eike demonstrated this through the biblical story of the coin (III 43,5). He viewed excommunication, although perhaps harmful to the soul, as not necessarily affecting a man's life, or his secular legal and social standing (III 63,2).

According to Eike, man's most precious gift was his freedom. During the Middle Ages men belonged to specific social ranks, some of which enjoyed greater freedoms. In his law Eike allowed for these inequities of freedom. However, he believed that servitude was morally

125 Scholars have thought for some time that Eike's reference to Origin the Church Father was an error, and that instead he meant to refer to the Origines of Isidore of Seville. This problem occurs in connection with the scheme of the seven ages of man. Isidore's ideas on this subject go back to Augustine and discuss six ages of undetermined length, while Eike used a time limitation of 1000 years for each of the first six ages. This concept came from Jewish literature and Origin had also used it. Thus Eike probably meant to write Origin and not the Origines of Isidore. He took his information from Honorius of Autun's Speculum ecclesiae, the Benedictheuer Speculum, and possibly from an older, lost Speculum ecclesae. See Gagner, Sachsenspiegel, pp. 98-102.
wrong, an illegal force used upon the weak (III 42,6). He disdained those who attempted to legalize servitude on the basis of the Scriptures (III 42,3), using the identical passages to establish the opposite opinion (III 42,4).

Peace was a requisite for man's freedom under law, and Eike lived in the century when the king and the major princes were trying to establish such peace in their territories. They issued laws of the peace and punished any violation rigorously. In one of his most lyrical passages Eike explained why Thursday, Friday, Saturday, and Sunday were called holy days and "days of obligation" and were set aside as days of peace (II 66,2).

As an historian Eike appeared only once in the Sachsenspiegel. This historical reference dealt with the origins of the aristocracy and the peasants in Saxony (III 44,2; 3). His account of the legend of the Saxons' valiant deeds in the service of Alexander the Great revealed his own tribal pride. It is true that the Saxons migrated to Thuringia during the Völkerwanderung, probably from Holstein. Alexander the Great was a legendary addition which, however, was accepted as truth by such writers as Widukind of Corvey, Rudolf of Fulda, and the writer of the Annalied. These chroniclers flourished in the tenth and eleventh centuries.126

Eike's closing passages of volume III of the Landrecht included some lines of poetry which echoed the thoughts of his preface. This also provided him the opportunity to sign his work and emphasize the dedication to his friend Graf Hoyer von Falkenstein (III 82,1b).

126See above pages 33-4, also note 96.
Constitutional and public law

Eike's analysis of the legal and social aspects of his society was quite complete. Since his own organization, however, was often interspersed with additions, I have developed my own pattern. Rather than follow the laws numerically, for the purposes of this discussion a topical arrangement has been made.

The constitutional arrangements of a society provide the basic framework for the law. Thus Eike first concerned himself with a detailed discussion of the various public functions of the law. Preservation of the central power was his chief aim. His overriding concern with strengthening royal power resulted in his laws being descriptive theory rather than actual practice.

The Sachsenspiegel's best known pronouncements about the king come in the discussion of the royal election. According to Eike the king had to chosen according to the law. The author described the ritual to be followed. The princes chose the king. After he had been consecrated by the appointed bishops, the king went to the throne of Charlemagne at Aachen (III 52,1). If he were crowned by the pope, the king would also be emperor (III 52,1). Somewhat later Eike described the actual election procedure (III 57,2). It is possible that all the princes and lords selected one man. By no means was this a matter of majority rule, but less important noblemen followed the choices of certain king-makers. Should the son of the previous king have been designated as monarch, he often but not always succeeded his father.

The actual election or rather final designation of the man who had become the candidate was the business of the electoral princes.
Eike's choices as to the make-up of the college of electors did not correlate with actual historical practices. But during the period of 1125 to the Interregnum, procedures and practices were often dictated by politics rather than follow a precise ritual. Eike merely took the various ideas and formed them into a unit. By 1273 his description had become the pattern of royal elections and was later incorporated into the "Golden Bull" of 1356.

Eike differentiated between Wahl and Kur. Wahl was the selection of a suitable candidate; Kur was the final designation as king of the selected candidate. From the many princes of Germany Eike chose six — three ecclesiastical and three lay princes — to designate the new king. (This is the actual Kur). No one knows why Eike chose these particular persons. He selected the Archbishops of Mainz, of Cologne, and of Trier, because they were the most important ecclesiastical princes. He selected those lay princes who also held the highest honorary posts in the empire: the Count Palatine of the Rhine as Lord High Steward, the Duke of Saxony as the Lord Marshall, and the Markgraf of Brandenburg as the Lord Chamberlain. In Eike's ritual the King of Bohemia, the imperial cup-bearer, was denied a vote on grounds that he was not a German. This was the one exception which was later incorporated into the ritual (III 57,2).

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127 See Bayley, *Formation of the German College of Electors*, Chapters 1 and 2.


In the final ritual of elections the concepts of the Wahl and the Kur fell together. Neither was it necessary in later centuries that all seven electors participate in the election.\textsuperscript{130} Eike's description was partly based upon actual practices, but it was also a theoretical discussion of what such an election should be ideally.

Who could lawfully become king? According to Eike any man of legitimate birth and proper legal status, who was neither a cripple, a leper, nor an excommunicate was eligible (III 54,3). Once the king had been elected, he took a coronation oath, the last oath he would ever be required to take (III 54,2). Additionally, the Frankish law applied to the king regardless of his origin (III 54,4).

Eike did not specifically distinguish between the royal and the imperial title. Although the king must be crowned by the pope in order to become emperor (III 52,1), the powers of the imperial office seemed to be his prior to the ritual (III 57,2). Only once, however, did Eike equate the two titles using them interchangeably (III 52,2).

Eike conceived the king's major duty to be the preservation of law in the realm. Royal jurisdiction was superior to any other court (III 26,1; III 31,1). Thus men could get redress of grievances at this highest court (I 34,3; II 25,2; III 33,2). The royal court could also judge cases of property disputes, and was often responsible for freeing a man of outlawry (III 33,3-5; III 34,1-3). The royal court under the king was the place where the great princes were tried or lodged complaints (III 55,1; III 58,1). The king also received fines which the princes had to pay (III 64,1-4).

\textsuperscript{130}\textit{Ibid.}, pp. 99-100.
Deposing the emperor was difficult (III 52,3). The pope could excommunicate the emperor only for certain crimes (III 57,1). Important privileges such as the receiving of tolls and the freeing of prisoners were granted the king (III 60,2-3).

The king's position as the fountain of justice (I 58,2) made him the origin of all judicial power (III 52,2-3). The entire court system, as it judged under the royal "ban", was thus dependent upon a royal commission (III 63,5-6; I 59,1). But to assume that the king personally gave this judicial power to every count does not agree with the historical evidence. By the thirteenth century judgment under a royal commission had become a hereditary possession of the great territorial princes. They in turn gave the actual position to a count. Thus the counts, who usually delegated their work to an official called the Schultheiss, were not actually royal officers. They had been enfeoffed with their jurisdictional powers by a prince who theoretically held them from the king, but who was actually independent of the monarchy's wishes.  

The court system as outlined by Eike consisted of three ecclesiastical and three lay courts (I 2,1) which were attended by the various ranks of society. However, Eike barely mentioned the ecclesiastical courts. He discussed the secular courts in great detail. These courts consisted of the count's court, the court of the Schultheiss, and the court of the Graf (I 2,2-4).

The court of the count met every eighteen weeks (III 61,1) and was attended by the schöffnenbar free people. The court officials included the Schultheiss, the beadle, and the Schöffen as well as the count as judge (III 61,1). The Schultheiss was a free man who lived within the jurisdiction of the court. The beadle was chosen from among a rank of society called the Pfleghaften. He possessed at least half a hide of property (III 61,3), and he was invested with his official powers by the judge (III 56,1). His duties included the attachment of property for fines and debts (III 56,2), the release of prisoners (III 56,3), and the execution of schöffnenbar free people (III 56,2).

The juror or Schöffe of the count's court held a permanent office which was inherited through ownership of a certain estate (III 26,3). Usually the Schöffen of the count were of quasi-noble rank, but should the families die out, then new Schöffen could be created by the emperor from the wealthier ministeriales (III 81,1). The count was also responsible for the supervision of castle-building which, if he was the prince of the country as well, was a powerful privilege (III 66,2-4).

The Schultheiss held the court for the Pfleghaften (I 2,3), while the Gograf held it for the Landsassen. This court of the Gograf provides one of the most interesting problems of the entire Sachsen­spiegel. Eike was the first to describe this institution fully, yet it is

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132See below pages 73-74.
133See below pages 73-74.
difficult to find evidence of this court in operation in the manner it has been described. The Gograf was mainly responsible for "police justice," requiring immediate attention (I 55,2; I 57). He was normally elected by the people (I 56; I 58,1), but who these people were is difficult to determine. In the beginning the Gograf was called upon for cases involving the hue and cry and criminal offenses. Later this court became the major court of criminal justice. This development which occurred in the thirteenth century made the court of the Gograf a powerful lower court. Eventually this criminal court superceded the court of the count whose functions were limited to matters involving certain people.135

The official of the court of the Gograf was the Bauermeister, a sort of headman of the village community. He had the power to accuse people who did not appear at court, and could call crimes to the attention of the court when there was no plaintiff (I 2,4). He also executed corporal punishments for minor offenses or took the fines paid in lieu of such punishment (III 64,11).

All judges were enjoined to do their job well and lawfully (III 87,3; III 53,2; III 91,2-3; II 2; III 30,2). They could hold their court at any place except in a church and anytime except on holy days (I 62,10).

The king was also the military leader of his society. The free classes of thirteenth-century Germany were ranked into the Heerschild.

135 Karl Kroeschell, "Zur Entstehung der sächsischen Gogerichte," Festschrift Hugelmann, I (1959), 295-313 provides an interesting article on the problems surrounding the Gograf and the creation of a criminal court in German medieval law.
a feudal-military term, which had far-reaching legal and social meanings. The king occupied the pinnacle of this order, followed by the ecclesiastical lords (III 59,1-2) and the lay lords or Reichsfürsten who received the banner-fiefs from the king (III 58,2; III 60,1). The barons took the fourth place, the schöffenbar free people and the barons' vassals, the fifth, and their vassals the sixth rank. Every one else fell into the seventh category (I 3,5). Position in the Heerschild was hereditary (II 72) but could be lowered by the taking of an inferior fief (III 65,2). The importance of the Heerschild lay in the military ordering of society. However, the ranks of the Heerschild were also used in identifying the proper amounts of wergild and compensation payments. The Landrecht includes a long list of wergild and compensation specifications (III 45,1-11). Even the animals were included in this scale (III 51,1-2).

One of the most important aspects of medieval or better feudal society was the relationship between individuals, the concept of homage and fealty. Eike himself stressed duty and legal obligation and the keeping of faith when it was sworn to. Thus a rebellion among the princes (II 1) and treason (I 40) were matters of extreme urgency. However, there were situations when a man was forced to abjure his oath of fealty and act against his lord, his vassal, or even his kin. These cases included the judgment of the king over his vassals regarding the death penalty (III 78,1), the defiance of a vassal against his lord.

136 The term Reichsfürsten describes the territorial princes who rose to power after the fall of the Hohenstaufens. The classical work on their origin is Julius Ficker, Vom Reichsfürstenstande (3 vols.; Innsbruck: Wagner, 1861).
because of crimes committed by the lord, even the king (III 78,2). It was also permitted to pursue a lord or vassal in a criminal matter (III 78,3), or take a castle (III 78,4), or defend a castle (III 78,5). Neither could a man be blamed for denying his fealty if he acted out of self-defense in an ambush, or protected his fellow travelers, or his comrades in war (III 78,6-9). These examples present the author's sense of justice which allowed him to write into the law the defiance of lords and kings to the preservation of individual dignity.

Eike concluded this part on public law by mentioning provisions about markets (II 26,4; III 66,1), treasures (I 35,1), the mint and tolls. In Germany, in contrast with other countries, the minting of money was not a royal monopoly. In Eike's immediate area the Archbishop of Magdeburg was probably the major lord to coin money. Eike admonished his minters to coin legal money, not forge coins. Neither should forged or invalid coins remain in circulation (II,26,5-6), rather they should be returned to the mint (II 26,1). Bridge and water tolls as well as safe-conduct were explained (II 27,1-3). The king's highway had to be a certain size, and proper procedures of right-of-way were to be observed (II 59,3). Although Eike also commented about game preserves where wild animals were protected by the king, he never advocated the death penalty for killing wild animals in these preserves (II 61,1-5).137

137Hans Fehr, "Die Staatsauffassung Eike von Repgaus," ZRG, XXXVII (1916), 131-260 approaches the problem of Eike's ideas on constitutional theory from a far more theoretical viewpoint. His comments are particularly appropriate regarding the meaning of the state, private and public law, and the development of constitutional theory in Eike's works as such.
The procedure at law

Proper legal procedure was one of the most important aspects of law in Eike's time. The correct form for charges, answers, verdicts, and the like could mean the difference between winning and losing a case. Thus the judges and Schöffnen used the Sachsenspiegel as a guide to which they could turn in an emergency.

All the suitors of the court were admonished to observe the correct legal days (II 11,4) and the proper procedure to be followed. All men of good legal standing must appear and participate in the business of the court (III 60,3; III 61,4). The judge was advised to perform his lawful duty (I 62,7). He and his Schöffnen wore a special attire to enhance the dignity of the court (III 69,1) and at all times were cautioned to remember their solemn duty (III 68,7; III 68,2).

A court case began with a formal charge brought about by the plaintiff (Ic62,l;5). Basic requirements for a proper charge included: one charge at a time (III 12,1-2), the right time for accusations (II 19,5; II 8; II 6; III 16,1), and a detailed account of its reasons (III 41,4). In most cases an accusation required a formal answer by the defendant (II 3,3; III 38,1). However, upon occasion a defendant was exempted (III 25,2-3).

A man's property, his legal status, his honor, and even his life could be placed in jeopardy by answering a formal charge. Therefore, in order to insure proper procedure as well as to protect the defendant, the court permitted advocates and guardians to appear.

138 The use of the hue and cry could initiate a case, particularly in criminal offenses. See below page
Any lawful and respectable man could be called to be an advocate (I 60,2; I 61,2; III 63,2). This advocate spoke for the defendant (I 60,1) but the defendant had to assent to the advocate's words with a formal gesture before they were accepted as his own statements (I 61,3; III 14,1). The defendant and the advocate could take counsel outside of the court; the plaintiff could do the same with his advocate (I 62,9; III 14,1). However, the defendant could not claim an advocate if he had already answered the charge himself (III 30,1). In certain cases a man could not appear before the court on his own behalf. Then he made use of a guardian (I 42,1; I 43; I 47,2). On the other hand, some individuals were not allowed to have guardians to plead for them. Outlaws had no such rights (I 48,1; III 16,2). Lame and wounded men were not allowed guardians except when they were asked to fight an ordeal by battle (I 48,2-3; I 49).

A vital aspect of the court's procedure was the calling of witnesses. In the Middle Ages these witnesses usually testified in cases involving a previous court action or the proper payment of debts (I 6,2). A man could also demand that the court testify in his behalf (II 22,1-2; III 43,1; III 88,1). Testimony was verified by others. Thus one man testified regarding an action and then several witnesses collaborated his statement (III 88,5). Six witnesses was the usual number. In order to obtain sufficient witnesses, three times the required number of witnesses was called (II 22,4). Some testimony had to be given immediately; other proofs could be given after waiting six weeks (I 62,6). Witnesses were drawn from the suitors of the court, but in a royal court ministeriales could not testify against the schöffenbar free people, an instance of the idea of trial by peers (III 19). Witnesses could not volunteer to appear; they must be summoned by the court (III 37,2).
Another important facet of legal procedure was the oath. The oath was a ritual performance and any error was considered as a sign that the oath was forsworn. A man used the oath (which was usually sworn upon holy relics) to prove his innocence (I 18,2; I 15,2; I 62,4).

Oaths were also employed to establish a man's guilt. Then they were sworn by the plaintiff or the court (I 66,1; III 28,1-2). If a man did not perform his promised oath, he was convicted of the charge against him (II 11,1). If he promised on oath to pay a debt, however, and the plaintiff refused to accept the oath, then the defendant was not held responsible for the debt (II 11,2). The oath was also used to establish peace among feuding parties. Such oaths required six oath helpers and could be performed on "days of obligation" (I 8,3; II 10,3).

Regular oaths had to be sworn on "unbound days" (Monday, Tuesday, Wednesday) (II 10,6).

In an age when policemen did not exist and powerful defendants could resist court action by show of force, the court needed to protect its jurisdiction. One such protective measure was the posting of a bond or surety. This was a process whereby a man became responsible for another's obedience to the court's demands. Frequently such bonds were set in order to insure the presence of the defendant in court. If the defendant failed to appear, then the bondsman was obliged to pay the wergild of the plaintiff (I 65,3; III 9,1;3-4; III 14,2; III 17,2; II 4,3; III 13; II 9,2). Surety could also be posted for the payment of debts (I 7), or for the release of a prisoner (II 9,3). Occasionally monetary surety was not necessary. In such cases the court would accept a property surety or a letter from a prince (II 5,1; II 42,3).
Severe punishment for contumacy was another means the court employed to insure obedience to its summonses. If a man failed to appear after three summonses, then he was convicted of the crime without a trial (I 67,1; II 9,1; II 49). The punishment for contumacy was proscription. Failure to redeem this proscription resulted in total outlawry (I 67,2). However, a man could plead a "real emergency" which excused him from appearance at court. These emergencies included imprisonment, sickness, a pilgrimage or crusade, and royal service (II 7).

Although legal proof could be presented through witnesses and oaths, in more important matters verdicts were based upon the ordeal by battle. This involved an elaborate ritual complete with special weapons, clothing, and formal challenges (I 63,1-5). An ordeal could even be fought against a dead man (I 64). If a man was not prepared to fight when he was challenged, then he was allowed a specified time to prepare himself (II 3,2).

Once a court was assembled, charges and answers made, and ordeals arranged, the judge and the Schöffen announced the various verdicts. A verdict was not merely a judgment of the guilt or innocence of the defendant, but it included any pronouncement of the court. The Schöffen who rendered verdicts were men knowledgeable in the law. They guided the judge and the suitors of the court (II 2,1-3; 7;9;10;13-15; II 18, 1-2; I 62,8; III 36,1). The Schöffen were exhorted to render a verdict only after careful and judicious deliberation (III 69,2).
Any verdict could be contested (III 69,3). This was a formal action comprising its own ritual (III 12,11). Once a case was taken to a higher court, the judge of the lower court was responsible for securing information regarding its outcome (II 12,4). If the contesting party lost the appeal, then he paid a fine to the lower court judge and compensation to the offended Schöffe (II 12,8). Appeals from a Markgraf's court and cases involving members from divergent tribal groups could be decided only in the royal court (III 12,8;12).

Holding court was a highly lucrative privilege. The judge received a fine for every illegal action in court (I 62,3; III 87,1-2). Usually this fine consisted of money, but sometimes the confiscation of property became necessary (I 1,2; I 62,2; II 41,1). A fine could also be paid in lieu of other punishments (I 65,2). These court fines as well as the accompanying compensation and wergild payments must be paid within certain time limits, or else the defendant incurred further damage (II 5,2; II 6,1;3; I 65,4).

Court action frequently involved men of different regions and ethnic stock. The territory which Eike described in the Sachsenspiegel was a frontier region, the eastern boundary of the empire. It is thus not at all surprising that the author dealt with problems arising from different cultures living side by side, frequently in conflict with one another. If a man had established in court that he did not speak German, then he was allowed to plead his case in his native tongue. If it could be proven, however, that he had ever acted in a court as a German, then he was not permitted to use his native tongue. To protect the different
groups from tribal prejudice, they were not allowed to testify against each other (I 19,2; III 70,1-2; III 71,1-2).

Civil law

The family provides the foundation stones of any society. Family traditions and possessions are passed on through the establishment of inheritance laws. Thus a major portion of the Sachsenspiegel is devoted to a discussion of the family and its rights of inheritance.

Eike compared family relationship to the human body, a favorite analogy used in the Middle Ages. Father and mother were the head, their children the neck, and so on to the fingertips. A family consisted of seven degrees (I 3,3; I 19,1), and an inheritance would be passed through all these degrees before it was lost to the family. Therefore it was important to establish rules about inheritance when the normal heir—usually a son—was not present (I 5,1; I 17,1-2; I 20,1). Another problem was that of multiple heirs. If a man had several children they were all eligible to inherit his property (I 6,1). They could retain the property in common or they could divide it (I 12). There was no rule of primogeniture (III 29,2). The only provision that could be regarded as primogeniture concerned the enfeoffment of an estate held by several brothers. The lord was only required to enfeoff one of the heirs with the estate (I 14,1). The difficulty of dividing property among several heirs was further increased by previous gifts which the parents had made to one of the children. If these privileged children wanted to share in the inheritance, they had to return all previous gifts so that the estate could be divided equally (I 10; I 13,1-2; I 14,2; I 19,1). To a limited degree the heir was also responsible
for debts against the estate. In the case of several heirs this liability was shared (I 6,2; III 31,2).

Inheritance rules not only included the disposal of real estate, but also the division of personal property. This was particularly necessary in regard to the Heeresausruszung, the armaments of a dead man which normally fell to his sons (I 22,4). The eldest took the sword while the other weapons were divided among them (I 22,5). If the deceased's sons were minors, the Heeresausruszung was given to their eldest uncle who usually also served as their guardian. When they came of age he had to surrender the arms (I 23,1). However, this Heeresausruszung could only be inherited by those who possessed the Heerschild (I 27,2). If no heirs could be found, then the property was entrusted to the court (III 80,1). The judge could not touch the inheritance for a period of a year and a day. This period permitted ample time for possible heirs to appear and claim their property. If the heir was abroad on a crusade or the like then the judge had to wait for his return before he disposed of the estate (I 28).

Legitimate birth was a major requisite for inheriting an estate. Thus the family relationship and the legal marriage between a man and woman was greatly stressed (II 23; III 15,4). If a divorce was granted, the children were still protected from illegitimacy and could inherit from their parents (III 27). If a man was executed or committed suicide, his family still retained his property (II 31,1). Occasionally an outsider would claim that property had been promised to him by a member of the family. If this promise had been made in court, then it was held valid (II 30), but validity was most easily established through family
inheritance rather than through any other agreement (II 43,2). All cases of inheritance rights were tried according to Saxon law if the estate was located in Saxony.

Protection of property rights is a primary function of civil law. These rights were divided into three categories - the ownership of property, the alienation of property, and the collection of debts. In the thirteenth century property consisted principally of land. Thus much of the civil law deals with the holding and alienation of land.

Concepts of ownership of property during the Middle Ages find little correlation with modern concepts. Most medieval men did not own property outright, but instead they held it in "legal possession." Anything from paying rent to military service was accepted payment for the possession of the property. Allodial rights - that is the full ownership of land - were possible, but often difficult to prove (II 43,3; II 57). By the thirteenth century only the nobility held allodial property; most frequently it was possessed by princely families and the king. There is, however, no provision in the entire Sachsenspiegel which claims that land belonged to the crown or the king alone, an idea present to some degree in English law of the same period.

However, full ownership was rarely the issue. Most disputes over property concerned actual possession of an estate. Such proceedings were handled with special care and the defendant was given sufficient opportunity to state his case (II 3,1; II 70). If two men, who had equally good claims, demanded a piece of property, an elaborate procedure of surety, appeals, and witnesses was followed to establish the rightful claim (II 42,1-2;4; III 15,1;3). Rightful ownership was
frequently established by the testimony of individuals living upon properties adjoining the disputed estate (III 21,1). In rare cases the ordeal by water was used to find the right owner (III 21,2). If the dispute could not be settled amicably, then the court was empowered to divide the estate among the disputing claimants (III 21,2).

Buildings belonged to the estate, but were also considered part of the movable chattel. Like the land they were inherited (II 21, 1-2;4). Buildings could be improved or damaged without interference from the lord (III 21,3). A lord could grant land without the building, but a special contract was required to do this (III 21,5). Disputes over chattel became as important as those involving land. They were handled through appeals to former owners (II 36,6-8). Chattel was often used to pay for debts or used in gambling (II 60,1). If the owner died, then a claim for the chattel could be lodged against the heir (II 60,2).

The surest sign of legal possession of an estate was the right to alienate it freely. This could be done in many ways (II 24,2). Since a piece of property did not actually belong to the possessor, simple sales were rarely performed. Instead a man usually returned the land to the man who had given it to him with the proviso that another specified man would get the property. The first possessor was often paid for his willingness to surrender the estate (I 9,1-6). Allodial property could be sold, but the former owner had to retain enough of his lands to enable him to pay any court fees (I 34,1-2). If a man wished to deny that he had made a sale, the current owner could protect his claim through witnesses. The man who sold the property
also had to put up a bond to guard against the risk of selling and buying stolen property (III 4,1-2; III 83,1-3). A special provision was made for the tenant who lost a crop from a rented property, if he lost it before the rental contract expired (III 77,1-2). Property could also be lost through legal action, if the possessor had obtained it illegally, or another man's claim proved superior. But this could only be done after an elaborate trial (III 82,2).

Personal property could, of course, be borrowed. The actual owner was protected by the courts in case the borrower did not return the objects (III 5,2;4; II 22,1). If the object was damaged in any way, then the borrower had to pay for it or prove that he was innocent of the damage (III 5,3;5). The actual owner could also take back his property (III 22,3) but he could not charge the borrower with theft (III 22,2).

The collection of debts is another important function of the civil law. A man could be summoned into court without previous warning, and payment could be demanded on the spot (I 6,3;5; I 70,2). If the creditor had died then his heir became the new creditor (I 6,4; I 24,4). On the other hand an honest debtor was also protected against a malicious or negligent creditor (II 11,3). The death of either creditor or debtor did not erase the debt. The heirs of the bondsman of the debtor became responsible for payment, and the heirs of the creditor took over his obligations (III 10,2; III 11; III 31,1). Various procedures were developed to insure the property payment of debts. The creditor had to be available for the debtor on the due-day (III 40,1), while the currency used in repayment was set by the
terms of the original contract (III 40,2-4). Sometimes a debt was owed by several people. Then it became their joint responsibility to pay the debt properly (III 85,1-4). If a man was not able to pay his creditor, then he could be put into servitude to that creditor until the debt was paid off (III 39,1-3).

Criminal law

The enforcement of law during the Middle Ages was often confined to small local units. No permanent policemen aided the court in the performance of its duties. The central government was far away and frequently without the necessary military power to enforce its legislation. Indeed the very people the monarchy had to rely upon to help in a military and punitive expedition were the same people against whom these expeditions were directed. In the twelfth and thirteenth centuries the monarchy attempted to overcome the difficulties of "humbling the over-mighty subject" with the Landfrieden, the establishment of the king's peace on a national level. Eike's comment that an accused man should not bring more than thirty armed men with him to the court (II 67) emphasizes the need for better enforcement of the criminal law.

The peace laws protected those members of society who were too weak to protect themselves. They also granted peace to various areas and on certain days of the week (II 66,1). Any violators of this peace were punished above and beyond the normal punishment for the

139 See Joachim Sarnhuber, Die Landfriedensbewegung in Deutschland bis zum Mainzer Reichslandfrieden von 1235 (Bonn: Ludwig Röhrscheid Verlag, 1952).
crime they had committed. Additionally all sanctuary was denied them (II 10,4; III 36,2; II 71,1). A peace agreement prohibited men from carrying weapons (II 71,2) except in tournaments and as members of a posse chasing a criminal (II 71,3-5). A man had to be careful, however, of accusing another man of having broken the peace. If he lost the suit, the plaintiff was liable to the same punishment that was to be given the original defendant (I 50,1; I 69; II 69).

If a man had personally sworn to keep the peace and then broke this agreement, he could be punished with death (III 9,2). Eventually any crime came to be regarded as a violation of the king's peace. The laws of the Sachsenspiegel represent the intermediary stage between family feuds and modern criminal law.

Eike provided an extensive list of crimes and their respective punishments. A thief was hanged, but a petty larcenist was punished with only a fine (II 13,1-3). Murderers, violators of the peace of the plow and the church, traitors, arsonists, and unfaithful ambassadors were put to death by being broken upon the wheel (II 13,4). Heretics were burned at the stake (II 13,7). Robbers, rapists, and adulterers were beheaded (II 13,5). Those who aided thieves and robbers received the same punishment as the actual criminals (II 13,6). Even a judge who failed to mete out just punishment was subject to this punishment himself (II 13,8). In the case of lesser crimes such as wounding a man, the defendant was compelled to compensate the injured man (II 36, 1-9). The minter could lose his neck for forgery (II 26,2-3), while men in possession of forged coins were subject to fines. It was illegal for one man to hold another for ransom. Compensation must be paid by
the captor for the illegal imprisonment (III 47,1; III 31,3; II 34,2). Although stealing grain was a major offense punishable by death (II 39,1), a traveler could take grain from the field for his weary horse without fear of death (II 39,2).

Murder was always regarded as a serious crime, but Eike listed several forms of murder which were specially heinous. Patricide for the purpose of inheriting the victim’s property or killing one’s lord or vassal were so categorized (III 64,1-3). On the other hand if a man killed in self-defense (II 14,1), he was required to pay a wergild to the dead man’s family, but he could not be executed for murder (II 14,2). By the same token a man who found a dead man in the fields and buried him was protected from a charge of murder (III 90,1-2). If he took a wounded man into his house and the man died, he was also protected (III 90,3). Nor could a man be held responsible for crimes committed in his house if he had no prior knowledge of the crime (III 91,1). A father could vouch for his son (II 17,2) or the lord for his vassal (II 19,2) by taking an oath that the accused men were innocent. This oath applied only once to each son or vassal. The lord of a castle could be held responsible for failing to surrender a known criminal (II 72,1-5) or for keeping stolen property. Conversely, however, a son could not be held accountable for crimes committed by his dead father (II 17,1). Neither could a man be held accountable for any promises taken under duress (III 41,1-3).

Criminal cases were initiated by raising "the hue and cry." This was particularly applicable if the suspect was caught red-handed or was seen fleeing the scene of the crime (II 35; II 64,2-5). Through
the hue and cry the men of the neighborhood were called together to constitute a policing force which may be compared to a sheriff's posse. These men were armed, and they chased the fleeing criminal. If the criminal was forcibly detained at the spot of the crime by the victim, and that man shouted for help, then this was also considered as raising the hue and cry. All adult males of good standing were obligated to help chase a criminal, if this became necessary. However, a man could plead a "real emergency" (e.g., sickness, a pilgrimage, etc.) which prevented his participation.

Although criminal law dealt with major crimes, many of its provisions actually involved petty matters - the most frequent example was concern with lost or stolen property. If a man bought an article in good faith in the market (II 36,1-5), then he was protected against accusation of theft. Should he find an article, he must publishize its discovery (II 20). Failure to do this could result in a charge of theft (II 37,1-3). Minor offenses such as accidental fires (II 38) and crimes committed by animals (II 40,1) usually resulted in the assessment of fines and damages to be paid by the owner. At times an animal's owner could escape this responsibility by refusing to continue to shelter the animal (II 40,2). The animal's owner was liable for its behavior even though a servant tended the animal (II 40,4-5). Anyone who killed an animal intentionally had to pay compensation to its owner (III 48,1-3).

Although murder, robbery, and the like were punishable by death, it was often extremely difficult to carry out the sentence. Thus medieval law developed the concept of outlawry, the exclusion of the criminal from the functions and protections of his society.
Outlawry in the Sachsenspiegel took two forms. The first of these was called proscription. Here a man was proscribed - outlawed - from the activities and safeties of his community (I 68,1-5; I 70,3; I 66,2). Thus a proscribed man could not get redress of grievances in court although he was held accountable for any crimes he committed (III 16,3; I 39; III 63,3; III 88,2-3). An elaborate procedure involving both the royal and the local court was required for one to be released from this proscription (II 4,1-2; III 17,1; III 18,1-2; III 24,1-2). Nor could anyone give food and shelter to a proscribed man (III 23).

Proscription was not the actual punishment for a crime, but rather a means of forcing criminals to justice. Since many a powerful lord refused to obey the summons of the court, proscription as a punishment for contumacy served to isolate him until he could be apprehended. This led to the second form of outlawry. Should a man remain proscribed for a year and a say, then he was put into the royal ban or superior Reichsacht\(^{140}\) (III 34,3). He was herewith declared legally dead; his allods passed to the crown, while his fiefs were forfeit to his lords (I 38,2). Any such criminal could be hunted down as though he were a wild animal (III 63,3). His wife became a widow and his children fatherless orphans (I 38,3). This ban struck noble and peasant alike.\(^{141}\)


\(^{141}\)Henry the Lion had to go into exile as an outlaw in 1181. Otto von Wittelsbach, the murderer of Philip of Swabia, was outlawed after his crime and later killed by a friend of the Hohenstaufens.
The farming community

Thirteenth-century society was primarily a rural one. Most lords lived in lonely castles around which were clustered the villages. Land was the basis of wealth, but land was a useless possession unless farming communities lived upon it, worked it, and procured from it the proceeds of agriculture. Life in a village was intimately connected with the lord who owned most of the land. Numerous rents and tithes were payable on specified days (I 54,1-5). Many of the farmers were lease-holders who paid an annual rent. They could easily move whenever they so desired (II 59,1), or they could remain and be guaranteed the right to inherit their present lands (II 59,2). Other members of the community lived in a more servile position. They paid tithes on grain, animals, orchards, and the like (II 48,4-12). Every animal had its specified tithe and due-day (II 58,2).

This village community, however, was not only organized to pay tithes to the lord, but had its own internal existence. The village headman, or the Bauermeister, took care of minor police matters and supervised the village (II 55). In coastal villages, the Bauermeister with the community's help was responsible for the proper maintenance of the dikes, an essential for the village's existence (II 56,1-3). The Bauermeister also supervised the Common (III 86,1-2). Any stranger coming to the village was not subject to the Bauermeister's rules until he became a member of the community (III 79,2). This medieval village was normally a collection of homesteads protected by a common village fence. Each individual homestead was also fenced (II 59,2). The fields lay outside this inner village. In such close quarters it was extremely important to regulate the building of houses and outbuildings (II 49,1;
II 50; II 51,1-3). Boundary questions were as important in Saxony as they are at the present time. Eike used the hops growing on a fence as his example to explain this matter (II 52,1-2). The man, on whose side of the fence the hops have their roots, could harvest them first by pulling off as many as he could. The remainder belonged to his neighbor.

If a man moved from a homestead, he could take away any buildings he had erected, but he had to leave the fence and the manure pile (II 53).

Many of the regulations regarding village life were concerned with damage suits or the possession of property. Thus, a man had to make sure that he was tilling only his own field (II 46,1-4; III 37,4). He could not walk across a private path or fish in a private pond (II 28,1-4). A man was also held responsible for any damages to another man’s crops incurred by his livestock (II 47,1-4). However, a farmer could not blame the village if he neglected to harvest his grain properly (II 48,2). The village also employed a herdsman or shepherd who collected the livestock and took them to the pasture. While they were in his care, he was responsible for them and had to compensate farmers for any lost animals. The herdsman was paid by the entire village (II 54,1-6; II 48,1).

Social and legal groups

Much has been written about ranks of society as described in the Sachsenspiegel. Eike discussed three groups of freemen—the schöffenenbarfe free people, the Pfleghaften, and the Landsassen.

The *schöffenbar* free people may be identified as the lower nobility and some free farmers. They visited the count's court and had the privilege of trial by peer, particularly when they were involved in an ordeal by battle (III 26,2; III 29,1; I 51,3-4). The Pfleghaften, also called Biergelden or Bargilden, were a group of people who possessed property on a somewhat permanent basis. Their obligation was limited to obtaining the lord's permission if and when they wished to sell their property. It had also been suggested that the Pfleghaften were the ordinary citizens of the towns. Eike mentioned only that they attended the court of the Schultheiss and that of the cathedral-provost (I 2,1;3; III 73,1). The third group was called the Landsassen. Eike called them free people, who came and went as a guest would (III 45,6). They did not own property, but rented it from a lord. A social rank was hereditary (I 16,1), but upon occasion a man could be deprived of his freedom (III 32,2-9). A stranger who claimed to be free was treated as a freeman until and unless the contrary could be proven (III 32,1). Nevertheless Eike's descriptions of these specific groups are vague. Additionally, other available evidence regarding social ranks

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143 See Molitor, *Die Pfleghaften*, pp. 54-70; also Wolfgang Metz, "Zur Geschichte der Bargilden," ZRG, IVII (1955), 185-93.

144 The word *pfleghaft* or *plegen* implies a mandatory deed, an obligation to be rendered. What the obligation consisted of is not completely clear. Molitor, *Die Pfleghaften*, pp. 54-70 identifies this group as colonists who settled in the eastern parts of Saxony in the twelfth and thirteenth centuries on waste land. For this there were certain privileges granted to them. Thus their obligations might not have been any more than the permission of the lord—usually the prince—when they wished to sell their lands.

does not always agree with Eike's categories. This discrepancy has been and is a persistent obstacle which hinders medieval scholars.

The grouping of men into free and servile did not exhaust the possibilities of differentiation. Individuals were also classified according to profession, social position, sex, and age.

Women constituted the most prominent of these special groups. The woman of the thirteenth century was decidedly a second class citizen. She could not act in court in her own behalf (II 63,1), but needed a guardian to perform these functions (I 46; I 47,1). Her guardian could be her father, an uncle, or her husband. She was never really free (I 45,2). If she married below her social rank, she assumed her husband's social status. However, she regained her own social rank after his death (I 45,1;3). A woman could not actually inherit her husband's property, although she frequently received the usufruct of some of his property (I 21,2). Set aside for her was the so-called woman's property (I 24,3) which consisted of objects of the household. She also possessed her morning-gift, a present which her husband had given her the morning after their wedding night (I 20,1;6;8-9). A woman also possessed inheritances from her own family (I 21,1), which in turn was passed on to her children, or nearest male relative (I 27,1). As long as the woman was married, however, her husband held her property for her (I 31,2).

Philip Heck, Ubersetzungsprobleme im frühen Mittelalter (Tübingen: Verlag J.C.B. Mohr (Paul Siebeck), 1931) includes a review of the problems connected with the proper identification of the various ranks of society. Heck also discusses the opinions of several scholars on this subject.
The protection of widows was the major reason for providing women with usufruct rights. The heir had to wait thirty days until he could demand the inheritance (I 22,1;3; I 24,1). If the widow was pregnant she was allowed to remain in the house of her dead husband until the child was born (III 38,2). If a question of legitimacy and therefore of inheritance arose, the widow could be required to prove that her husband was actually the father of the child (I 33; I 36,1-2). A divorced woman could also claim her morning-gift and any usufruct upon her former husband's allods but she could not remove the buildings (III 74). In certain cases the widow remained with the heirs, usually her children. If she later desired to move or to remarry, she was entitled to the same share of her deceased husband's property as she had been entitled to at the time of his death (III 76,1-5). Neither could the wife be blamed for any death-bed gifts her husband made (I 52,4).

Since women were at the mercy of guardians as far as property and legal matters were concerned, they frequently needed protection against evil guardians. The court functioned as guardian for the women in these cases (I 41; I 44). A pregnant woman was immune from any severe punishment (III 3). The primordial place of the family in the Middle Ages assured the woman of a protected status as the child-bearing partner of a marriage union. Thus rape - criminal violation of a woman - was punished by death (III 1,1; II 64,1). A man who had raped a woman could not later marry her legally (I 37); even criminal violation of a prostitute was regarded as rape (III 46,1).

Children comprised another special group. They needed protection in the same manner that women did. Until a child came of age, a guardian
cared for his property (I 11), and fulfilled all the heir's obligations (I 23,2). When the child reached maturity, the guardian was required to render the heir an accounting of his trusteeship (I 42,2; II 58,3). Crippled children could not inherit (I 4). Frequently a child was put into a monastery while still a minor. If he decided that he did not wish to remain, he could leave when he reached maturity (I 25,2). The death penalty could not be imposed upon a minor. Instead his guardian paid for the damage (II 65,1). Nor could a guardian arbitrarily chastise his ward (II 65,2).

Priests and monks represented a third class. They received special protection from the state. Therefore they were not permitted to carry weapons (III 2). A priest could inherit property. A monk could not inherit (I 5,3; II 25,1), because when he entered the monastery, he renounced his legal status (II 22,3; II 25,3). If this man was married and had entered the monastery without his wife's permission, she could sue for his return (I 25,4). If a monk or a nun became an abbot or abbess of princely rank, they could exercise power in the feudal hierarchy; however, they would not personally be under the Landrecht (I 26a;b).

Another group were the ministeriales or so-called unfree knights who became very powerful in the twelfth and thirteenth centuries. Eike did not treat the ministeriales in detail on the grounds that their customs were too diversified for a general discussion (III 42,2). However, he did mention dissension concerning ministeriales' ranks in marriage and the status of their children, particularly when the parents served different lords. There was some exchange of ministeriales.
Eike also mentioned that Bishop Wichmann of Magdeburg set up some rules regarding ministeriales in the late twelfth century (I 52,1; III 73,2). Although the Sachsenspiegel contains few statements about town life, Eike made some comments about merchants and Jews. Merchants were mentioned in the discussion of tolls, bridges, and safe-conduct. The Jewish community received the same protection as that afforded women and priests. Jews were not allowed to carry weapons (III 2). A Jewish merchant also had to make sure that he had proper warranties for the possession of Christian ecclesiastical vestments or else he might be accused of theft (III 7,1-4).

Servants represented the lowest social rank. They were promised fair wages when their master died (I 22,2). They were also protected by their master if they were beaten or harmed while in his employ (I 34,1). Should a master fire a servant, then the servant was free to leave. If the servant ran away, he was obligated to return his wages (II 32,1-3). If a servant married he could also leave his master's employ (II 33). A master could sue for the return of his property which the servant had lost gambling (III 6,1), but the servant could not appeal to his lord, if he willfully lost his own property (III 6,2). If the servant lost the master's property through theft, the lord could bring suit for its return (III 6,3).

In the Sachsenspiegel-Landrecht Eike von Repchow pictured thirteenth-century society as colorful and highly diverse. Some of his ideas are still part of our modern legal system, while others have become obsolete. Eike's work provides a window through which we are able to catch a glimpse of his century. To the extent that some understanding
of another century, another society, or another culture is possible, Eike von Repchow in the Sachsenspiegel has furnished us with some of the implements necessary to understand his era.
CHAPTER II

The Landrecht: Book I

1. God granted two swords\(^1\) to the world in order that Christianity would be protected. He entrusted the pope with the spiritual sword and the emperor with the secular sword. Thus it is that the pope will ride on a specified day upon a white horse and the emperor shall hold the stirrups so that the saddle will not slip. This action has a symbolic significance: Should the pope find it impossible to master an offender with the spiritual law, the emperor shall use the secular power in such a way that the offender becomes obedient to the pope. Should likewise the secular courts need help, the spiritual law shall render assistance.

2. After coming of age, every Christian is obligated to attend an ecclesiastical court in that bishopric where he legally resides. There are three varieties of obligation. The schöffenbar\(^2\) free people shall attend the bishop's synodical court; the Pfleghaften\(^3\) shall attend

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\(^1\)See introduction, page 25, note 73.

\(^2\)The term schöffenbar is applied in the thirteenth century to the gentry. It is probable that Eike belonged to this class. See introduction, pages 73-4.

\(^3\)The Pfleghaften are a group of people who according to their name had to render some sort of obligation. See introduction, pages 73-4.
the court of the cathedral-provost, \(^4\) and the Landsassen \(^5\) shall attend
the court of the arch-priest. \(^6\)

I 2,2. The people shall attend the secular courts in the same manner as
they attend the ecclesiastical courts. The Schöffen shall attend the
court of the count, which is conducted under the royal ban, every
eighteen weeks. But should it become necessary that the court be
convened again a fortnight after the regular court, because a crime has
been committed, they shall attend this court also so that justice may be
done. With this they will have acquitted their properties of their
obligations to serve at court.

I 2,3. Because of their land holdings, the Pfleghaften are obliged
to attend the court of the Schultheiss. \(^7\) Should the current beadle die,
a new beadle shall be chosen from among them.

I 2,4. The Landsassen, who have no allodial holdings in the country,
shall attend the court of the Gograf \(^8\) every six weeks. In this court
and likewise in the court of every Vogt, \(^9\) every Bauermeister \(^10\) shall

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\(^4\)See Heck, Sachsenspiegel, pp. 54-70 for a discussion of the
cathedral-provost (Dompropst).

\(^5\)The Landsassen are a peasant group; see introduction, pages 73-4.

\(^6\)See Heck, Sachsenspiegel, pp. 66-70 on the arch-priest (Erzpriester).

\(^7\)See ibid., pp. 178-217; also pp. 70-86. See also introduction,
page 53, note 134.

\(^8\)The court of the Gograf seems to have developed in the 12th and
13th centuries as a result of the growth in power of the territorial
princes. See introduction, page 54.

\(^9\)The Vogt is a steward or overseer, perhaps also advocate. This
last is the lay official within a monastery. See introduction, page 13,
note 30. Also Heck, Sachsenspiegel, pp. 143-45; 168-77.

\(^10\)See introduction, page 54.
bring a charge against those who did not come to this obligatory court session, and also issue charges arising from the hue and cry, from bleeding wounds inflicted by another, and the harm threatened with a drawn sword, and all other crimes that are normally punishable by death or mutilation. But the Bauermeister may only make these charges before the court, if no plaintiff has appeared to make his own charge.\footnote{This paragraph discusses the differences between the Klage and the Rüge. Cases of civil as well as of a criminal nature were normally brought before the court by a plaintiff. But should no plaintiff come forward, the court through the Bauermeister issued the various charges. The first action – by the plaintiff – is called the Klage; the second action – by the court – is called the Rüge.}

I have spoken here only about the free people since all men were free when the laws were made and our ancestors came into this land.

3

I 3,1. Origin\footnote{It seems probable that Eike actually meant Origin the Church-father (185?-254?) rather than the Origines of Isidore of Seville. See introduction, page 47, note 125.} prophesied that the world will endure for six ages and that each age will be a thousand years in length. Then in the seventh age, the world will come to an end. According to the testimony of Holy Scripture the first age began with Adam, the second with Noah, the third with Abraham, the fourth with Moses, the fifth with David, and the sixth with the Incarnation. We do not know the time and duration of the seventh age.

I 3,2. The Heerschilde\footnote{The word Heerschild or clicheus militaris is used to describe the military and legal ranking of the feudal system in Germany. See Heck, Sachsenspiegel, pp. 537-621.} are arranged in a similar manner. The king has the first shield, the bishops, abbots, and abbesses the second,
and the lay princes the third since they have become the vassals of bishops. The Freiherren possess the fourth shield, the schöffenbar people and the vassals of the Freiherren the fifth, and their vassals the sixth. Just as the duration of the seventh age is not known with any certainty to Christians, in the same way it is not known whether holders of the seventh shield are under feudal law, or whether they may have a shield at all. The lay princes made the sixth shield the seventh when they became the vassals of bishops, which was not the case before. Just as the seventh shield is the end of the Heerschild order, so the family ends in the seventh degree of kinship.  

I 3,3. Now we shall describe the ranks of kinship. A husband and wife who have been legally married stand at the head (of the kinship association). The children who have been born to this couple stand at the neck. Should they not be full brothers and sisters, then they cannot belong to that degree and must occupy another rank. Should two brothers marry two sisters, and the third brother take an unrelated wife, still their children will be equal in kinship, so that they can inherit one from the other, providing they are of equal birth. The children of the full brothers and sisters stand at the union of shoulder and arm. This is the first degree of kinship recognized in a family: the children of brothers and sisters. The second degree is found in the elbow; the third in the hand, the fourth in the first joint of the middle finger.

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14 The idea of seven as a mystical number of which Eike was rather fond is discussed in Heck, Sachsenspiegel, p. 538.
the fifth in the second joint of that same finger, and the sixth at
the third joint. The seventh degree is found in the nail, not a joint.
Thus it is called a nail-kinship. Those who occupy the same position
in the system between head and nail are considered to have equal rights
of inheritance. Those who are closer to the head in this system take
precedence over those farther away. Kinship thus ends in the seventh
degree for the purposes of inheritance, although the pope has permitted
marriage in the fifth degree. But then, the pope cannot make a law
which curtails and alters our Landrecht and Lehnrecht.

14 Neither the fool nor the dwarf
can inherit fiefs and other goods
and neither can the crippled child.
Those who are their heirs,
and their next of kin,
shall care for them. (rhymed)

A child that is born dumb, or without hands and feet, or is blind, may
still inherit under the Landrecht, but not under the Lehnrecht. But
should he have received the fief before he became crippled, it cannot

15 Innocent III at the fourth Lateran Council in 1215 had made a
decree concerning this matter. See Sächsische Weltchronik, c. 356.
Actually this was an error. The pope had set the permitted degree at
the fourth, not the fifth. See Karl Gottfried Hugelmann, "Der Sachsens-
spiegel und das lateranische Konzil," Zeitschrift der Savigny-Stiftung für
Rechtsgeschichte, Kanonistische Abteilung, XLIV (1924), 427-87. See also

16 The word is altvile which probably means someone who is mentally
retarded. See E. Björkman, "Altvile im Sachsenspiegel," Zeitschrift
für deutsches Altertum und Litteratur (1899), 146-50.
be taken from him for that reason. The leper receives neither fief nor inheritance. But should he have received it before his illness, he shall retain it and bequeath it as other men do.

5

I 5,1. Should a son marry during his father's life-time and his wife is his peer and they have a son, this child will receive equal portions with his father's brothers in his grandfather's property, if his father dies before the grandfather without having received his portion of the inheritance. Each then will take one man's portion. But the children of daughters do not possess this right of taking the portion of the daughter in the grandfather's or grandmother's inheritance.

I 5,2. The daughter, who is at home unmarried, does not have to divide her mother's "woman's property" with the daughter who has received a dowry. However, any inheritance which falls to them through death must be divided equally among them. A woman may injure her honor through an unchaste life; however, she will lose neither her legal status nor her inheritance.

I 5,3. The priest shares equally with the sister in the mother's "woman's property," and with his brother in the allods and the inheritance. No one may be designated a priest unless he be taught and ordained a priest, before the "woman's property" has fallen to him through death. If, however, the sister has no other brother except the priest, she shall receive an equal portion from the inheritance as well

\[17\] See I 24,3 for Eike's definition of the "woman's property."
as from the "woman's property." No one may take a "woman's property" from the priest's belongings after his death, for all of his property is called an inheritance.

I 6,1. All possessions that a dead man leaves behind are called an inheritance.

I 6,2. He who receives the inheritance shall be legally obligated to pay debts upon it as far as the value of the movable chattel allows it. He is not obligated to pay for theft, robbery, gambling debts, or for any debts unless he has received equivalent value, or had put up a bond for payment. The heir shall be required to pay such debts as are called to his attention as the law demands it through the testimony of seventy-two men either all schöffenbar free people or legitimately born serfs.

I 6,3. But if the debtor is fully aware of his obligations, then the creditor need not remind him with witnesses as he accuses the debtor before the Landrecht or the Lehnrecht because of his knowledge. The debtor shall either confess and pay, or he shall deny and abjure the entire matter.

I 6,4. All debts which were owed to the deceased shall be paid to the heir.

I 6,5. There is no need to convict a man of a debt which he has incurred himself. But he must confess it or deny it.

I 7. Should a man have occasion to give a surety or a promise, he shall render and perform it, and what he has promised in court that he shall keep faithfully. Should he wish to deny it afterwards, he may withdraw it with his oath, as long as he had not entered into the contract in
court. But what he has promised in court, of that his opponents may convict him with the testimony of two men, and the judge shall be the third.

8

I 8,1. In cases dealing with the bestowal or the forfeiture of an allod, or in matters concerning a conviction through testimony in regard to a man's legal status, life, or his health, and in a forfeiture promised before the court, the judge and six of those men, who find the verdict there, must be witness thereto.

I 8,2. The testimony of the beadle is valued at that of two men, should it be required when seven witnesses are needed. Beginning with the time when he was chosen beadle, his compensation is also two-fold and so is his wergild which is valued according to his birth rank.

I 8,3. Conciliation,\(^\text{18}\) however, and swearing to keep the peace, if done at court, shall be witnessed by the judge and two men. But should it be done without the court, he must testify to it with six helpers to whom the conciliation was granted and the oath was sworn.

I 9,1. Should a man in court promise to give property to another man and has been given silver or other property as payment and should the buyer die before the transaction had been confirmed to him, the property

\(^{18}\) Conciliation is used here as a translation of Sühne, here used in connection with bloodfeuds and their legal status. See Paul Frauenstädt, Bluterache und Totschlagsühne ("Studien zur deutschen Kultur- und Rechtsgeschichte," Leipzig: Duncker and Humblot, 1881).
shall be given to the heir as it would have gone to the man as long as it had been paid for in full. The same also is done with movable chattel.

I 9,2. If a man will give to another his property, and promises to free it before his lord whenever he can arrange it, and should the other pay him for it, either all or part, and then dies before he can be enfeoffed with it, the first man is obligated to fulfill his promises to the feudal heir of the dead man, be he his equal in rank or not. Should there be no feudal heir, he is obligated to render the property to the legal heir whoever he be, as he would have done to the man who had paid him for it. Otherwise he shall return to the heir what had been given him as payment.

I 9,3. The lord shall do the same if a man pays him for an estate which the lord must free for him before enfeoffment, and if the man dies before he can be enfeoffed with it.

I 9,4. Should a man, who shall let go of an estate, promise that he will try and get the enfeoffment for another man, and he does it and then announces it to the other man before witnesses, so that the receiver can go to the lord and get the enfeoffment. Should the receiver refuse to do so without cause, and if the lord dies in the meantime or refuses to enfeoff that man with the property so that the receiver cannot procure it as planned, the first man is freed of his obligation to voluntarily offer himself for arrest, but he is not released of his obligation to let the other man have the property, should that one manage to get the enfeoffment afterwards.

I 9,5. If further a man gives another possession of an estate, before he has transferred it to him, he shall set a warranty for the unceded
property, should the other man need such a warranty. But does he or
the man to whom he has given the estate lose full ownership thereto
through court action, then the man shall return the property to him
who had given it to him in the first instance.
I 9,6. But if he who was to have transferred ownership to the other
dies, then his son is not obligated to transfer ownership, unless he had
promised to do so himself and had given surety thereto.
I 10. If a father gives a son clothes, a saddle-horse, and armor at the
time when the son needs them and can use them and the father is willing
to give them, then should his father die later, the son need not divide
these things with his brothers, nor give them back to the father's lord,
nor to his father's heir - if he cannot properly inherit because of
inequality of birth - although he had not been portioned from his father's
property.
I 11. If a father has guardianship over his children after their mother's
death, then, when they are separated from him, he shall return to them
all of their properties, except which he has lost without any fault of
his own. The wife shall do the same to the father's children, should he
die; and every man who is a guardian of children.
I 12. If brothers or other people hold property in common and they raise
its value through their expense or their service, then the improvement
shall be shared by them equally; the same is true of damages. What a
man, however, acquires through his wife, that he does not share with his
brothers. But if a man gambles away his possessions or spends them on
whores, or squanders them on gifts and gaudy display, where his brothers
or his associates were not involved, then the loss shall be his alone and
not that of his brothers or his associates with whom he holds the
property in common.

I 13,1. Should a father or mother portion off one of their children
with property, sharing the household or not, and these portioned-off
children wish to share in the inheritance after the father's or the
mother's death, brother against brother, or the married daughter
against her undowered sister, then they must bring all their portions
to the partitioning with their oath, except for the "woman's property,"
if it is movable chattel. But they cannot deny possession of any other
property purely upon their oath.

I 13,2. But if they had relinquished the right to share in the
inheritance, then they shall give up all claim to it, unless they
can refute the above with an oath upon holy relics. But if they
have relinquished it before the court, then they can be convicted of
this through testimony with a better right than they can swear to their
innocence. The Bauermeister is legally a proper witness over the
villagers in his court-district in place of the judge for a thus
constituted legal action.

I 14,1. Although it is proper under the Lehnrecht that the lord only
enfeoffs one of the sons with the father's fief, this is not so under
the Landrecht. For the son cannot keep all to himself unless he
compensates his brothers according to the portions which constitute
their legal shares in that estate.

I 14,2. Neither is it proper under the Landrecht that a son will retain
a fief which the father had given him during his life-time and which
had been freed for him, and still take equal shares with his brothers
in the rest of the fief. Although they cannot refuse it to him under the Lehnrecht, it is not proper under the Landrecht. Thus, if they begin proceedings against him under the Landrecht, they may compel him with verdicts to a legal partitioning.

I 15,1. He who grants someone his chattel in fief, or as bond, or gives him custody thereof, either for a certain period or indefinitely, can easier prove with two oath-helpers that these are his goods than the one who has them, or his heir after his death, may dispute the matter later with an oath of innocence. But if the man, who has the goods in his possession, may attest to the fact that these goods are his own chattel or his inherited goods, or if he has a bondsman for that fact, then he may overthrow the other's testimony, unless his bondsman falters in his task.

I 15,2. Should a man be accused for something which he does not have, then he may cleanse himself with his oath of purgation. But if it is proven that he does have the thing in his possession, then he must answer thereto without the oath of purgation.

I 16,1. No one may obtain another legal status than the one he was born into. If, however, he renounces his rights in court and makes demands upon another set of privileges which he does not succeed in obtaining, then he shall lose both sets of privileges. This provision does not include the serf who has been freed; he will retain the privileges of free Landsassen.

I 16,2. A child will retain his father's legal status, if it is born free and legitimate. If, however, either his father or mother belong
to the rank of the ministeriales, then the child will retain that law to which it is born.

I 17,1. If a man dies childless, then his father inherits from him. If he does not have a father, then his mother inherits from him with a better claim than his brother. The inheritance of father and mother, brother and sister is taken by the son, but not be the daughter. If, however, there are no sons, then it falls to the daughter. But if an inheritance is shared among brothers and sisters who are all of the same place in the kinship order, then they will obtain equal portions regardless of their sex. This the Saxons call a "joint inheritance." Yet the children of a son or daughter receive an inheritance before father, mother, brother, and sister for the following reason: As long as there are descendants of equal birth, the inheritance shall not be given to the lower ranks of the kinship order. He who is not of equal birth rank with another cannot take an inheritance from him.

I 17,2. The Swabian cannot receive an inheritance through the female line, for the women on grounds of their sex have been deprived of inheritance-rights through the sins of their ancestors.

I 18,1. The Saxons have retained three sets of rights despite Charlemagne's wishes: The Swabian law through their hatred of women.

I 18,2. And secondly: If a man does not promise something in court, however well-known his promise is, then he may rid himself of that promise through his oath of purgation, and he cannot be convicted thereto through witnesses.
I 18,3. And thirdly: No verdict, however legal before the royal court, is found in Saxony. Should a Saxon wish to contest the verdict and appeals it to his right hand and to the majority of the men, and the verdict is fought over by the contesting party and six helpers against seven others, then that side has won the verdict where the majority of the men were victorious. Additionally the Saxons retained their ancient law as long as it did not run counter to Christian law or the Christian faith.

12

I 19,1. The Swabian will receive the Heeresaufrüstung over and above the seventh degree as far as he may account for the fact that the man is related to him from the paternal side, or insofar as he may certify the fact that one of his ancestors demanded from the other's ancestor, or that the other ancestor demanded from his ancestor the Heeresaufrüstung in court or had received it.

I 19,2. The Swabians contest a verdict among themselves within the Swabian communities,19 and appeal to an old-Swabian20 court, which they may have designated, and to the majority of the suitors at that regular court at the primary place of court. Thus Swabian law does not differ from Saxon law except in as far as the taking of inheritances and the appeal of a verdict is concerned.

19 Meant are the Swabian colonies within the Mark-regions of Saxony to which Swabians migrated in the 11th and 12th centuries.

20 Old-Swabia refers to the original Swabia in southern Germany, located by the Rhine, Danube, and the Alps.
I 20,1. Now hear what every man of knightly birth may give his wife as morning-gift. On the morning after the wedding-night, as he goes to the table with her, before the meal, he can give her a servant or a serving-maid, both of age, and a house and livestock, which can be pastured. All this he does without the permission of his heirs.

I 20,2. If the woman does not own the place upon which her building stands, then, should her husband die, she shall move the building in such a way as not to disturb the ground within six weeks after the thirtieth day after her husband's death. But if she offers to sell the building to the owner of the land upon the evaluation of the farmers, and he refuses the offer, then she may dig the building up as long as she evens out the ground afterwards.

I 20,3. Should a widow stay with her children or her husband's heirs for either a long time or a short time, and was not portioned off with her property, then, if she does leave them, she will claim the same privileges to a share of the property which is there, as she would have taken them when her husband died.

I 20,4. But should the widow remain after her husband's death with her children at the children's estate, which is not hers, and has not been portioned off from the estate, and then her son takes a wife during

21 The "thirtieth day" is an important element in the law of inheritance. On this day a mass was said for the dead and not until this day did the widow have to leave her husband's house or could his heirs take possession.
her life-time, then, if her son dies thereafter, the son's wife takes with more right her husband's morning-gift and half the stored food and her "woman's property" from her husband's estate than his mother, as long as the son's wife can attest to her husband's and her own uncontested possession of that property.

I 20,5. But should the son die upon his mother's property, then his mother has a better chance to keep it with witnesses than the son's widow.

I 20,6. The wife will retain her morning-gift with an oath upon holy relics, but must prove possession with witnesses.

I 20,7. Should a wife die before her husband, then her niece has a better claim to her "woman's property" than her husband's mother. The mother is a guest in the possessions of her son, as likewise the son is in those of his mother.

I 20,8. Those not of knightly birth may not give their wives anything else as a morning-gift except the best horse or animal they possess.

I 20,9. The woman may retain her morning-gift with an oath upon holy relics and needs no testimony.

I 21,1. Women may be given an allod during their life-time with the heirs' permission, regardless of their youth, within that court

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22 See I 20,9.

23 See I 20,6.
where the allod is located, and there at every place, insofar as the king's ban runs there.\(^{24}\)

I 21,2. No one may deprive women of their usufruct; neither a later born heir nor anyone to whom the estate has fallen by inheritance, unless she forfeits it herself: When she cuts down fruit-trees, or turns serfs, who have been born to that land, of the estate, or in some way lets her usufruct get out of her possession. Thus she may lose her usufruct unless she corrects the matter before the regular court-term, if she is accused by him who shall have the estate after her death. If a man is legally divorced from his wife, she still keeps the usufruct which he had given to her upon his allods.

I 22,1. The heir may travel to the widow at the estate before the thirtieth day, so that he prevents the loss of anything which belongs to him. The woman shall also take care of the funeral and the mass at the thirtieth with his counsel. But otherwise he shall have no power over the estate until the thirtieth day.

I 22,2. The servants shall first be paid their earned wages which belong to them to that day on which their master died. And they shall be kept until the thirtieth day, so that they may find new work. But if the heir wishes, they shall serve their full term and receive a full wage. If they have been given too much of a wage, they need not return it.

\(^{24}\)The king's ban or the royal ban is the expression used to define the count's court where law is supposedly royal law. By Eike's time this still existed in theory, but had changed in practice. For the counts were no longer royal justices but either vassals etc. of the territorial princes or the territorial prince himself. See introduction, page 52, note 131.
If further their yearly or half-yearly wages are disputed, then they may prove them upon an oath upon holy relics. He who has been serving upon a pension\textsuperscript{25} may admonish the heir to mercy. If further the serving-man\textsuperscript{26} dies, before he has served fully for his wages, which were promised him, then no one is obligated to pay his heir more wages than he had served for.

I 22,3. Thereafter the woman must share equally with the heirs all the stored food which has remained after the thirtieth day in everyone of the farms of her husband, or where else he had them in his possession.

I 22,4. Then the woman shall give her husband's Heeresausrüstung\textsuperscript{27} which is his sword, the best stud horse, a saddled horse, and the best harness which he possessed for a man's body as he died. Then she shall give a Heerpfuhl\textsuperscript{28} which consists of a bed, a pillow, a linen sheet, a table-cloth, two wash-basins, and a towel. That is the ordinary

\textsuperscript{25}The German term for pension is Gnadengabe or gnade which means gift of mercy, a fitting way to describe a pension.

\textsuperscript{26}The term serving-man is a translation of gemedede man - gemietete Mann - which means literally "rented man."

\textsuperscript{27}The modern German word Heeresausrüstung is a translation of the medieval herwede, which means the armanents for use in serving with the army - the weapons a man needed in battle.

\textsuperscript{28}The modern German word Heerpfuhl is a translation of the medieval herepole which are things needed by a warrior during a campaign besides his weapons.
Heeresausrüstung as it is commonly given; yet many people add things to it which do not belong there. What a wife does not possess of these things, that she need not give if she dares to do her oath thereto, that she does not have them, for every debt specially. But what may be proven there, that may not be erased by a man's or a woman's oath of purgation.

I 22,5. If two or three are born to inherit one Heeresausrüstung, then the oldest will take the sword and the rest they will share equally among each other.

I 23,1. If the sons are still minors, then their eldest paternal relative of equal birth rank will take the Heeresausrüstung alone and will be the children's guardian thereto, until they come of age. Then he shall give it back to them, as well as their other possessions, unless he can prove that he has used them to their benefit, or that they were taken from him through robbery, or through misfortune without any fault of his.

I 23,2. Although a child has come of age according to the Lehnrecht, his legal guardian shall still represent him to his advantage in his estate, and shall serve the lord in place of the child according to the obligations of the child, while he cannot do these himself because of the "foolishness," or his childishness, or the weakness of his body. But to him who is the heir of the child, the guardian shall present accounts of the child's estate from year to year and shall assure him, that he did not waste it through non-observance of obligations since that child has come of age. For often one man is the child's guardian an another his heir. But if the guardian is also the heir, he need not give an
accounting to anyone about the child's estate, nor set bonds. He is also the guardian of the widow, until she remarries, if he is her equal in birth.  

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I 24,1. The wife shall take her morning-gift after the Heeresausrichtung has been given. All farm-horses, cattle, goats, and pigs which go with the herdsman, and garden and house are part of the morning-gift.

I 24,2. Fattened pigs, however, belong to the stored food as does all other horded food in each of her husband's farms.

I 24,3. Then she shall take all that belongs to the "woman's property;" That consists of all sheep, geese, chests, all yarn, bedding, coverlets, pillows, linen-clothes, table-clothes, hand-towels, bath-towels, wash-basin, brass candle sticks, linen and all female dresses, rings, bangles, head adornments, psalm books and all books used in worship which women are apt to read, thereto armchairs, chests, rugs, bed-hangings, tapestries, and all fillets. That all belongs to the "woman's property." Many small items also belong to it such as brushes, scissors, and mirrors, but I have not listed them. All cloth which has not been cut for female garments, and gold and silver bullion, does not belong to the woman. All things except those named above belong to the inheritance.

I 24,4. The man who legally owns mortgages outstanding from the dead man's time shall redeem them upon his own initiative.

29See also I 25,5.
I 25,1. The priest, but not the monk, shares an inheritance with his brother.
I 25,2. If the child is put into a monastery while it is still a minor, then it may leave while still a minor and keep its Lehnrecht and its Landrecht.
I 25,3. Should, however, a man who is of age enter a monastery, then he renounces his Landrecht and he loses his fiefs. He has lost his rank in the Heerschild as long as there are witnesses to this from among the monks of the monastery he entered, or by seven men from his peerage group who saw him in the cloistered life, although he left again within the year as it is permitted in the law of the grey monks.30
I 25,4. But should he enter a monastery without the consent of his legal wife, and should she request his return in the synodical court,31 then he shall retain his Landrecht, but not his fief which he had surrendered. For a man may renounce his rank in the Heerschild without his wife's permission.
I 25,5. Should a child die or enter a monastery during its minority, then he who has control of its chattels shall give them to him who would have received them after the child's death, unless he has spent them with the heir's consent.32

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30 Cistercians.
31 See the Compilatio prima, III 28 c.3 (-Gregorian Decretal, III 32 c.3. and c. 17): "Qui dam intravit monasterium invita uxore, qua ipsum repetente coactus est ad eam reire ... Unde apostolus: Vir non habet potestatem sui corporis, sed mulier."
32 See I 23,2.
I 27,1. Every woman bequeathes her property in two ways: her "woman's property" will go to her closest niece, related to her on the maternal side of the family. Her inheritance will go to her next-of-kin, whether woman or man.

I 27,2. Every man of knightly rank bequeathes his estate also in two ways: the inheritance will go to the nearest relative who is his peer, regardless of who he is. His Heeresausrüstung will go to the nearest and oldest relative on the paternal side of the family. That man who is not a knight and does not belong to the Heerschild order only leaves an inheritance, when he dies, but not a Heeresausrüstung.33

I 28. When such things as the Heeresausrüstung, inheritance, or the "woman's property" are left without heirs, they shall be given into the custody of the judge or the beadle, if he demands them. The judge shall keep them a year and a day and shall not give them away, and shall wait whether someone may legally claim them. After that time, the judge may use them to his needs, unless the heir is a prisoner, or is detained in the service of the state, or has gone outside the country in the service of God.34 The the judge must wait for the heir until he returns, for the heir cannot lose his inheritance during the instances described. The same procedure is followed also with movable chattel.

33 The man who is not a knight would not possess the weapons which belong to the Heeresausrüstung.

34 A crusade or a pilgrimage
I 29. The Saxon may forfeit allods and hides of his inheritance through silence (i.e. by not claiming the inheritance in court)\(^{35}\) after thirty years, a year, and a day, but not sooner. In the empire and among Swabians an inheritance-claim may not be lost through silence as long as it may be proven through witnesses.

I 30. Every man who has migrated to Saxony will inherit there under the Saxon law and not under his own law, be he Bavarian, Swabian, or Frank.

I 31,1. Husband and wife do not have separate estates during their life. Should the wife die during her husband's life-time, her next-of-kin inherits only the "woman's property" and her allods - if she had possessed them - but not any chattel. A wife may not give away her possessions without her husband's permission in such a way that he would have to acquiesce to the transaction.

I 31,2. When a man takes a wife, he takes all her properties into his possession as her legal guardian.\(^{36}\) Therefore no wife may give her husband any gifts from her land or her chattel, for she would thus deprive her rightful heirs after her death. Neither may her husband have any other rights of possession to his wife's properties as those which he received together with her as her guardian at the onset of their marriage.

\(^{35}\)The German word is *verswigen.*

\(^{36}\)This sentence about the husband's right of interference - we would call it community property - still is part of the legal system, even in some of our states.
I 32. No wife may keep as her own anything which has been given in usufruct only to her during her life-time. Neither may her heirs demand it after her death, as long as it may be proven with witnesses that it was given to her for life only. Should she claim it as her own and her claim is denied in court, she has lost both her ownership and her usufruct.

I 26a. Should a monk have been elected to be a bishop or a nun to be an abbess, they may hold the "belt" of their power and the privileges of their possessions from the empire, but they do not receive the secular law.

I 26b. Should a cloistered nun become an abbess or a monk a bishop, they may hold a rank in the Heerschild order granted by the empire, but they do not acquire the Landrecht therewith.

I 33. These are some items concerning a wife who is with child after her husband's death and proves herself pregnant at the time of the burial or on the thirtieth day. Should the child be born alive and does the woman possess the testimony of four men who have heard it, and of two women who helped her during the birth, the child receives the father's inheritance. Should the child die afterwards, the inheritance passes to the mother, if she is its peer. This will break all expectancies to the father's fief, since the child lived after the father's death. The fief will escheat to the lord, if the child was seen and proved to be large enough to have been able to live. But if the child is brought to church, then anyone who sees and hears it may be a witness to its being alive.
I 34,1. A man may alienate his allods with the permission of the heirs and need not have the judge's permission, providing he keeps half a hide and a homestead\textsuperscript{37} large enough for a wagon to be turned around upon it. From this he shall render his legal obligations to the judge.

I 34,2. If a man surrenders his property and receives it back as a fief, this surrender does not profit the lord unless he may keep that fief in his own possession for a year and a day. Thereafter he may return it to the former owner in incontestable enfeoffment, so that neither the former owner nor his heirs may ever again claim allodial rights thereto.\textsuperscript{38}

I 34,3. Should the judge illegally prevent a man's alienation of his allod, the man may alienate it before the king, when he comes to Saxony, as the man should have done it before the judge, providing that he has witnesses to prove that the judge illegally prevented the alienation.

I 35,1. All treasure, found in the ground deeper than a plow's furrow, belongs into the imperial treasury.

\textsuperscript{37}The German word for "homestead" is Hofstette or Gehöft — in medieval German word but also hof. This designates the actual domicile plus the barns and the yard. Since the lands themselves were usually located outside the village proper, these homesteads formed a closed village. The Hofstette in the areas Eike described are small "castles" of wooden palisades and enclosed yards. There are still that way today. See preface.

\textsuperscript{38}This transaction is known as a "fief de reprise" or in German aufgetragenes Lehen. See Ganshof, Feudalism, pp. 121-23. In this manner did Otto von Braunschweig give the allods Braunschweig and Lüneburg to Frederick II and received them back as the Duchy of Brunswick, an imperial fief, and the origin of the Electorate of Hannover. See Hirsch, Sachsen-spiegel, I, p. 137.
I 35.2. Silver may not be mined by anyone upon another man's property without the owner's permission. Should the owner give permission, he will still retain the stewardship thereover. 39

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I 36.1. Should a woman take a husband for the first time and has a child before her proper time, when the child could have been alive, the child may be refused its law since it was born too early. 40

I 36.2. But should a wife have a child after her husband's death, after her proper time, the child may also be refused its law because it was born too late. 41

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I 37. If a man publicly seduces another man's wife and makes her into a whore, or rapes a woman or a maid, he will never be able to have legal children with her although he marries her.

39 The German term is vogedie in the medieval and Vogtei in the modern, which means administrative control. Silver mining was an important matter in the thirteenth century since coinage was in pure silver. The oldest mine in Saxony was probably the Rommelsberg by Goslar in the Harz Mountains about which many legends have been told.

40 In order for a man to be "perfect in his law", he had to be legitimate. Should a child be born less than nine months after the mother's marriage, it was presumed to be illegitimate. The idea that the subsequent marriage had made the child legitimate was not recognized by the Sachsenspiegel. See also I 37.

41 Again the child is presumed illegitimate; this incident is probably easier to prove than I 36.1 because some children are born and live at seven months. That is perhaps the reason for the phrasing: "proper time" and "before it could live."
I 38,1. All professional fighters and their children, minstrels, those born out of wedlock, or who conciliated a theft or robbery, or gave back stolen goods, and have been convicted of these crimes in court or have bought themselves free of the death-penalty or corporal punishment are outside of the law. Those who committed an infamy first before their crime are also barred from all law.

I 38,2. Men who have been in the Acht of the empire for a year and a day are declared outlawed and are deprived of their allods and their fiefs. The fief is forfeit to the lord, and the allod is passed to the crown. If the heirs do not retrieve it from the crown within a year and a day with their oath, they will lose it together with the outlaw.

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43 See I 8,3. This is an expended use of the idea of sühnen. Although the crime itself is paid for, the criminal is still outside of the law. See also I 39; I 51,3; II 26,2; III 25,2.

44 See I 65,2.

45 The word Acht is usually translated as "ban." What is referred to here is the Reichsacht which extended outlawry over the entire realm. A man who remained in the ban for a year and a day would be put into the Oberacht (see III 34,3). The designation oberachte - Oberacht appeared first in the Sachsenspiegel. See introduction, pages 70-71.

46 There is a great deal of material to give status to this sentence. See Rheinfränkischer Landfrieden of February 18, 1179, c. 10; Constitutio contra incendiarios of December 29, 1186, c. 10; Treuga Heinrici of July 1224, c. 19. The entire matter of Acht and Oberacht finds it most celebrated case in the fall of Henry the Lion. Erich von Repgow was familiar with this "cause celebre" as is shown in his comments in the Sächsische Weltchronik, c. 329.
unless they prove that a real emergency prevented their coming. This real emergency shall be proven as is proper. The possessions of ministeriales may not fall to the crown or anywhere outside of their lord's power, if the ministeriales commit an offense against their law. I 38,3. The lawless man does not have lawful children, unless he regains his legal status by winning a joust, with a lance, before the emperor's army when they are fighting another king. But he does not regain his estates as he has been deprived of them legally.

I 39. If those, who have lost their law through robbery or theft, should be accused a second time of these crimes, they may not cleanse themselves of the charge with their oath. They have three choices: They may carry the hot iron, or they may reach up to their elbow into a kettle of boiling water, or they may defend themselves against a champion.

I 40. That man who has been adjudged a traitor or has deserted from the imperial service will be deprived of his honor and his Lehnrecht, but not of his law.

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46 The word is unecht. This can also mean illegitimate. See I 48,1; I 51,1.

47 The term used is djustere, an internationally known tournament term.

48 It is not clear from the text whether the outlaw fights the enemy-king or just anybody. The picture in the Dresdener Bilderhandschrift suggests the first.

49 Ordeal by battle.
I 41. Should a girl or a widow charge her guardian under the Landrecht that he was forcing her out of her allods, fiefs, and usufruct, he shall be declared a bad guardian and shall be deprived of all his wardships in court after being summoned to answer this charge at three terms of the court and not obeying the legal summons after the third summons. The judge shall become the woman's guardian and by order of the court help her regain her possessions from which she had been forced.

I 42,1. A man may have a guardian during his minority and in his old age if he needs one. If he wants to, he may also dispense with the guardian. If a man does not have his guardian close by, he shall bring him to the next court session that has been set by the court to hear his case. A man over twenty-one has reached his majority. He may be said to be above his years when he is over sixty, so that he should have a guardian if he wishes. This, however, will not lessen his compensation or his wergild. If a man's age is not known, but he has a beard, hairs below and in his armpits, he might be considered of age. 50

I 42,2. When the child has come of age, 51 he may be the guardian of his

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50 There is a very precise sentence in the Compilatio prima, IV 2, c. 7 (or Gregorian Decretals, IV 2, c. 3) about a man's majority: "Certum autem est, cum puberem esse, qui et ex habitu corporis pubertatem ostendit, et generare iam potest."

51 The idea of majority comes in two stages. A child has come "into his years" when he is twelve and may act on his own although he often does have a guardian. The second stage ends at twenty-one and is called coming "into his days." This is the point at which a man becomes accountable for himself.
wife and any one else's if he wishes, including the ordeal by battle, although he has not reached his majority. For as he may represent himself, he may also represent his wards.

I 43. The judge may set a guardian for women in a case of rape, that is not appealed to the ordeal by battle, and likewise in cases concerning red-handed crimes, if they do not have their regular guardians at hand. But if the suit goes to the ordeal by battle, then a paternal relative who is her peer shall be the woman's guardian.

I 44. When a girl or widow sues under the Landrecht against her guardian, that he is taking her property, then the court shall act as her guardian in this case, as it should when her husband gives her property as an alod or in usufruct.

I 45,1. A husband is still the guardian of his wife, although he is not her equal in birth, and she is still his compeeress and follows him into his law when she goes to his bed. She is free of his law, however, when he dies, and regains that law which is her birth-right. Therefore her guardian will be her nearest paternal relative, and not someone from her dead husband's family.

I 45,2. A wife cannot alienate her possession without her husband's permission, nor sell any allods, and return the right of usufruct, because he holds possession of these in common with her. Girls, however, and unmarried women may sell their allods without their guardian's permission unless he happens to be their heir also.
I 46. Girls and women must have a guardian in every suit as they cannot be convicted through witnesses of those things which they speak or do before the court.

I 47,1. Should a woman have to take an oath, she shall take it herself and not her guardian. Her regular guardian shall further promise, receive, and render surety for her.

I 47,2. A guardian designated by the court shall also promise and receive surety for the women and shall not suffer from it at a later time, as long as he confesses the truth as soon as he is asked by the court. For his guardianship remains in force only as long as the court does. The judge may designate a special guardian for every court session.

I 48,1. All those who were born illegitimate or have lost those rights which come through legitimate birth cannot have a guardian in their suit or in their ordeal by battle.

I 48,2. Lame people must answer and file suits without guardians unless the suit ends in the ordeal by battle. In that event one of their paternal relatives, who is their peer and wishes to do it, is their guardian. Should the lame man be without his regular guardian when

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52 The term used is echtlos which derives from e - law, contract. In later developments of the legal language e or eh or ehe also came to mean marriage. The meaning of the term in this passage is unclear as there are discrepancies in the various manuscripts. Rechtlos - lawless was substituted in one; ehlos in another. See also I 51,1. For the meaning of outlawry, see Victor Friese, Das Strafrecht des Sachsenspiegels ("Untersuchungen zur deutschen Staats- und Rechtsgeschichte," vol. 55, Breslau: Verlag von M. and H. Marcus, 1898), pp. 209-20; also Rudolf His, Das Strafrecht des deutschen Mittelalters (Leipzig: Theodor Wechter, 1920), I, 410-75.
challenged to a fight, and dares he swear to that, he may obtain as his guardian any one who will fight for him or whom he is able to rent with his money, although it can be proven that he has a regular guardian. I 48,3. Should the defendant defend himself with a champion, the plaintiff may convict him through a champion, although this had not been part of the original challenge. In no way does this prejudice the case against the plaintiff. In the same manner a dead man may be defended, should an opponent wish to convict him. A man may thus defend himself with a champion, but he cannot convict with a champion a lawful man to the detriment of his legal status.

I 49. Should a wounded man challenge that man to battle who has harmed him, and the plaintiff cannot carry out the ordeal because of the weakness of his body, and he has no guardian who will do it for him, a new day shall be given him at a time when he is able to fight the ordeal himself.

I 50,1. Should a man wound or kill another and bring him before the court as a prisoner and wishes to convict him of a breach of peace and does not succeed, he is himself adjudged guilty of the crime which he had done to the defendant.

I 50,2. Although a man is a minstrel or born illegitimate, he still is not the companion of thieves and robbers so that a champion must be sent against him. 54

53 The defendant must swear that the absence of the guardian is due to an emergency.

54 See I 38,1; I 39.
I 51,1. There is many a man in some manner incapacitated at law who has not been deprived of those rights which come through legitimate birth. A man thus incapacitated may have a legal wife and have children with her and they are his peers. They may also take his inheritance and that of their mother, should they be their parents' equals, unless they are different from them through servitude. Neither may a legitimate man or woman take an inheritance from an illegitimate one.

I 51,2. It has been said that no child can be her mother's bastard, but that is not true. A woman may have a legitimate child, a noble child, a servile child, and an illegitimate child. Should she be a serf, she may be freed. Is she a concubine, she may take a husband legally and may have legitimate children thereafter in her marriage.

I 51,3. That man who is irreproachable in his law from the time of his four ancestors, that is from two grandfathers and two grandmothers, and from father and mother, may not be accused of a blemish in his birth unless he himself has dimished his legal status.

I 51,4. Whenever a schäffenbar free man challenges one of his peers to an ordeal by battle, he needs to know his four ancestors and the place of his origin and must designate them properly, or the

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55See I 48,1.

56The freeman must prove through his ancestors and his Stammgut - place of family origin or birth, that they were free and that consequently he is also free. See Heck, Sachsenspiegel, pp. 500-15.
challenged man may legally refuse to fight the ordeal.

I 51,5. Should one man challenge another to an ordeal 57 and that man may legally refuse to fight, the challenger must let him go and pay him compensation. 58

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I 52,1. No one may alienate his allods or his serfs without the permission of the heirs and without the regular court. Yet lords exchange their ministeriales 59 without the court, as long as this exchange can be proven and witnessed to. Should a man alienate the land unlawfully without the heirs' permission, the heir may take possession of the land with verdicts, as if that one who had alienated the land as he was not allowed to do was dead.

I 52,2. A man may alienate all chattel at all places 60 and without the heirs' permission, and return and enfeoff estates, as long as he is able to mount a horse, himself carrying sword and shield, from a stone or a wooden block about as high as the distance from the thumb to the elbow. He must do this without help excepting that man who holds the horse and the stirrups. When he is no longer able to do this, then he may not give away, enfeoff, return any land so that he will take it away from him who expects to receive it after his death.

57See I 63,1.
58See I 53,1; I 62,4.
59See III 73,2.
60Everywhere and not only at the place where the regular court is held.
I 52,3. But what a man has deprived another man of illegally, he must return into his possession. Thereafter he may not sue for the gift, but only upon the rights which he had to it before it was taken from him.

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I 52,4. No one shall accuse a wife or the domestic servants if a man gives away his chattels on his death-bed or pawns them off at a time when he should not do so, for they are not able to speak against the man's presentation, be it right or wrong. Should someone receive something unjustly, it shall by rights be demanded from him. The wife is only accountable for that part of her husband's estate which is in her possession and has been granted to her through his death.

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I 53,1. He who does not follow when the hue and cry has been raised, or does not complete his suit lawfully, or challenges a man to an ordeal who may refuse it lawfully, or who does not appear on time to a set court, or misses it completely, or says or does anything against all proper manners during the court, or does not pay a debt of which he has been convicted pays a fine to the judge for every one of these offenses. The judge may also demand a fine from every debt through which a man wins compensation. Yet often the judge is paid a fine because of a misdemeanor committed during the session of the court, although neither the plaintiff nor the defendant received any compensation thereof.

61I 62,3.
62I 62,1.
63I 51,5; I 63,1.
64I 51,4-5.
I 53,2. Should a man lay claim to an item and files suit thereto and his claim is legally refused, he shall remain without compensation and without fine, as long as he does not forcibly seize the item. I 53,3. The beadle shall attach him who does not pay fines and compensation when they are due, and shall pawn or sell the attached item immediately for payment of the debt. Yet the beadle may only undertake such attachment if he has been empowered to do so with verdicts.

I 53,4. No one pays a fine twice for the same action unless he breaks the peace therewith and also becomes liable to excommunication. In this case he must pay a fine to the ecclesiastical court and to the secular court, and shall give compensation to him whom he had injured.

I 54,1. No lease-holder shall tolerate attachment for his lord's debts above the amount of the rent which he pays annually.

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65II 5,2.

66The term mit ordelen - durch Urteil or "with verdicts" appears frequently in the law-book. It describes the legal empowering of an officer of the court (judge, beadle, etc.) to act through the verdict after it has been rendered by the jurors (Schöffen).

67The German word is tinsman which comes from tins - Latin census which means tribute or duty. Here the word refers to a copy or lease-holder, in short any one who is not a serf, but does not have alodial property as a freeman might have. Most farmers who were not serfs fell into this category of the tenant-farmer. I 54,5 will also refer to an inherited copy-hold usually called a fee-farm where the rights of the possessor were greater than those of regular tenant-farmers.
I 54.2. Should a man not pay his rent on the due-day, he shall pay twice the amount on the second day, and so on all days, as long as he has his due-day behind him, insofar as the lord pursues him with proper verdicts and demands the rent within his house. No man, however, is obligated to pay his rent outside of his house.

I 54.3. The lord, or his representative who rents out the land, may demonstrate the rent with more right than the man may deny it. The same is true of the tithe upon the property which the man holds. But if the man claims that he has paid in full, then he may prove this with two witnesses who saw and heard that he paid it, should this ever be questioned.

I 54.4. The lord may distrain without the judge's permission on his own estate against the rents which have been promised him from his lands.

I 54.5. No lease-holder may work a stone quarry or a clay pit without the lord's permission whose lease-holder he is. Neither may he cut wood nor clear wasteland on his lease-hold unless it is his fee-farm.

I 55.1. All secular courts have their origin in election. Therefore no mere official may be the judge nor any one unless he is born to it or has been enfeoffed as a judge.

68 See I 54.1 note.

69 The term used is kore - Kur - election. This is a special form of election which is also used and much better known when applied to the election of the monarch. A selection was usually made from among several candidates; this was the final designation of the chosen one. It does not seem to mean that the judge was elected by the suitors of the court.
Should theft or robbery occur suddenly and a man was caught there in the act, and the regular enfeoffed judge cannot be found, a Gograf shall be chosen from at least three villages in order that this sudden crime be judged.

Neither enfeoffment nor a "search for enfeoffment" exists for the office of the Gograf. For it is through the free choice of the people that the Gograf is chosen for every sudden crime, or for a set time. But if this office is granted by a lord as a fief, the possessor shall be obligated to follow the Lehrechte in relation to his vassals and his children, providing, however, that the people may bring this enfeoffment to naught for both of them with their free choice.

The concept Gograf - gogreve has been disputed in historical literature for a long time. Kroetschell, Zur Entstehung der sächsischen Gogerichte, has reviewed this question thoroughly. The author comes to the conclusion that the Gograf and the court he presided over arose in the twelfth century together with the Landfriedensgesetze in the wake of what has been called the Kriminalisierung des Strafrechts (p. 299). The court had competency in the so-called Blutgerichtsbarkeit which was also a phenomenon of the twelfth century. Crimes were thereby punished with blood - capital punishment - and no longer with wergild and compensations. Indeed, the entire Landfrieden movement arose in response to the state's attempt to subdue private blood-feuds. The first mention in the sources of a Gograf is in the later half of the twelfth century (p. 297). It appears usually in connection with the rising territorial princes whose agent the Gograf became.

The problem of who, if anybody, elected or designated such a Gograf is raised in this sentence. Kroetschell argues (pp. 304-06) that the territorial prince had a very pronounced influence over the Gograf. Writes Kroetschell, ibid., pp. 305-06. "Der Landesherr nimmt das Blutgericht für sich in Anspruch: dass heisst nicht einfach, dass er es ist, der den Gografen ernennt (first ministeriales were used, later burgesses and farmers), sondern das ist eine Aussage über das Wesen des Gogerichtes selbst. Es ist ein Gericht des Landes (terra oder provincia)." Often the term Landgoding is found in the sources. The author argues
I 57. The jurisdiction of the Gograf ceases, if the thief or robber was not convicted on that day or night. The regular enfeoffed judge shall then adjudicate the matter. This pertains to that Gograf who has been elected to adjudicate on that same day a crime wherein a man has been caught. 

I 58,1. The Gograf shall be enfeoffed by the count or the Markgraf, if he has been chosen to serve a longer period of time. Counsel may be taken before him (in his court). That Gograf may also adjudicate crimes which had been continued overnight.

I 58,2. Whenever the count comes to the court of the Gograf, the Gograf's jurisdiction shall rest. Whenever the king comes into the county, the count's jurisdiction shall also rest if they are both present. This is true of every judge when the king is present, unless the suit goes against the king.

I 59,1. The judge may adjudicate all types of suits and crimes within his court-district, wherever he is located. However, a suit about allodial lands, or the charge of a crime against a schöffenbar free man may only be adjudicated at the regular place of court under the further that the suitors called by Eike the lantlude or dat lant consisted not only of rural freemen and serfs, but also of the nobles. It is then not really the Landesherr but the Land which designated this judge. By the term lantlude the important nobles of an area - the gentry are meant; it is not a Volkswahl.

74 I 55,2.

75 See I 2,4 for the regular Gografending which was attended by the Landsassen.
royal ban. No one may hold a court under the royal ban unless he has received it from the king. If he has received the ban once, he need not receive it again after the king's death. Only one man in a Vogtei may possess the royal ban. That man who holds court under the royal ban and has not received it shall forfeit his tongue.

I 59,2. No judge, who holds a court under the royal ban, may hold a regular court without his Schultheiss before whom he himself shall stand trial. Therefore, he shall request the first verdicts from the Schultheiss: Whether it is the proper time for a court; and thereafter: whether he should forbid any illegal escapes from the court and any other disturbances. As soon as this has been settled,

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76 The problem of what is and is not meant by the royal ban - koninges ban - Königsbann or Bannleihe has been discussed widely. The idea is based upon the premise that all law derived from the king and that the judge or the count was only the royal representative. I 58,2 shows this sentiment clearly. By the thirteenth century there developed an independent granting of the royal ban as part of the powers of the territorial prince - who was also the former count - and the judges became his appointees. Although Eike tried to keep the direct connection to the king open, this was a vain hope. Theoretically the king still granted the ban, not to the judges but rather to the territorial princes. The monarchy had thus lost control of the lower courts entirely. (See Mitteis, Deutsche Rechtsgeschichte, chapter 28, pp. 122 ff.).

77 Vogtei is the German term for advocacy which usually referred to the lay administrator of an ecclesiastical foundation. (See Barraclough, Medieval Germany, II, 185 for Theodor Mayer's discussion of the advocate in the twelfth century.) Eike himself had ample opportunity to study this office since his best friend and patron Hoyer von Falkenstein was Vogt - advocate of the abbey of Quedlinburg.
every one may bring charges about his troubles together with his advocate.\textsuperscript{78} The advocate is necessary to prevent any action to the plaintiff's disadvantage.

I 60,1. A man may bring suits and answer to charges without an advocate if he wants to risk the harm which could happen to him. For if he makes a slip of the tongue, he may not correct it, as he could do with the advocate by not agreeing with the advocate's statements.

I 60,2. The judge shall grant as advocate who had been chosen first and none other, unless he has been excused of his position legally. No one may refuse to be an advocate within the court-district where he resides, or holds lands, or is a suitor of the court, unless the action proceeds against the life, health, or legal status of his relative, his lord, or his vassal.

I 61,2. It is the judge's prerogative to decide who shall be granted an advocate first, if two men should ask for one simultaneously. The judge may also decide whose suit he wished to hear first, if two men bring charges at the same time, unless one of them proves with witnesses that he brought his action first.

41

I 61,3. The man with the speech defect may correct himself if he makes a slip of the tongue. Should he neglect to do something for some man whose advocate he is, that man may correct the error with another advocate.

\textsuperscript{78}The word advocate here means F\u00f6rsprecher or vorspreken, also translated as intercessor or attorney - the early form of a lawyer.
I 61,4. In Saxony every man who is not a priest and is a respected member of the legal community may be an advocate under the Landrecht. But he is required to put up bond if he does not possess an inheritance in that court-district so that the judge's fine and the compensation payments may be paid. But he need not put up bond until he has forfeited these fines.

I 60,3. A man shall be obligated to perform his legal duties and help at that court where he demands legal redress.

I 61,1. No plaintiff need set surety until the suit has been put on the calendar. The beadle shall take a plaintiff or a defendant in a criminal action into his custody, if they possess neither a bondsman nor an inheritance in that court-district.

I 61,5. A man's advocate may speak as his counsel in all those actions which are brought against the man or which he has files as long as the advocate is not taken from him through legal action, or they have renounced their connection.

I 62,1. No one shall be forced to file a suit which he had not yet filed. Every one may remain silent about his injury as long as he wishes to do so. But should he raise the hue and cry he must go through with the suit for this hue and cry is the start of the action.

I 62,2. A man who draws his sword to the detriment of another shall surrender this sword to the judge.

I 62,3. A man must pay a fine of three shillings if he only raises the

79I 53,1.

80This seems to apply only during the actual session of court. It is treated as contempt. See I 2,4.
hue and cry and does not follow through with the action.

I 62,4. The plaintiff who goes on with his suit, which does not result in the ordeal, shall remain without harm if the defendant clears himself through an oath of purgation, unless the plaintiff had challenged the defendant to a fight.

I 62,5. A plaintiff may bring suit against a breaker of the peace unnamed if he does not know the name.

I 62,6. Testimony, to which a man appeals, shall be furnished within six weeks or immediately, if he wants it. Testimony which is required about allodial property may be given immediately or at the next court session.

I 62,7. The judge always questions the man whether or not he agrees with the words of his advocate, and shall ask for a verdict between the speeches of the two men. Should the judge ask his questions according to his own notions and not according to procedure, this will neither help nor hinder the two contending parties.

I 62,8. That verdict which is requested first shall be rendered first.

I 62,9. Both plaintiff and defendant may take counsel about every item three times. These counsels may last until they are recalled before the court by the beadle.

I 62,10. A court is in session in all places where a judge does his work through verdicts.

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81 Then he owes him a compensation payment, see I 51,5.

82 See I 60,1; III 14,1.
I 62,11. As long as a man has an advocate, he shall not speak publicly before the court. But he may say yes or no, or ask for time to take counsel, if the judge asks him whether or not he concurs with the advocate's presentation of the case.

I 63,1. Before a man is able to challenge one of his peers to an ordeal by battle, he shall ask the permission of the judge that he may seize lawfully one of the breakers of the peace whom he sees present there. Should such permission be granted to him through a verdict, he shall inquire as to the method he should use in seizing him, so that it might help him in his search for justice. Then he is told properly that he shall seize him quite mannerly by the collar. When the plaintiff has thus seized the defendant and has let him go again with permission, he shall announce why he has thus seized him. This he may do immediately, or he may take counsel first. Thereafter the plaintiff must accuse the defendant of breaking the peace against him: either upon the king's highway, or in a village. And he is taking action against him in the same way as the defendant broke the peace against him. Thereafter, he shall accuse the defendant of having wounded him and having used against him, which he - the plaintiff - is able to prove.

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83 Touching a man by the collar or arm was the normal way to begin a challenge to the ordeal. It reminded of the slap in the face which was sometimes used to provoke another to fight a duel. Physical touch seemed to offend a man's personal freedom and honor.

84 All highways were under the protection of the king's peace, as was the enclosed village. See II 66,1.

85 Since the defendant had broken the peace against the plaintiff with physical violence, the plaintiff was going to fight it out with him.
The plaintiff shall then show the wound or the scar, should the wound have healed. Thereafter he shall further accuse the defendant of having robbed his property, which was no small matter and which is worthy of the ordeal by battle. The plaintiff shall accuse the defendant of these three crimes in one instance. Should he remain silent about one, he has lost the ordeal.

I 63,2. The plaintiff shall further speak: I saw all this myself and raise the hue and cry against the defendant. I would prefer it if he confessed his crime. But if he does not confess it, I will convict him with all those rights which the suitors of this court have granted me (or the Schöffen if this court is held under royal ban). The defendant may then request surety and it shall be granted him. Yet before this bond is set, the plaintiff may still correct his accusations. After such bond is set, the defendant may claim that he is innocent. This is an oath and a regular ordeal when the plaintiff has thus properly challenged the defendant to the ordeal and all is in order – I mean that in spite of his wounds the plaintiff is able to fight the defendant.

I 63,3. Every man may refuse to fight an ordeal against one of lesser birth than he. But the man of lesser birth cannot refuse to meet one of superior birth on account of the difference in rank, if he has been

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86 The German word is lantvolk which here should be translated as the legal community or suitors at this court.

87 See III 14,2; II 15,1-2; II 16,1.
challenged by this superior. A man may also refuse an ordeal to which he has been challenged after noon, unless the proceedings were begun before noon. The judge shall further provide the defendant with a shield and a sword, should he be in need of them. A man may also prevent a fight between his relatives, if they are both his relatives, and he is able to swear upon holy relics with six oath-helpers that they are so closely related that lawfully they should not fight each other.

To each of the contestants of the ordeal, the judge shall grant two messengers who shall make sure that the contestants have been prepared according to proper custom. The contestants may wear as many leather and linen clothes as they wish. The front of their heads and feet shall be bare, and they wear nothing but thin gloves on their hands. A naked sword shall be in one hand and one or two at their side, whatever they desire. A round shield made only of wood and leather except for an iron shield-hump shall be in the other hand. They shall also wear a tunic without sleeves over their garments. Peace shall be granted to the place of combat upon pains of death so that no one disturbs the contestants in their fight. To each contestant the judge shall give a man who shall carry a staff. He shall not disturb them unless one of them falls; then he shall interfere with his staff. Should one of the contestants be wounded or begs to have an interference, the man with the staff shall ask the judge's permission to interfere. After peace has been granted to the place of battle, the contestants shall take possession of it properly as the judge has permitted them to do. They shall also break off the iron tip of the sword if the judge permits it.
Thus armed they shall go before the judge and take their oaths: The plaintiff shall swear to the guilt against which he has started proceedings. The defendant shall swear to his innocence, and both shall ask God to help them in their fight. The sun shall be apportioned to them before their first round. If the defendant is defeated, judgment shall be held over him. Should the defendant be victorious, he shall be set free with a fine and compensation.

I 63,5. The plaintiff shall arrive first at the place of battle. Should the defendant tarry, the judge shall let him be summoned by the beadle and two Schöffen in the house wherein he is arming himself. There he shall be summoned a second and a third time. Should he not come after the third summons, the challenger shall rise and offer himself to combat, and shall beat two strokes and a thrust into the wind. With this he has defeated the defendant of whatever accusation he had made against him. The judge shall then pronounce judgment over the defendant as if he had been defeated in an actual fight.

I 64. A dead man shall be convicted in the same manner, if he has been slain during theft or robbery or a like crime. But if the plaintiff can convict the slain man with the testimony of seven men, he need not challenge him to an ordeal. However, if anyone of the dead man's relatives offers to fight the ordeal for him, this action will then take
precedence over the testimony. For the dead man may not be convicted without the ordeal unless he was proscribed.\footnote{The German word is \textit{vervesten} – actually to tie down. This is a lesser form of outlawry.}

I 65,1. To repeat what has been said: \footnote{I 63,5.} That defendant is convicted in a like manner, if he has been seized and has been formally challenged to the ordeal and has promised or has set bond for his appearance, and then did not obey the summons to the regular court session.

I 65,2. The man who had forfeited his life or his hand under the law and buys them off is incapable of participating at court. \footnote{See I 38,1; I 51,1.}

I 65,3. A man who sets surety in order to bring someone to court who has been charged with a crime shall pay his wergild if he is not able to bring him to court, but that shall not deprive the suretor of his legal status. \footnote{III 9,1-4.}

I 65,4. Wergild shall be paid twelve weeks after the time it has been won. All other debts may be paid to the creditor before they are due, as long as they are paid in a place from which the creditor can carry them unmolested. But the debtor shall have the testimony of two men, should he need it, who saw that he had paid the debt or that he offered to pay it with silver or with currency which is used there, and that the creditor refused against all reason to take it there.
I 66,1. The criminal caught in the act shall be brought before the court just as he was when he was captured. The plaintiff shall convict him with six oath-helpers (witnesses).

I 66,2. The proscribed man is treated in the same way\(^\text{93}\) if the crime for which he was proscribed can be proven.

I 66,3. Yet no one shall be adjudged forfeit of his life because of the proscription or the outlawry, if he had not come into it with the proper procedure.\(^\text{94}\)

I 67,1. Should a man be accused before the court and does not appear, he shall be summoned to the next session. But the man accused of a crime shall be summoned three times, always at intervals of two weeks. A free schöffnenbar man accused of a crime shall be summoned at intervals of six weeks to the regular place of court under the royal ban.

I 67,2. A man shall be proscribed if he does not obey the third summons.

I 68,1. A man shall not be proscribed for any crime except those which are punished by death or mutilation.

I 68,2. A man shall be proscribed who beats another with a cudgel so that the marks swell on him or make him bloody without a flesh-wound,\(^\text{95}\) and the wounded complains of this before the judge, or the beadle, or the Bauermeister and the peasants, and can prove a fresh deed, and the accused does not appear at his regular court-days to defend himself or to give lawful compensation.

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\(^{93}\)I 66,1.

\(^{94}\)II 4,1.

\(^{95}\)II 16,8; III 37,1.
I 68,3. A man may challenge another to an ordeal by battle with a bloody wound without being a flesh-wound, or even with the scar of the wound, and with hostile words.

I 68,4. A man may further kill another without serious visible harm or hurt him through a beating, blows, by throwing him, or in any other manner. He will forfeit his hand or his life for these actions and becomes liable to proscription.

I 68,5. For whatever crime a man has been proscribed, should he be captured during his proscription and brought before the court, he has forfeited his life, if he is convicted of the crime and the proscription through witnesses. But should he gain release from the proscription and then be brought captured before the court, he is treated according to his proper legal status as if he had never been proscribed.

I 69. Should a man bring a dead or a wounded man captured before the court and wants to convict him of breaking the peace with or without the ordeal and he does not succeed, this plaintiff shall be judged according to the laws of the peace. 96

I 70,1. A man shall be invested with the property and shall be granted power over it if he has brought an action on account of this property to three court sessions. No one may turn him out of this investiture unless it is done through a proper suit. The man may refute this investiture within a year and a day's time through an oath upon holy relics, but he may immediately represent it and at the next three court sessions if a suit is filed thereto.

96 II 14,1.

97 II 44,1.
I 70,2. If a man is not obligated to attend that court and is not present there and he is charged on account of a debt, he shall be summoned by the court to pay within a fortnight, or he shall refute the debt properly. If he does not do this, he shall be attached for the debt and the attached item shall be given as surety three times, always at intervals of two weeks, if the creditor demands it. Even if it is not demanded as surety, the attached property shall be kept in a safe place for six weeks. Should the attached debtor not cleanse himself of the debt within six weeks, he may not cleanse himself later unless he was prevented by circumstances beyond his control. 98 Thereafter the attached article shall be pawned for the debt, or sold, if it cannot be pawned. Should something be left over after the payment of the debt, that shall be returned to the debtor. Should it not be enough, he shall be attached again until the creditor is paid in full.

I 70,3. A man, who has committed a crime and has been charged at court through the hue and cry, before the crime was a night old, and the plaintiff may prove that crime through himself and six oath-helpers, shall be proscribed immediately. Should the judge be outside the court when it happened, the plaintiff may bring the suit before the beadle in the judge's place. If the plaintiff has witnesses to testify to this charge, the defendant shall be proscribed on the first day that the charge

98 The phrase echt not is used to describe a "real emergency". Four things constitute this: Imprisonement, sickness, imperial service, and a crusade or pilgrimage. See II 7.
judge has returned to the court just as if the deed had happened on
that same day.

48

I 71. Should a man be proscribed by the regular Gograf, who received
his judgeship from the count, he is actually proscribed by the count.
Thus the count also issues the ban of the king with his proscription.

\[99\text{III 24,1; III 34,1.}\]
CHAPTER III

The Landrecht: Book II

II 1. Lords who pledge loyalty to each other under oath and do not set apart their loyalty to the crown\(^1\) have committed an offense against the crown.

49

II 2. Should the count fail to appear at his regular court, this is the only term the plaintiff loses.\(^2\) But should the count fail to appear at a court session especially ordered because of a crime, the entire action must begin again from its start.

\(^1\) The word "crown" is used here to translate rike or Reich which appears in Eike's work to mean the power of the government as administered by the king. The concept of excluding loyalty to the king in every sworn oath was very difficult to enforce in Germany, although Frederick Barbarossa even tried to legislate this practice in his Constitution de jure feodorum of November 1158, c. 10 which states: "Illud quoque sanccimus, ut in omni sacramento fidelitatis nominatim imperator excipiatur." Despite the legislative attempt, this principle never found the strong application in Germany as it did for instance in England as witnessed by the Oath of Salisbury of 1087. It is also expressed in the English oath of fealty as used in the Leges Heinrici 55,3: "omnis homo fidem debet domino suo de vita et membris suis et terreno honorе et observatione consilu sui, per honestum et utile, fide Dei et terrae principis salva." A similar sentence is found in Bracton, f. 80 (Woodbine II,232): "... et fidem vobis pertabo contro omnes gentes quae vivere poterunt et mori, secundum quosdam: "Salva fide domino regi et heredibus suis." (The English references were quoted in Wiebke Fesefeldt Thadden, Englische Staatslehre des 13. Jahrhunderts ("Göttinger Bausteine zur Geschichtswissenschaft," vol. XXXII.), p. 18.)

\(^2\) In most instances the accused will be summoned to three successive courts. Should one of these summonses call him as well as the plaintiff to a regular court session and the judge fails to appear, the summons and the action are simply continued to the next session.
II 3,1. Should a man be accused to his face concerning an allod or a fief which he has in regular seisin, he shall be granted a hearing at the next court, if he declares: "I have not been summoned here because of this matter." Should he also request a continuance of the charge to the second time of court, he shall be granted such. But he must give an answer after the third summons.

II 3,2. Should a man be challenged to an ordeal by battle and came forward unprepared because he had not been summoned to the court for that action, he shall be given a deferment according to his rank upon his request, so that he may prepare himself thereto. But this is not done before the ordeal has been properly agreed to. The free schöfftenbar man has six weeks deferment; the ministeriales and all other free people have two weeks.

II 3,3. A man shall answer all other accusations immediately by either confessing or denying the charge.

II 4,1. Should a man wish to get free of proscription, the judge shall grant him safe-conduct, in order to appear at the court which has been ordered because of his request. Should he cleanse himself of that proscriptio

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3Excepting regular seisin (II 3,1) and the ordeal by battle (II 3,2).

4The German term used here is vrede werken - "to grant peace." The judge is empowered to give "peace" or better safe-conduct to the defendant.
proscription through an oath upon relics, the judge shall free him and the suitors of the court\(^5\) shall put him out of proscription with the proper symbols\(^6\) as he was also put into it. Should such action be refused him illegally, and he frees himself through an oath upon relics, he is no longer proscribed thereafter. He shall be granted safe-conduct and he shall give surety that he will appear at three courts, if such is demanded of him. There he shall be ready to answer, should any one wish to charge him. But if no one charges him during these three courts, he shall be acquitted of the charge.

II 4,2. If the man, who had freed himself from proscription while the plaintiff was not present, fails to keep his promise to appear before the court for which he has given surety, the judge and not the plaintiff will then win the surety when he puts the man back under proscription as he legally should do.

II 4,3. If a man gives surety through a bondsman that he will appear at court, but is prevented by reason of essoin\(^7\) from appearing, his bondsman or some one else as his representative shall name the reason of this essoin and shall prove it with an oath upon holy relics.

\(^5\)The German term here is lantvolk - Landleute or just lant - Land which refers to the suitors of that court - those who are obligated to appear at that court.

\(^6\)Eike says mit vingeren unde mit tunga. Meant are certain ritualistic actions of speech and pointing which were required when a man was proscribed as well as when he was freed from the proscription.

\(^7\)See II 7 for the reasons that constitute "essoin."
II 5,1. Should a man's allodial property within the court's jurisdiction exceed his wergild, he need not give surety if he is charged with a crime.

II 5,2. A debt which has been won before the court shall be paid within two weeks, a fine within six weeks, and a compensation within two weeks. However, should a man win his compensation first before the fine, the compensation shall be paid to him within six weeks, and the fine shall be paid thereafter within two weeks. These payments shall be made within the house of the creditor, in daylight, should the creditor own a house within the jurisdiction of the court, or in the nearest house belonging to the judge if the creditor has no house within the district.

II 6,1. The man who refuses the compensation due him before the court shall lose all claims to compensation.9

II 6,2. A man must prove all proper payment of debts with the testimony of two men who saw and heard the action.

II 6,3. If a man is obligated to present himself in court and does not appear, he is then convicted to pay a fine unless he can lawfully refute this charge.

8bi sunnen scine - "by sunshine" a rather poetic way to say "in daylight."

9It is not clear whether one instance of refusal is meant, or whether this action deprives the man of any compensation thereafter. The first choice is the more likely one.

10Selve dridde - selbst dritt - which means three oath - the man himself and two oath-helpers.
II 6,4. Should a man witness the granting of a gift or hear the reaching of a verdict and he does not refute it immediately, he may not refute it later.

II 7. There are four things which are reason for essoin: imprisonment, sickness, a pilgrimage or crusade in God's service outside the country, and imperial service. Should one of these reasons hinder a man from appearing at court, and it is properly established by one of his messengers, regardless of who is the messenger, the man shall remain without rebuke and shall win a continuance until the next court, if he is then free from the essoin.\footnote{See I 38,2; I 70,2; II 4,3;11, II 71,3 for other instances of the use of essoin.}

II 8. If a man charges another with a crime, and the defendant is not present at court, but appears later, and the plaintiff does not repeat his charge, the plaintiff shall pay a fine to the judge and compensation to the defendant, and the defendant shall be acquitted of that charge. But should the plaintiff go through with his suit and the defendant be acquitted properly, the plaintiff will not be bothered by that, unless he had challenged the defendant to an ordeal by battle.\footnote{Then he must compensate the defendant; see I 51,5.}

II 9,1. Should a man have begun to answer a charge and a day at court have been set for him through a verdict, but he does not obey the summons, he will be convicted of the charge against him.
II 9,2. The judge shall receive surety through a bondsman from both
the plaintiff and the defendant that they will obey the legal summons.
The bondsmen shall also pay heed as to their proper rights in that
court.

II 9,3. Should an action be continued until another day, with a
verdict on account of a prisoner, he shall then be released against
surety unless he had been caught in the act of committing a crime.

II 10,1. A proscribed man may be captured during days of obligation.\(^1^3\)
But he may not be tried then unless he was caught committing a crime.

II 10,2. No man is obligated to set a higher surety to the court than
the value of his wergild, unless he has confessed to owing a debt or
has been properly convicted of the debt.

II 10,3. Oaths to keep the peace and oaths against a man caught
committing a crime only may be sworn on days of obligation.

II 10,4. If a man breaks the peace on a day of obligation, he is no
longer protected by its sanctity. Neither does the church nor the
churchyard protect a man against the crime he committed within.

II 10,5. Should a man charge another of something other than a crime
during the days of obligation, the judge may try the defendant if he

\(^1^3\)The term bundene or gebundene dage means days of obligation,
days on which no court may be held. They are used here in connection
with the Peace and Truce of God-idea. See II 66,2 for a description
of which days are obligated and why. They are not, however, hilge
dage - holy days.
is present to stand answer, and shall command that the defendant either confess and promise to give redress, or deny the charge. But the judge may not hold a court on the days of obligation.

II 10,6. Should a man promise to swear an oath, he shall do so on the next day which is not a day of obligation.

II 11,1. Should a man promise to swear an oath on account of a debt, but he does not do so at the proper time, he shall stand convicted of the debt for which he had promised the oath, unless it can be proven that he was prevented by reason of essoin. Had the oath been promised before the court, the judge will receive a fine and the plaintiff, to whom the oath had been promised, will receive compensation.

II 11,2. Should the debtor be willing to take at the proper time the oath which he had promised, and the creditor does not want it, or is not present where the oath was to be given, the debtor shall be rid of having to give the oath as well as having to pay the debt, for which he promised the oath, if he is able to prove the negligence of the creditor with witnesses.

II 11,3. But should payment be made in silver or in pennies and the creditor does not wait for the payment or does not accept it on the proper day, the creditor does not lose the money, but he has lost that day of payment. Should the debtor also have had promised the creditor that he would surrender himself into voluntary detention,

14 See II 7.

15 The German is inridene - to ride into voluntary custody until the debt has been paid.
the debtor need not keep that promise. But the debtor is not freed from paying the money nor from the debt for which he thus would have surrendered himself into voluntary custody.

II 11,4. No court may be held on days of obligation.

II 12,1. No man may reach a verdict over his lord, his vassal, or his kin, if it will endanger their life, limb, or honor.

II 12,2. Schöffenbar people may reach verdicts over any man. But no man except one of their peers may reach a verdict over them, should it concern their life, honor, or inheritance. Neither may any one contest their verdict.

II 12,3. Every man who has a respectable standing in his law may reach verdicts over another man outside of the royal ban in such matters as are adjudicated without the royal ban.

II 12,4. Should a verdict be contested, it shall be appealed to a higher judge, and finally to the king. The judge shall send his representatives there who shall hear which side wins before the king. These representatives shall be schöffenbar free, if the contest happened in a county. If it had occurred in a Markgrafschaft, diverse people may qualify as long as they have a good standing in their law. The judge shall provision them. He shall give them bread and beer enough and three meals to eat, each according to the time of day, and a beaker of wine. Two meals shall be given to the servants. Each of the horses shall

16 The judge is of the court where the verdict was reached and contested.
shall receive five bails day and night, and shall be fitted with horse-shoes on their front legs. There shall be six servants and eight horses. After the representatives have discovered the wareabouts of the king in Saxony,\(^17\) they shall travel to the royal court and after six weeks they shall return with the verdict.

II 12,5. Should a man contest a verdict and not win the appeal, he must pay a fine to the judge and a compensation to the man whose verdict he had contested. He must also reimburse the judge for the expenses which the latter incurred by having to use representatives.

II 12,6. A contested verdict may not be appealed from a county to a Markgrafenschaft\(^18\) although the count may hold his county of the Markgraf.\(^18\) The reason for this lies in the fact that the Mark\(^18\) does not possess the royal ban and its law is different. Therefore, the verdict from the county shall be appealed to the crown.

II 12,7. Should a man be asked to render a verdict\(^19\) and cannot reach it, and will swear to it that it is impossible for him to reach one, another man may be asked, and still a third, and a fourth. The last has as much respite to consider the verdict as is given to the defendant.

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\(^17\)During Eike's life time Philip of Swabia as well as Otto IV were frequently in Saxony. The area was politically very important and known to be turbulent.

\(^18\)Mark, Markgraf, and Markgrafenschaft all designate the marcher regions of Germany and their rulers. Eike was particularly familiar with these problems as the one described above since he lived in one of these marcher region himself and knew several of their rulers.

\(^19\)See I 62,7; III 69,2.
II 12,8. Should a Saxon contest a verdict and appeal to his right hand and the majority, he may fight for it with six helpers against seven other men. The verdict is won by those who win most of the duels. Those who are defeated must pay a fine to the judge and a compensation to those they fought against. A battle over a verdict may not be fought anywhere except before the king.

II 12,9. Should a man be asked to reach a verdict and does so according to what he thinks is right and proper, he shall remain without blame, although his verdict may be against the law.

II 12,10. Should a man refuse to give his assent to a verdict and reach a new one, that verdict shall be used which is followed by the majority of the suitors present there. Both finders shall remain without fine, since neither contested the verdict of the other.

II 12,11. When a man contests a verdict, he shall say this: "The verdict which that man has reached is unjust, and I contest and appeal it, wherever I have to appeal it according to proper procedure, and ask for a verdict therefore to tell me where I shall appeal the matter." 

II 12,12. Should a Swabian contest the verdict of a Saxon, or a Saxon that of a Swabian, they may let it be decided before the king, as has been explained before.
II 12, 13. A verdict shall be contested while the man stands. A verdict shall be reached under the royal ban with every juror seated upon his chair. But a man who was not born to the jurors' bench shall request to be seated there through a verdict, so that he will be able to reach another verdict. The man who reached the first verdict shall surrender him his chair.

II 12, 14. The new juror will ask leave to keep his verdict which he has reached, as is his right, and will appeal the matter, at that court to which it should be properly appealed. He shall ask for representatives for that matter. But no one shall ask for consent to a contested verdict. The finder shall not retreat from his position without the consent of the man to whose benefit the verdict was reached. The man who has reached a verdict must appeal it, if it is contested, and may not retreat from the verdict without the judge's permission nor without the permission of the man to whom the verdict was reached.

II 12, 15. A man who is captured because of a crime and is brought before the court may not contest any verdict. A man who is to fight an ordeal by battle shall not contest a verdict after he has entered the arena.

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24 The jurors' bench

25 A chair in the jury was inherited along with a piece of property to which the chair belonged. This arrangement pertained only to the count's court. It is possible that such a chair existed in Eike's family, but he probably did not hold it.

26 See III 69, 3.

27 The place where the ordeal was to be fought.
II 13,1. This is a discussion of the various crimes and the punishments that will be ordered. The thief shall be hanged. But should a theft occur in the village during daylight, which amounts to less than three shillings, the Bauermeister may punish the offender on that same day with a flogging and shearing of hair, or with a commuted sentence of three shillings. But the convicted thief shall remain without honor and without legal status.

II 13,2. This is the highest judicial power which the Bauermeister has. He may not try that same crime, should the charge come after a night has passed. For higher amounts of money and other chattel he may set a higher punishment.

II 13,3. The same punishment as for petty theft is given for false measure and weights and for false sales, should these be discovered.

II 13,4. All murderers and those who commit robbery on the plow, a mill, a church, or a churchyard, and also those who commit treason

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28II 13,1. The Bauermeister takes care of most small police-cases in a village. But his jurisdiction is limited to trying crimes which had happened on the same day that they are brought before him.

29A false sale – giving too few items for payment received.

30The concept of "robbing the plow" has been the object of some controversy even as early as the sixteenth and seventeenth centuries, Leo Leesmont, "Pflugraub in Mittelalter," ZRG, LVIII (1938), 534-47 brings the interesting conclusion that what was punished was not really stealing a plow or even a team of oxen or horses, but the interruption of the peace of the field (Ackerfriede). Successful agriculture could only be carried on if the man plowing felt himself secure upon his field, since these fields were often far away from the village. Leesmont cites
and arson, and those who use to their own advantage their obligations and position of ambassador shall be broken upon the wheel.

II 13,5. A man shall be beheaded if he kills, imprisons, robs, or burns a man, except during arson, or if he rapes a woman or girl or breaks the peace, or is caught committing adultery.

II 13,6. Those men who conceal stolen goods, or help to do so, shall be punished in the same manner as thieves or robbers, if they are convicted of such charges.

II 13,7. The Christian who commits heresy, or deals in witchcraft, or with poison shall be burned at the stake.

II 13,8. A judge who does not try the crimes shall himself become subject to that punishment which should have been given to the criminals. Neither is any man obligated to attend the court of such a judge or help him administer the law while the judge has refused to act according to what is law.\textsuperscript{31}

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II 14,1. A man kills another in self-defense and dares not remain with the body for fear of his life, so that he may bring the dead man before court and have judgment passed over him. He shall not lose his life, if he comes before the court without the dead man and confesses to all this before he has been charged, and puts himself into the hands of the law. He shall pay the judge the highest monetary court-fine which is

\begin{footnotesize}
\textsuperscript{31}See III 87,3.
\end{footnotesize}
customary there and a wergild to the dead man's kinship. The kinship shall be summoned to the next court to receive their wergild, thereafter to the second, and the third. Should they not appear at the third summons, the defendant shall retain the wergild until it has been won from him in a legal action, and he shall have peace. No one shall demand the defendant's life for the dead man, if he had offered himself for trial before he had been charged with the death.

II 14,2. But should the dead man be brought before the court unburied and the defendant is charged with the crime, the defendant must stand trial for his life or must be able to convict the dead man, or must answer as to the stroke he has done and of which he has been accused.32

II 15,1. A man who has a claim in court for which he must pledge surety and promises this must give up his claim with a surety-compensation and must pay a fine to the judge if another man comes and makes the same claim and the first man, who had promised surety, cannot have the claim of the second man rejected. His surety-compensation consists of the loss of his right hand upon which he promised surety, or half his wergild.

II 15,2. But should a man pledge surety, when he puts in a claim for the Heeresausrüstung or an inheritance, or a woman pledge surety, when

32Since the defendant has claimed self-defense, he must be able to prove this against the dead man, He can either be charged with murder or with "the stroke," that is: with harming or slaying a man. See also I 69.
she claims the "woman's property" or some chattel, and their surety is
turned aside in that they lose it lawfully, they must pay the judge a
fine and must relinquish the property with compensation.

II 16,1. Every man shall give surety for manslaughter, for paralysis,
or a wound to his lord to whom he belongs, and for his paternal kin.

II 16,2. Should a man cripple or wound another, and is convicted of this,
his hand shall be struck off. But should a man be convicted of a crime
through the ordeal by battle, he incurs the death-penalty.

II 16,3. Every man has compensation according to his birth-rank, unless
he has forfeited it.

II 16,4. The beadle who must pay a fine to the judge on account of a
deed which has curtailed the judge's rights shall pay it with the
royal measure. This fine consists of thirty-two strokes with a green
oak-rod which measures two lengths the distance from thumb to elbow.

II 16,5. A man shall be compensated if he is crippled at the mouth,
nose, eyes, tongue, ears, his manhood, and feet. This must be paid
for with half his wergild.

II 16,6. Every finger and toe has its special compensation which
consists of a tenth part of the man's proper wergild.

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33 The lord has been accused of a crime and the vassal gives surety
for him.

34 The German for "royal measure" is koninges malder. The word
malder - Malter is a corn measurement of about 150 liters or also a
"cord," a measure of wood. Here it is used to mean a numerical value.
A royal measure is probably counted as thirty-two.
II 16,7. A man will be compensated with half his wergild, if he has
been hurt often during a fight, as long as he does not die. But as often
as a hurt man is wounded a second time on another limb, so often he shall
be compensated with half his wergild.

II 16,8. Should a man beat another without wounding him or call him a
liar, the offended man shall be granted compensation according to his
birth-rank.

II 16,9. Should a man be wounded on a limb for which he has already
been given full compensation in court, and loses it completely, he may
not claim any higher price for it now than his compensation.

II 17,1. The son is not responsible for the crimes which his dead
father had committed.

II 17,2. The father may free the son once, should the son be charged
with a crime, as long as the son has not been separated from the father.
The father will swear an oath upon relics that his son is innocent of
that crime. But should both father and son be charged with that crime,
the father cannot free the son unless he has first proven himself inno-
cent.

II 18,1. No verdict shall properly be reached as to the punishment of
a man unless he has first been convicted thus far that judgment should
be pronounced.

II 18,2. A verdict regarding a man's proof of property or legal seisin
shall not be reached in court unless the man has first won the proof with
witnesses.
II 19,1. The father may separate the son from himself before the court with any property that the son will take, however small this might be.

II 19,2. The lord may once free his serf after that serf has been properly convicted, if the lord trusts himself to swear upon relics that the serf was born on his estate and was innocent of the deed that he had been charged with. The defendant, however, will remain without honor and without legal status.

II 20,1. Brother and sister take an inheritance from their full brother and sister before a brother and sister who are half-related through the father or the mother. The children of a full brother take the inheritance in the same way as the half-brother.

II 20,2. Every man shall have full wergild and compensation although he is minus some limbs, as long as he does not testify as to his injuries in court and tries to secure a guardian or compensation there-with.

II 21,1. The copy-holder, regardless of his rank, may bequeath his building on that copy-hold to his heirs, unless he is a man of knightly rank who has given the building to his wife as a morning-gift.

II 21,2. Should property revert to a lord, he will take the building together with the fief, unless the man had a wife to whom he had given it as a morning-gift.
II 21,3. Should a wife have usufruct upon an allod or fief, she does not pass the building to her nearest relative when she dies, but it goes to him who takes the estate. For as every man may improve or despoil the building upon his fief against his lord's will, so also may the woman do when she has a usufruct upon that land.

II 21,4. Should a man have a son who is his heir under the Lehnrecht, but not under the Landrecht, the son still retains the building of his father upon his father's fief with more right than the man who is his father's heir under the Landrecht.

II 21,5. Should a lord grant a fief to a vassal without conditions, the vassal then owns all buildings there upon together with the estate, just as it had belonged to the lord, unless the lord excluded the building in the feudal contract.

II 22,1. If a man has to prove something against the judge, he need not have the judge's testimony, should the charge not go higher than his fine. He may prove this with two oath-helpers from among the suitors of that court who are able to reach verdicts there. But should the debt be higher, he must have the Schultheiss or the beadle as his witness in place of the judge against the judge.

37 He will have to pay a fine to the judge in the event that he loses the case.
II 22,2. If a man furnishes his proof with the Schultheiss or the beadle or the Schöffen, the judge shall also be a witness as to the truth of their testimony, that he heard it, although he did not know about it before. But should the judge refuse to be a witness contrary to all justice, the man has still completed his case as his proof has been accepted.

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II 22,3. Should a man who has reached his majority go into a monastery and wears a monk's habit and behaves like a monk, although he did not do this before the court, and he wishes to dispute this later, the charge can be proven against him outside of court with seven of his peers of the man, who had thus renounced the world, who have seen him in the monastic life, or with the brothers to whom he had gone. Regardless of whether he had taken his vows or not, he has still surrendered his Heerschild rank.

II 22,4. Should testimony be given with seven men, then twenty-one men may be asked for such testimony.

II 22,5. If a man appeals to the testimony of the man against whom the testimony is directed, then that opponent legally must tell under oath all he knows about it, or deny that he knows anything. Should the first man complete his testimony with the opponent's testimony, he need not have any other testimony against his opponent. The defeated opponent must pay a fine to the judge and must give the winner his compensation. In the same manner the winner would have given it to his

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38 The German is bezift sek der werlt - to give up the world. See also I 25,3.
opponent, if he had lost his proof in that he had brought him to
testify against himself as against all justice and against his prior
knowledge.

II 23. Should a man not wish to be or may not be without a wife, he
should take another legal wife, although he has lost three, four, or
more wives through death. A woman may do likewise and take another
husband and have legitimate children with the last as with the first,
and passes to them her legal status and her property.

II 24, 1. No man shall be expelled from his possessions by virtue of the
court, although he may have obtained it illegally, unless it is taken
from him in a legal action, where he himself is present, or whereto
he has been summoned on behalf of the court to his proper day of court.
Should he not appear, he will lose the estate through due process of
law. 39

II 24, 2. Every man may surely lose his legal seisin lawfully, if he
sells, pawns, or cedes it, or if he misses his year 40 with his lord,
or if it is taken from him in a due process under the Landrecht or

39 He loses it through contumacy.

40 "To miss a year" means to forget to seek proper enfeoffment
from the lord of that estate for an estate which had been inherited
by the vassal or obtained by him in some other way.
the Lehnrecht, or through whatever other means he surrenders it voluntarily. He has then lost possession of it lawfully. Therefore, no one can lawfully take away the possession from the possessor with only witnesses, unless it has been won from him through due process while he was present, or a charge had been made against him in this matter and he was summoned to his proper day in court.

II 25,1. If a man is charged with having gained possession through robbery, where the fresh deed can be proven, and the judge was summoned through the hue and cry, then the judge shall follow the hue and cry instantly and shall try the robber and his wicked helpers first of all to obtain justice for the plaintiff. Thereafter the judge shall invest the plaintiff with his possession, if the defendant does not properly object to the investiture.

II 25,2. A plaintiff who does not receive justice from a judge or whose case is not concluded may obtain justice from the king as soon as the king comes to Saxony, if the plaintiff has proof to put forth regarding his case.

II 26,1. Comments on the mint: Coins shall be reminted when new lords come to power.

II 26,2. Should the minter bring out a forged coin in order to buy things with it, he shall forfeit his neck. Should a man who is without legal status because of theft or robbery be found to have three and a half pennies,\(^1\) he has forfeited his hand unless he is able to

\(^1\)Apparently forged pennies. A convicted thief is suspect in any criminal matter.
have a bondsman\textsuperscript{42} for them. Should a law-abiding man be found to have a shilling worth of forged coins, he will lose the coins and nothing more. But should he have more than a shilling, then his hand will be taken by the law, unless he has a bondsman for the coins.

II 26,3. If a minter forges his coins and does not hold them to their legal standard, he may not charge any one else with forgery so that the other becomes liable to a fine. The minter shall keep the coins in their standard weight, equally heavy and with the same silver content.

II 26,4. No one shall erect a market or a mint without the permission of the judge in whose jurisdiction it will be located. The king also should lawfully send there his glove\textsuperscript{43} as proof that such is his will.

II 26,5. No one may further coin pennies to look as other pennies do unless they have a differentiating mark.

II 26,6. Certain coins that are forbidden may be used up to two weeks thereafter to pay a fine or redeem a pawn. The minter, however, may break the coins in pieces if a man tries to use them beyond that time.\textsuperscript{44} But the minter must return the coins to the man.

\textsuperscript{42}A bondsman is used to explain why the man had those forged coins in his possession.

\textsuperscript{43}The symbol of royal authority

\textsuperscript{44}The issue is declared invalid and is returned to the mint for reminting.
II 27,1. Should a man defraud on the bridge-toll or water-toll, he shall pay for it fourfold. Should a man defraud on the market-toll, he must pay thirty shillings. The proper amounts of the bridge-tolls are: Four pedestrians pay one penny; a man on horseback pays half a penny; a loaded wagon pays four pennies a round trip. The amount of the water-toll is half that of the bridge-toll.

II 27,2. Every man who does not need a ship or a bridge shall be free of the toll regardless of whether he drives, rides, or walks. Neither shall he be legally obligated to pay for safe-conduct if he wishes to risk his goods or his life. But should he pay some one for safe-conduct, that man shall protect him from harm within his territory, or he shall pay him compensation for it.

II 27,3. An empty wagon gives half the toll of a full one. A half-full wagon gives half the toll.

II 27,4. Should a man take a wrong path over cultivated land, he shall pay a penny for every wheel. A man on horseback shall pay half

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45 The water-toll is payment to use a ferry. Mention of a ship is made in II 27,2.

46 Merchants in the thirteenth century and after were plagued by robber-barons who lived off merchants and their trains. Thus the king and the princes, against a fee, gave a merchant train a military escort to protect them.

47 See II 47,5.
a penny for the damage, should grain be growing there. Attachment against payment may be demanded. Should these men refuse to give a pawn, they may be arrested with the hue and cry. They must compensate for the hue and cry with three shillings and must still give the pawn.⁴⁸

II 28,1. If a man cuts wood or grass, or fishes in natural ponds⁴⁹ belonging to another man, his fine shall be three shillings. He must also pay compensation for the damage as is proper.

II 28,2. A man who fishes in an artificial pond, cuts wood which has been planted or cuts fruit-bearing trees, breaks off the other's fruits, cuts down boundary-trees or digs up stones which were put there as boundary-stones must pay thirty shillings. If he is found at the place, he may be required to set bond or may be arrested for the damages without a legal warrant.

II 28,3. A man who steals moved grass or cut wood during the night shall be punished with an "osier switch." Should he steal it during the day, he shall be given a flogging and a shearing of hair.

⁴⁸This pawn often consists of the wagon which has done the damage (Hirsch, Sachsenspiegel: Landrecht, p. 194 note 4).

⁴⁹Eike used the words waters an wilder wage - "waters with wild waves" to describe natural ponds in opposition to artificial ones as they are described in II 28,2.
II 28,4. Flowing waters are used for shipping and fishing by every one. The fisherman may also use as much of the ground on the right bank of the river as he is able to take in one stride from his boat.

II 29. A man who obtains goods called chattel from the water shall return them to the loser, if the owner of the chattels properly requests them and compensates the finder for his trouble according to the assessment of respectable people. The finder shall announce his findings publicly and shall keep them untouched for six weeks. Should someone come looking for them, he shall admit that he has the chattels. If the finder denies that he has them when the loser comes looking for them, they become like stolen property if they are found in his possession at a later time. He must then return them with compensation and pay a fine since he has kept them like a thief. But he has not committed theft and the incident shall not harm him in his honor, life, or limb, for he did not obtain the goods from the loser like a thief or robber.

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II 30. A man's claim to an inheritance upon grounds of a promise and not upon kinship is held unjustifiable unless it may be proven through witnesses that this promise was made in court.

II 31,1. The inheritance of an executed man or a suicide passes to his next-of-kin.

II 31,2. Stolen goods from theft or robbery which are found with the robber shall be kept by the judge for a year and a day. Should no

50 A stream etc.
one claim them lawfully during that time, the judge shall use them for his benefit.

II 31,3. No man may forfeit another man's goods which he had in his possession, although he has forfeited his own life.

II 34,1. A man who beats, captures, or robs a lord's servant only because of the lord shall lawfully give both of them compensation, unless he dares to swear upon relics that he did neither shame nor harm to the lord because of his act. He is then freed from one compensation. I would define "shame" in this way: The beating of a servant by reason of his lord's debt and not his own, or by reason of a joint debt. I would define "harm" in this way: A servant is beaten so badly that he cannot render his services to his lord. For this the offender must give compensation to the lord as the servant would have to give if he escaped from the lord's service illegally. The offender must pay compensation to both lord and servant unless he may free himself of this shame and harm against the lord whose servant he had beaten or captured.

II 34,2. A man who has captured another must answer to each of the man's lords, his kin, and his wife if he is charged thereto while he holds the man in custody.

II 35. This is the definition of being caught red-handed: A man has been caught during the crime or in flight from the scene, or he possesses stolen goods from theft or a robbery hidden in a place to which he carries the key. Stolen goods so small that they could have been stuck through a window are not included.
II 36,1. A man who has bought stolen goods openly and has kept them without concealing his ownership and has witnesses to prove this may not be charged with a red-handed crime by the owner of the stolen goods who finds them in the buyer's possession on the next day, unless he has lost his law before that. By touching the property with the judge's permission the previous owner may begin his suit for the return of his property.

II 36,2. But should that man refuse to return the goods to the previous owner, before the case comes into court, the previous owner shall demand of him in court to return these goods. Should he refuse, the previous owner shall raise the hue and cry and attack the possessor like a thief, as if he has been caught red-handed or proclaimed himself guilty through flight. But should the current owner come to court voluntarily, the previous owner shall take possession of his goods in the lawful manner.

II 36,3. But should the current owner claim that it is his property: such as a sheet which he had ordered woven, a horse or livestock which he had raised in his own stable, he who currently has the goods may retain them with more right if he is able to bring the testimony of two of his neighbors, than the previous owner who had started legal proceedings can get the stolen property back.

II 36,4. Should the current owner claim that he has bought it in the common market, but he does not know from whom, he shall go to that place and take an oath that he had bought that thing there in daylight, quite candidly and without guile, although he does not know from whom. If he can prove this place with his oath, then he is innocent of theft. But he will lose the money he had given for it. The previous owner
will regain his property which was stolen or robbed from him, if he is able to bring witness to that fact with an oath upon relics with two oath-helpers who are respectable and law-abiding people and who know that the property was stolen from him.

II 36,5. But should the current owner say that the item was given to him, or that he had bought it, he must name as warranty him from whom he bought it and the place where he bought it. But he must also swear that his reference to the warranty is truthful. Then the previous owner must follow him during a fortnight, wherever he goes, but not across navigable waters. Should he present warranty as is proper, his warrantor must answer in his place for the property. But should he lose that warranty, he must surrender the property with a fine and compensation.

II 36,6. An appeal may be made to many warrantors, one to the other, until the appeal goes back to him who raised the livestock in his stables, or had the garment made himself.

II 36,7. The man who had started proceedings for the item's return shall claim it with two oath-helpers, if the current owner loses his warranty.

II 36,8. The current owner who has the property when proceedings were started against it shall retain it in his possession, until he has been deprived of it through legal means.

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II 37,1. If a man finds something and denies having it when he is asked about it, then the item becomes stolen property. What a man
finds, or takes away from thieves and robbers by chasing after them, that he shall announce before his neighbors and at the church. Should the man to whom it belongs come after it within the next six weeks, he is able to claim it with two oath-helpers. He shall reimburse the finder for his expenses which he incurred if the stolen property was a horse or livestock.

II 37,2. The man who has taken away stolen property from thieves or robbers shall retain one third of the item, if the previous owner belongs to a different court-jurisdiction.

II 37,3. Should no one come within those six weeks to put in a claim for the stolen property, the judge shall take two parts, and the man who took it from the thieves retains the third part.

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II 38. A man shall pay for the damages which happen to others through his carelessness, either from fire, from a well not fenced knee-high above the ground, or from a shot which was aimed at a bird, but hit a man or an animal. But although the injured man dies, the careless man shall not be tried for his limb or life. But he must pay compensation according to the dead man's wergild.

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II 39,1. A man who steals grain at night is liable to be hanged. If he steals the grain during the day, he incurs the death-penalty.

51Eike said verscult des galgen - "earns the gallows."
II 39,2. A traveler who uses grain from a man's property as feed, but does not carry any away, shall only pay for the damage according to its value.

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II 32,1. No man is obligated to be liable for his servant for more than what is the servant's pay, unless he has become his bondsman.

II 32,2. A lord who drives out his servant before the proper time shall give him his full wage.

II 32,3. A servant who runs away from the lord before his proper time on his own accord shall give to the lord as much as the lord had promised him. The servant shall return twofold what he had already received.

II 33. A servant who has taken a legal wife or has through a death become the guardian of minor children may well leave the lord's services and retain so much of his wage as is rightfully his to that time. He shall return, without penalty, any wages which were above the amount he had earned.

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II 40,1. The owner of a dog, bear, horse, oxen, or any other animal which kills a man or another animal, shall pay compensation for the damage according to the legal wergild or the value, providing the owner takes back the animal after being informed of its deed.

II 40,2. The owner is not liable for the damage if he turns that animal out and does not take it into the courtyard or the house, and

52The horse of the traveler was hungry. This is not regarded as theft. See also II 68.
does not feed it and give it drink. The injured man may take the offending animal in lieu of damages if he so desires.

II 40,3. No animal owes a fine to the judge because of its act.

II 40,4. For the damage, however, which is committed by a man's horse, or his livestock in the care of his servant or domestic help, that man shall be accountable in whose care it is. But if the servant runs away and the master's horses, oxen, and wagons are caught in the act, and there is proof, the owner of the livestock and wagon must pay compensation, if he cannot deny the charge, as much as his wagon, horse, and other livestock captured during the act are worth. Otherwise he must surrender them and the injured man may keep them as payment.

II 40,5. But should a man let his neighbors' grain or other seed be eaten by swine or geese, which cannot be used as bond, and they are chased by dogs, and bitten and killed or wounded, there will be no punishment.

II 41,1. The beadle shall attach a man's allods with a cross which he puts on top of the gate according to the Schöffens's verdict, if the judge is not able to get his proper fines through a bond on the allods because they have too little value.

II 41,2. But should the man, to whom the property belongs, not be able to retrieve it within a year and a day, he has then legally lost all claim to it. His heir thus should come within the year and a day before the court and claim it as his inheritance as is lawful through an oath upon relics, and shall pay the debt which the judge can prove with
witnesses as having won in that court, with two oath-helpers. But no higher debt may the judge prove than a threefold fine or one wergild.

II 42,1. Should two men sue each other over an estate to which each claims enfeoffment with a different lord, each man shall bring his bondsman into court. The man who is granted the bond shall keep the property. The man whose bondsman does not appear loses it, unless there was an essoin which he can prove. Neither will he lose it, if they both claim the estate without actual possession and have been enfeoffed with it at the same time.

II 42,2. But should one man have lawful possession of the estate for a year and a day without a counter-claim against him, he does not lose it, should his bondsman desert him at a time when he need the surety, as long as he becomes accountable for it himself in his law.

II 42,3. Yet the princes may stand surety for a man with an opened letter with a seal, as long as they send along one of their born ministeriales, who will represent the property in their place. The letter shall be presented to the man against whom the claim is made, to be a witness in his behalf, if he has need of it.

II 42,4. But should two men fight over an estate, and they both appeal to the same man, legally they shall come before him within six weeks, and the judge shall send two representatives with them who will hear

53 See II 44,1.
the result. He who loses the suit must pay a fine to the judge and must
give a compensation to the winner.

II 43,1. Should one man claim an estate as a fief and another claims
it as an alod, and they claim it with equally good rights of possession,
the man claiming it as an alod on the testimony of two Schöffen may
retain it with more right than the other man may prove it a fief.
II 43,2. A man may also keep inherited allodial property with more right
than another man may keep a bought alod or one given to him.
II 44,1. Should a man have possession of an estate for a year and a
day without a legal claim against it, he has then lawful possession of
that estate. As long, however, as an estate possessed by a man is
claimed in a legal suit, and however long that man remains thereon
through force, he may never win legal ownership to the estate, as long
as a legal suit may be proven against it.
II 44,2. But should a man possess a piece of property which has fallen
to him through death or which has been given or enfeoffed to him, and
he has not taken it away himself from any one else, he need not pay
back anything that he has profited from that property, should he lose
possession of it in court, as long as he has not disturbed any one's
right to that property.

II 44,3. Should a man claim that he possesses allodial rights to his fief
or to the usufruct of his mother and niece, he must establish this allodial
possession with six Schöffenbar free men or his case will be rejected.
II 45. A man who is charged in court in his presence and runs away shall be declared guilty of the charge. He shall be proscribed immediately if he had been charged with a crime.

II 46,1. Should a man till another man's field without knowing it or which another man has given into his keeping, and he is charged with this while he is tilling it, he shall lose his labors on the field, should the plaintiff win the case. The man who had given it to him shall repay the defendant for his damages.

II 46,2. A man who sows a piece of land under dispute in court shall lose his labor and his seed.

II 46,3. But should he sow it, while not charged, he shall then keep the seed and pay rent to the man who retains the land.

II 46,4. Should a man till the sown field of another man, he shall pay him damages as is proper, and give him his compensation.

II 47,1. Should a man drive his livestock on another man's grain or grass, he shall pay him for the damage according to the law and shall give compensation of three shillings.

II 47,2. But should the man not be present where the livestock does the damage and the livestock is attached, the damage shall be paid by the owners of the livestock, when the damage is estimated immediately by consent of the farmers. Every one shall give six pennies as compensation for his livestock.

54 III 20,1.
II 47,3. Should the animal be too excited or of a type that it cannot be easily captured: like a horse in heat, a goose, or a boar, the man shall call two men to the place and show him the damage, and follow the animal to its owner's house, and there charge the owner. The owner must then give compensation for the animal as if it had been attached.

II 47,4. Should a man drive his livestock on the common pasture of another village and is attached, he shall give six pennies.

II 47,5. A man who drives over untilled land remains without punishment, unless that land was a fenced-in meadow.

II 48,1. The herdsman shall pay for the loss of any livestock which was left within his care.

II 48,2. A man has no right to expect compensation for his eaten or trampled grain, if he let it stand unharvested when all other people have harvested theirs.

II 48,3. The same is true about the tithe, should the landlord not want to take it, and the man paying the tithe lets that grain stand upon the field and shows it there to his farmers.

II 48,4. A man shall assess a tithe on the animal, when it comes down with young, wherever it goes to find shelter in the evening. The grain shall be tithed upon the field, the livestock inside of the village, at that man's house where it was born.

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55 Eike used the word marke which in modern German is Feldmark or Gemarkung, translated it means landmark, boundary district, precinct. The word Feldmark is still used today to describe the fields belonging to a village, but they are actually outside the narrower village limits. This narrower village Eike called dorp - Dorf - village.
II 48,5. A tithe is given from each animal except chickens. Every farm, every Wurt,\textsuperscript{56} and unusual house is tithed for a chicken at St. Martin's day.\textsuperscript{57}

II 48,6. Should the proper tithe be given upon the field, it shall consist of every tenth shock or tenth sheaf, equal in size to all the others.

II 48,7. A man who wishes to harvest his grain shall announce this to the landlord,\textsuperscript{58} when he is in the village or on the field. The man shall tithe himself, if the landlord does not come to fetch his tithe. To this the man shall secure his oath, if it is required, and shall bear witness to the tithing with two of his neighbors, and shall leave the grain-tithe stand unharvested. No blame shall fall on him if that grain is later in bad shape or has been lost.

II 48,8. Sometimes certain set amounts of shocks to the hide are given as tithe, and a lamb from the herd of sheep belonging to one farm.

II 48,9. The sheaf belonging to a grain-tithe shall be bound with a twine the length from thumb to elbow between two knots when the twine is stretched out with the winter grain.

II 48,10. The man who gives the tithes according to proper custom has given it well.

\textsuperscript{56}A Wurt is a house built on top of an artificial mound. It is usually found in tide-water regions where the weather and winter storms flood the land easily.

\textsuperscript{57}November 10.

\textsuperscript{58}Tegedere - Owner of the tithe.
II 48,11. The landlord takes the tithe from bees, however, and from some types of livestock by waiting from year to year until it is due him from the house, that should pay it. It shall be given him annually if he does not wish to wait.

II 48,12. One penny is the tithe for every colt and mule. Half a penny is given for each calf, donkey, sheep, and young pig, if there are five or less. But should the farmer possess six or more, the landlord will take one. This may be redeemed with two pennies, if there are six, one and a half for the seventh, one penny for the eighth, half a penny for the ninth. But the man to whom the livestock belongs shall first take away two of the six, or three of the nine, before the landlord chooses. Geese and goats are tithed at the same time with farthings.

II 49,1. No man should hang his eaves so that they drip into another man's farmyard. Neither should he have a window looking into another man's farmyard.

II 49,2. Every man shall also fence in his part of the farmyard. The man who does not do so shall pay for any harm which comes from it. If harm comes to him from not fencing, he shall not be punished for it.

II 50. If a man wishes to put up boundary-trees or stones, he shall take the owner of the other side of the land along. If he puts up a fence, he shall turn the branches of this living fence towards his farmyard.

II 51,1. The oven for baking, the latrine, and the pig-sty shall stand three feet away from the fence.
II 51,2. Every man shall thus guard his oven for baking and its walls that the sparks do not fly into another man's farmyard and do damage.

II 51,3. Latrines which point into the direction of another man's farm shall be walled to the ground.

II 52,1. Should the hops grow twining themselves around a fence, the man in whose yard the roots of the hops are should grab the hops at the nearest point and pull. The hops which follow him are his. What remains on the other side of the fence belongs to his neighbor.

II 52,2. The branches of a man's trees shall not hang over the fence to the detriment of his neighbor.

II 53. Should a man build on foreign property, for which he pays rent, he may break the building down and take it when he leaves that property, or his heir after his death. This does not include the fence in the front and the back of the house, and the manure pile. The lord shall compensate the man for those items as to the estimate of the villagers. Should the lord fail to do so, the man may take away those items with the others.

II 54,1. No one shall leave at home his livestock which can follow the herdsman except for the sow which has young. She shall be protected in such a way that no harm comes to her.

II 54,2. No man may have a special herdsman who thus deprives the village herdsman of his full pay. If he possesses three or more
hides of allodial property or a fief, he may have a herdsman of his own. II 54,3. Should the herdsman be paid according to the amount of hides and not the livestock, no man shall refuse to pay him, in order that the village will not be without a herdsman.

II 54,4. The herdsman must pay for those animals that were put into his care and which he did not return to the village. Should they have been taken by wolves or robbers and are not recaptured, and the herdsman does not raise the hue and cry in order to have witnesses for the event, he must pay for the animals.

II 54,5. Should one animal be hurt by another in front of the herdsman, or is trampled or bitten, and the herdsman is charged with it, he must point out the animal who did the damage and must swear that his testimony is correct. Then the owner of the animal which did the damage shall take the wounded animal into his care until it is well enough to rejoin the herd. Should it die, he shall pay for it according to its wergild.

II 54,6. Should the herdsman be accused of not returning an animal to the village, and he dares to prove his innocence through an oath, he shall be cleared of the charge. But should he who misses his animals go immediately to the herdsman and charge him with the loss through two witnesses, the herdsman may not clear himself with an oath, but must repay the man for his animals. But should the herdsman claim that the animals had not been in the herd, the man has a better chance to prove that the animals were with the herd with two witnesses who say that the animals were given to the herdsman's care than the herdsman may prove himself innocent.
II 55. What the Bauermeister orders to be done for the good of the village with the consent of the majority of the villagers, the minority must also adhere to.

II 56,1. Should villages be situated on the water and have a dike that protects them from the floods, every village shall secure its part of the dike before the flood. Should the flood come and break through the dike, and all those who live within that land are called with an alarm to help, and one of them does not help to repair the dike, he has forfeited all inheritances which he had within the diked land.59

II 56,2. Should the waters wash away any of the land, the owner has lost the land. But should the water break itself a new riverbed, he does not lose anything of his land.

II 56,3. Should an island arise within the river, it will belong to that side of the river to which it is nearest. Should it be right in the middle, it belongs to both sides. The same is true of an old riverbed when it dries up.

II 57. Should an estate belong to many men so that one holds it from the other, whatever is done unlawfully upon this estate shall be paid for by the man who holds it in free possession, and not from any one else.

59This is probably the most important regulation regarding village-life, especially along the waterfront and in the tide-water area. As an old German proverb explains: "Wer nicht will deichen, der muss weichen."
II 58,1. Should a man not have a feudal heir after his death, his heir under the Landrecht shall take the proceeds from that fief.

II 58,2. These are the proper times when obligations must be paid: The tithe on lambs is due at St. Wolburga's Day.\textsuperscript{60} The tithe on geese is due at the feast of the herbs.\textsuperscript{61} All sort of tithes on meat are due on St. John's Day;\textsuperscript{62} these are paid yearly with pennies. Should it not be paid on this day of rendering, it is paid for at the birth of the animal. The grain tithe is due on St. Margaret's Day;\textsuperscript{63} what has been put into shocks by then should be tithed. Tithes on vinyards and orchards are due on St. Urban's Day.\textsuperscript{64} Many obligations are due on St. Bartholomew's Day.\textsuperscript{65} The tithe on the seeded grain, which a man works for with his plow, is due when the harrow goes over it. The tithe upon the garden falls due after it is seeded and raked. The money from mills and tolls and the mint and vinyards is due whenever the day comes when through agreement they should be paid.

II 58,3. Should a child reach his majority\textsuperscript{66} before the due-days of the rent, at which time the proceeds have been earned by the estate,

\textsuperscript{60}May 1.

\textsuperscript{61}The Ascension of the Virgin - August 15.

\textsuperscript{62}July 24.

\textsuperscript{63}July 13.

\textsuperscript{64}May 25.

\textsuperscript{65}August 24.

\textsuperscript{66}A child came of age when it reached its twelfth year. In order to be fully competent legally, however, it had to be twenty-one.
it shall receive the rent. But should it come of age after the right
due-days, it has lost those proceeds. I make these statements for these
reasons: Should a lord or someone in his place work a garden, an
orchard, or a vinyard, and he has expenditures upon them until St. Urban's
Day, and the child has not reached its majority, the lord shall take
the fruits from his labors. Should the lord also have the child's land
planted before its coming of age, the lord will keep the seed, but not
the stubble on the field nor the grape vines where they stand in the
ground and are tied to the rods which hold them. Neither may the lord
have the child's wood or grass cut after the child comes of age. But
should the child reach his majority before (St. Urban's Day), the lord
will have lost his labor, for the child does not compensate him for that.
Neither does the lord compensate the child or its heir for its labor,
when he takes the proceeds from the estate.

II 59,1. Should a lord want to remove his tenant from the property
to which this man is not born, he shall tell him so by Candlemass. 67
The man shall do the same if he wants to give up the land.

II 59,2. Should the lord's tenant die, his heir takes his place and
pays from the property as the other would have paid. Should the lord
die, the man shall give his promised rent to that man to whom the lord's
property has fallen, and need not give any other surety except his plow.

67 February 2.
II 59,3. The king's highway shall be so wide that one wagon can make room for another. The empty wagon shall give the right-of-way to the loaded one, and the lightly loaded wagon to the heavy one. The rider shall make room for the wagon, and the pedestrian to the rider. Should they be on a narrow path or upon a bridge, or the rider or pedestrian is being chased, the wagons shall not move until after they have passed. The wagon that comes as the very first to the bridge shall cross it as the first, empty or loaded.

II 59,4. He who arrives first at the mill shall grind his grain first.

II 60,1. If a man lends or pawns to another a horse, a dress, or some other movables or lets them go voluntarily, in any manner whatsoever, he cannot raise a claim to them, except to the man whom he lent or pawned them, should that man sell them, lose them through gambling, or lose them through theft or robbery.

II 60,2. But should the other die, a normal death or not, the former owner shall put in a claim for his property against the heir, or the judge, should the property fall to him.

II 61,1. When God made man, he gave him the power over fish, birds, and all wild animals. Therefore we have this testimony from God that no man shall forfeit his life or limb on account of these things.
Yet there are three places within Saxony where the wild animals enjoy peace under the royal ban except the bears, wolves, and foxes. They are called game preserves. The first is the Heath of Coine, the second is the Harz Mountains, and the third is the Heath of Maget. Should any one capture game within, he shall pay the fine of the king's ban which is sixty shillings.

Should a man ride through the game preserves, his longbow shall not be drawn, his shortbow shall be covered, and his greyhounds and his pointers shall be held tight and his dogs shall be leashed.

Should a man be hunting a piece of game outside this forest, and the dogs follow it into the preserve, the man may well follow, yet in such a way that he does not blow his horn or bait his dogs. He does not commit any misdeeds in the preserves, if he soon catches the piece of game. Thereafter he must call back his hounds.

No man may trample upon the seed during the hunt or chase after that time has come that the grain has knots as well as shoots.

Should a man keep a malicious dog, a tame wolf, or a stag, bear, or monkey, he shall pay for any damage done by them. Should he want to get rid of them after the damage, this does not relieve him of the responsibility, if it may be proven by a man and two oath-helpers that he had them till that time they did the damage.

Bannforst - a forest under the royal ban or peace.
II 62,2. If a man kills a dog, bear, or any other animal while it is about to harm him, he needs not fear punishment, if he dares to swear an oath upon relics that he actually did it in self-defense.

II 62,3. The man who wants to shelter game outside the game preserves shall keep it upon his own fenced-in property.

II 63,1. No woman may be an advocate or may bring suit without a guardian. That ability was lost for all women through Garfania who before the crown behaved ill-mannered because she was furious that her wishes would not go through the court without an advocate.

II 63,2. Every man may well be an advocate, or a witness, and may bring suit and answer to charges except within that court and judicial district where he has been proscribed or where he has been put into the Acht of the king. He cannot do the above described things before the ecclesiastical courts, if he has been excommunicated.

II 64,1. A woman or a girl, who sues before the court because of rape, shall sue by raising the hue and cry on account of this violent crime of which she must bring proof.

69 Reference to the Corpus Iuris Civilis, Digestorum III, 1. De postulando 1, 5. This was not the actual reason why women were not allowed to handle their own cases. That lack was based more clearly upon their inability to carry weapons.
II 64,2. Those who bring a captured thief or a robber before the court with a posse's help shall file suit with the hue and cry on account of this violent deed which they bring before the court with the help of the posse.

II 64,3. Those who bring a dead man before the court and charge that a crime has been done to him shall file suit by raising the hue and cry on account of this violent deed which is thus made public.

II 64,4. Should the man who has been robbed know where the stolen goods have been taken and he wishes the judge to follow him there, he must summon the judge with the hue and cry and file suit on account of this violent deed which he will thus prove.

II 64,5. If the criminal has not been caught in the act, then suit must be filed without hue and cry, if one wants to win one's suit.

II 65,1. No child is able to commit an act within his minority through which it will forfeit its life. Should it kill a man or injure one, its guardian shall pay compensation for him in the amount of the other man's wergild, if the deed is proven to the guardian. What harm the child does shall be paid for with the child's property according to the value of the damage.

II 65,2. But should a man kill a child, he shall pay its full wergild. Should a man scold a child or discipline it, or hit it with a broom

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70Eike used the word lude - Leute - people to refer to the men who are ordered to help catch a thief when the hue and cry is raised. It is also called a posse.
because the child misbehaved, that man will remain without blame if he dares to swear upon holy relics an oath that he had not hit the child on account of anything else but its misdeeds.

II 66,1. Concerning the peace: This is some information about the old peace which the imperial power has granted to the land of the Saxons with the consent of the knights of that land. At all days and time, priests and other ecclesiastical people shall have lasting peace, also girls and women, and Jews regarding their belongings and their persons. Peace shall be given to churches, churchyards, and to each village within its moat and fence, and to plows and mills; and to the king's highway on the water and land which shall have lasting peace, and all that is therein.

II 66,2. Holy days and days of obligation are given all men as peace days, in addition to four days in every week: Thursday, Friday, Saturday, and Sunday. On Thursday is blessed the consecrated oil with which all of us have been marked in baptism to Christendom. On a Thursday God began the Sacrament of Holy Communion with his disciples, and began the New Testament. On a Thursday God who had assumed human shape went to heaven and opened the way for us, which was closed before. On Friday God created man, and God was tortured by men on a Friday. He rested on a Saturday after he had made the heavens and the earth and

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71 This introduction follows the introduction of the Sächsischen Landfrieden of September 1, 1221 rather closely.
all that is therein. On a Saturday he rested from his tortures in
the tomb. On a Saturday also the priests who are the teachers of
Christendom are consecrated. On Sunday we were reconciled to God for
Adam's sin. Sunday was the first day that ever was and will also be
the last when we who have earned it shall rise from the dead and ascend
to grace with body and soul. That is why these four days are common
peace days to all men, excepting those who have been caught red-handed
in crime, or have been outlawed by the crown or have been proscribed
by a court.

105

II 67. Should a man be charged with a crime, he may not bring more
than thirty men with him before the court. When he comes before the
court, they shall not carry any weapons except swords.

II 68. Should the horse of a traveler lay low, he may cut grain as far
as he can reach standing on the path with one foot and may give it to
the horse, but he shall not take any grain along with him.

106

II 69. Should a man kill or wound a violator of the peace, he remains
without punishment if he can testify with six oath-helpers that he had
wounded him during the chase, or during the deed when the other violated
the peace.

107

II 70. No man shall be expelled from his property which he owns properly,
unless he has been deprived of the possession legally.
II 71,1. A man who violates the peace shall be tried as has been described before. 72

II 71,2. No man shall bear arms other than a sword during a sworn peace except in the service of the state or on the way to a tournament. All other men who travel armed shall be tried, if they are caught carrying weapons, for they are in the ban of the king. Neither may swords be worn inside castles, towns, villages, and in all those places which have living quarters and inns within them.

II 71,3. Weapons may be carried when following the hue and cry. All men who are of age are obligated to follow the hue and cry if they are allowed to carry a sword, unless they are prevented by reasons of essoin. This does not include priests, women, sextons, and herdsman.

II 71,4. Should men chase criminals to a castle, they shall remain outside of it for three days, and every man shall provide for himself during this time. The man who has raised the hue and cry shall in the meantime walk or ride up to the castle. But if he was wounded and could not ride with the posse, the other people shall be obligated to ride, particularly if they saw the man who violated the peace. Should he flee into another court-jurisdiction, they may capture him upon the fields, and take him back, if the people of that jurisdiction do not get to do it.

II 71,5. But should the man flee to a village, a town, or a castle in another court-jurisdiction, the hue and cry shall be renewed and the Bauermeister and the farmers and the knights, who are available at the

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72 II 13; I 4; I 5.
time, shall be summoned and demand his return to the rightful court.
This surrender shall be demanded, if he has been caught during the act, and they can prove with the testimony of seven men that they have chased him since the violent crime from their district. They shall put up bond for the man's wergild, in case they do not judge over him properly. Thereafter, they shall lead him back and have done right.

II 72,1. The judge shall be summoned before the castle where the violator of the peace is kept against all law with the hue and cry, as is proper, so that the summons may be heard at the castle. If the inhabitants of the castle do not surrender him according to the law, the castle is declared proscribed including all those within it. But should six messengers of the judge and the plaintiff be let in and undertake a search for the violator of the peace and the stolen goods, the inhabitants of the castle shall not be proscribed.

II 72,2. Should a castle be charged because a robbery had happened from it or upon it, the lord of the castle or one of his castle-inhabitants may deny it with an oath upon holy relics. Should one of them be charged with that crime, he may not cleanse the castle until he has cleared himself first. But should a castle be convicted through an ordeal by battle, the lord or one of the inhabitants must deny it against his peers, or the castle will be proscribed and tried in court.

II 72,3. Should a man be accused of having committed acts of violence from that castle, the lord of the castle must bring him before the court, and he must give compensation or cleanse the castle. Should the man not do it, the lord must answer for the crime himself.
II 72,4. But should a man bring suit against a castle, claiming that he was robbed while there, yet he did not know who robbed him, the lord of the castle shall answer for it within six weeks from that day— the time when he was charged with the deed— so that he may clear the castle with his oath or pay for the damage as is proper, excepting, however, that the lord is innocent both of knowing of the deed, or of being an accomplice of the deed.

II 72,5. Should people ride from a castle and do harm, and they do not return to it that same day and night, and the stolen goods are not brought into it or before it, the castle remains innocent of the deed. But should the robbers return to the castle and the stolen goods are brought therein or before it, the castle becomes guilty of the deed.
Map. I. Germany in the thirteenth Century

1 Frisia
2 Saxony
3 Brandenburg
4 Landsberg
5 Pleissner Vogtland
6 Meissen
7 Lausitz
8 Lower Lorraine
9 Thuringia
10 Franconia
11 Bohemia
12 Upper Lorraine
13 Swabia
14 Burgundy
15 Bavaria
16 Moravia
17 Austria
Map. II. A sketch of the area called Ostfalen (Eastfalia)

1. Brunswick
2. Magdeburg
3. Halberstadt
4. Quedlinburg
5. Aken
6. Reppichau
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