

Exploring Legal Multiculturalism in the Irish Sea: Multiculturalism, Proto-Democracy, and State Formation on the Isle of Man from 900-1300

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ABSTRACT

This thesis explores the relationship between proto-democracy, multiculturalism, and state formation. In the introduction, I express the desire to ascertain how legal multiculturalism on the Isle of Man could be viewed as a product of the shared proto-democratic character of the Irish and the Norse legal traditions. Further, I wish to explore how this multiculturalism influenced the development of the state on the island and, coming full circle, what multiculturalism and state formation meant for the future of proto-democracy on the island. In this thesis, I conclude that many of the institutions that played a role in fostering state formation on Man, such as the keys, coroners, and parishes, were themselves a product of legal multiculturalism. Further, I argue that this legal multiculturalism and state formation in turn results in a loss of institutions on Man that characterized the separate legal traditions as proto-democracies.

*For all those who helped me get to where I am today.
And for Aja, who never stopped believing in me, even when I stopped believing in myself.*

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Chapter 1: Introduction

The leading men take counsel over minor issues, the major ones involve them all; yet even those decisions that lie with the commons are considered in advance by the elite. Unless something unexpected suddenly occurs, they gather on set days, when the moon is either new or full... When it pleases the crowd, they take their seats armed, at the command of the priests there is silence, since at this time they too have the right of enforcement. Then, according to his age, birth, military distinction, and eloquence, the king or leading man is given a hearing, more through his influence in persuasion than his power in command. If his views are ill received, the men reject them with a roar if well received, the clash their spears.¹

1.1 Introduction

Tacitus's account of the *Germani* circa 98 A.D. represents the oldest known depiction of Germanic assembly practices and has fascinated minds for generations.² By modern standards, Tacitus's account is considered unreliable, yet it still provides a useful introduction to the study of assembly traditions in Northern Europe during the early Middle Ages. Assemblies of this kind were not found exclusively amongst the Germanic peoples; rather, they appear to have been quite common in ancient Europe. Frenand Braudel argues that by virtue of being pre-industrial, an "upper limit" was placed on European society.³ So long as every culture possessed a relatively homogeneous means of production and relied on similar economic and social conventions, there was no reason to expect that political conventions would differ greatly. What stands out in depictions of

¹ Tacitus, *Germania*, 11.1-2, J.B. Rives, trans., *Tacitus Germania* (Oxford: Clarendon Press, 1999), 81.

² Tacitus's work has enjoyed quite a bit of popularity in the past four centuries. In the late nineteenth and early twentieth centuries, *Germania* was seen as a bible of sorts for the *Völkisch* and *Nationalsozialismus* movements in Germany. For more see Christopher Krebs, *A Most Dangerous Book: Tacitus's Germania from the Roman Empire to the Third Reich* (New York: W. W. Norton & Company, 2011).

³ Frenand Braudel, "Preface," in *Civilization and Capitalism 15th - 18th Century, vol. I The Structures of Everyday Life: The Limits of the Possible*, trans. Sian Reynolds (New York: Harper & Row Publishers, 1981), 27-9.

these ancient assembly traditions is a character that in a way could be understood to be in some sense “proto-democratic:” political decisions that would affect the people were made by the people themselves. Further, though not apparent from this passage, these assemblies appeared in a societal context that lacked a coercive executive power, which is conventionally associated with states. While law might have been made and promulgated at these assemblies, society relied on informal forces to enforce it. The term proto-democracy then refers to assembly traditions such as these that are characterized by features that appear “democratic” in an era before the formal development of the state.

Of the many assembly traditions in Northern Europe, the Germanic tradition is certainly the most studied. The traditions described by Tacitus were inherited by the Germanic peoples in the Middle Ages and formed an important part of their early political institutions. The Norse in particular are notable for the large number of these assemblies they appear to have established. As the Norse began to spread out across Northern Europe in the Viking Age, they brought with them their traditions and established assemblies, called *þings* and *moots*, wherever they settled. In Iceland, they established the still present Althing, Tingwall in Orkney, Dingwall in Scotland, Tynwald on the Isle of Man, and many more found ringing the Irish Sea. As they settled new lands and established these assemblies, they naturally came into contact with the peoples already living there. In the case of the British Isles, these people were the Anglo-Saxons, the Welsh, and the Gaels, each with their own distinct political traditions. This leads to an interesting question: how were these seemingly democratic assemblies affected by their placement amongst established political traditions?

1.1.1 Research question

In this thesis, I examine the effect that the cultural contact between the Vikings and those that they settled amongst had on the respective assembly traditions. In particular, I am interested in the contact between the Norse political traditions and those of the Irish as seen on the Isle of Man. I investigate how the Manx Tynwald can be viewed as a product of Irish and Norse legal multiculturalism, the influence of multiple legal cultures on a single legal tradition. Further, I examine how this legal multiculturalism has influenced the development of familiar state institutions, such as an executive power, on the Isle of Man. The main claim of my thesis is as follows. First, while in many ways different, the Irish and Norse assembly traditions shared key components allowing for a relatively natural blending of traditions. Second, I argue that in seeking to rule, it was easier for the Norse to adapt their assembly traditions to the existing practices of the Manxmen rather than attempting outright to replace the old legal system. Third, I argue that the very act of blending legal traditions significantly impacted the development of the state on Man. While each political tradition independently possessed features useful in the development of a state, it was only in coming together that the various components aligned, and the ideal legal conditions for state formation arose. Finally, I argue that while legal multiculturalism produced on Man the necessary conditions for the formation of a state, it also resulted in the loss of the characteristics of the Irish and Norse legal systems that characterized them as “democratic.”

1.1.2 Significance

The Tynwald on the Isle of Man is a useful case in studying the effect of multiculturalism on assembly traditions, as its early history existed at the intersection of several political cultures. Prior to the sixth century, the Isle of Man appears to have been inhabited by a Brythonic speaking people. An analysis of the islands extant land division structure shows that the island's early system of land tenure mirrored other systems found elsewhere in Wales, suggesting the presence of a Brythonic political practices.⁴ Later, upon the settlement of the Irish on the island in the sixth century, the appearance of an assembly site at Tynwald Hill in St. John's, in the same tradition as Tara in Ireland, indicates the importation and establishment of Goidelic assembly traditions.⁵ Lastly, the Viking settlement on the island at the beginning of the tenth century marks the arrival of Norse political traditions. When the politics of the island appear in the written record during the High Middle Ages, statues show that all three of these political lineages managed to survive each successive wave of immigration.⁶ This survival implies that each subsequent set of settlers, rather than attempting to expunge the old traditions of the people that they settled amongst, negotiated the cultural overlaps and conflicts to produce a single multicultural system of law.

In this way, Man serves as a good example of legal multiculturalism. An analysis of this overlap of the Goidelic and Nordic political traditions on Man is thus an excellent case study for examining the impact of multiculturalism on proto-democracies. Within a century after the Norse settlement on the island, features of a state begin to emerge

⁴ R.H. Moore, "The Manx Multiple Estate: Evidence for Undertones in the Manx Land-System?" in *Recent Archaeological Research on the Isle of Man*, ed. Peter Davey, 171-82 (Oxford: Archaeopress, 1999).

⁵ Timothy Darvill, "Tynwald Hill and the 'things' of power" in *Assembly Places and Practices in Medieval Europe*, ed. Aliko Pantos and Sarah Semple, 217-32 (Dublin: Four Courts Press, 2004).

⁶ George Broderick, "Tynwald: a Manx cult-site and institution of pre-Scandinavian origin?" *Cambrian Medieval Celtic Studies* 46 (2003): 90-1.

underscored by the establishment of the Kingdom of Man and the Isle in 1079 under the leadership of Godred Crovan. The emergence of a state on an island with an established history of political multiculturalism then provides the perfect vehicle to investigate the impact of multiple political traditions on the process of state formation.

1.1.3 Literature Review

Much work has been previously done in investigating the political history of Man. The island's unique history amongst the nations of the north has long attracted interest from scholars. From an archaeological perspective, the island is a treasure trove,⁷ attracting the attention of many medieval and Viking Age Archaeologists. Excavations of key sites in the past fifty years such as Peel Castle, burial mounds in Jury, and coin hordes in the south of the island have painted a picture of the Norse settlers as refugees of the greater conflict plaguing the Irish Sea at the time. As such, they appeared primarily concerned with the pragmatics of survival and establishing a foothold on the island as opposed to raiding and conquest. Much of these findings are presented in David Wilson's *Vikings in the Isle of Man*.⁸ In addition to this rather rigorous work, many more articles have been published regarding the early political landscape of the island, such as R.H. Moore's analysis of the Brythonic origins of the island's land divisions⁹ and Timothy Darvill's groundbreaking archaeological surveys of Tynwald Hill, revealing its long and

⁷ For instance, the island has a dense number of runestones, 26 surviving stones compared to 33 for all of Scandinavia. R.I. Page, "The Manx Rune Stones," in *The Viking Age in the Isle of Man*, ed. C. Fell (London: Viking Society for Northern Research, 1983), 134.

⁸ David Wilson, *The Vikings in the Isle of Man* (Aarhus: Aarhus University Press, 2008), 25-56.

⁹ Moore, "The Manx Multiple Estate."

marked history of use as an assembly site.¹⁰ The contribution of each of these authors to the study of the political history of the island is invaluable.

The island has also attracted the attention of scholars interested in the study of toponymy. A long running debate over the nature of Manx place names extends back to J.J. Kneen's original place-name survey of the island in 1926.¹¹ This and more modern surveys, such as George Broderick's *Place-Names of the Isle of Man (1994-2005)*,¹² have revealed some interesting features of the toponymical landscape of Man with implications for the island's settlement, language, and political history. As writing did not develop on Man until relatively late in the Middle Ages, the island's place-names were sought as a way to investigate the island's early history with regard to settlement.

However, it was quickly noticed that few if any place-names survived that could be dated before the Norse settlement. Further, no Gaelic names appear which could be dated for any period prior to the Norse exodus. These two points sparked a debate over the survival of Manx Gaelic as a vernacular language on the island from the Irish settlement circa 500, through the period of Norse control. Margret Gelling began the debate by arguing that the lack of pre-Norse place-names combined with the emergence of Gaelic names only in the period after the end of Norse hegemony implied that Gaelic had died as a vernacular language and was replaced by Norse only to be reintroduced by Irish

¹⁰ Darvill, "Tynwald Hill."

¹¹ J.J. Kneen, *The Place-Names of the Isle of Man with their Origins and History*, 6 vols. (Douglas: Yn Cheshaght Ghailckagh, 1925-9), <http://www.isle-of-man.com/manxnotebook/fulltext/pn1925/index.htm> (accessed 15 October, 2013).

¹² George Broderick, *A Dictionary of Manx Place-Names* (Nottingham: English Place-Name Society, 2006).

immigrants in the post-Norse period.¹³ This model certainly has implications for the island's political traditions. The extinction of Gaelic as a spoken language in favor of the Norse would suggest either an extermination of the native Manxmen at the hands of the Norse, or an expunging of the native culture to the point of language death. Both of these should then spell doom for the idea of a blending of political traditions and a continuation of Gaelic political traditions of the island into the modern day.

Gelling's model provoked a rather lengthy and comprehensive response from Basil Megaw. Megaw argued that Gaelic culture could be observed to have survived the Viking period. He argued that Gaelic survived as the vernacular of those not in power and thus was not as capable of affecting the recorded memory of the island in the way that Norse, the language of the political elite, was able to. Only once the Norse hegemony ended and writing had become more common on the island was Gaelic able to be observed.¹⁴ His model has since become the accepted standard but is far from definitive. The debate remains open as others, such as Gillian Fellows-Jensen, continue to examine that island's toponymy to glimpse migration patterns and debate other aspects the island's cultural history.

Lastly, the Isle of Man has attracted the attention of one scholar in particular. Broderick is a scholar of all things Manx. In addition to his extensive work on the place-names of Man and his work on the *Chronica Regum Manniæ et Insularum*¹⁵ he has

¹³ Margret Gelling, "Norse and Gaelic in Medieval Man: The Place-Name Evidence," in *Man and the Environment in the Isle of Man*, ed. Peter Davey (Liverpool: British Archaeological Reports, 1978), 251-64.

¹⁴ Basil Megaw, "Norseman and Native in the Kingdom of the Isles: A Re-Assessment of the Manx Evidence" in *Man and the Environment in the Isle of Man*, ed. Peter Davey, 265-314 (Liverpool: British Archaeological Reports, 1978).

¹⁵ George Broderick, ed., *Chronica Regum Manniæ et Insularum* (Douglas: Manx National Heritage, 2004).

produced a particular piece of scholarship concerned with investigating the apparent multicultural origins of the Tynwald. In his paper, Broderick surveys medieval depictions of the Tynwald in order to identify various Gaelic and Nordic political traditions, arguing that despite the popular notion that the Tynwald's origins lie with the Norse in the tenth century, its roots in fact extend further back into the Goidelic milieu.¹⁶ This work is significant as it argued with concrete evidence for the Tynwald and Manx law being the conflux of two separate assembly traditions, rather than of exclusively Norse origins as originally thought. In the context of this thesis, his work clearly supports the notion that the Tynwald can be used as a case study of multiculturalism in proto-democracy. This enables me to investigate exactly how the multicultural lines were navigated and take the investigation one-step farther than Broderick, to ascertain how these multicultural roots impacted the development of the state on the island.

1.1.4 Structure of thesis

This thesis proceeds as follows. In the final section of this introduction, I discuss what is meant by key terms in this paper such as state, democracy, and multiculturalism and present a brief history of the Manx Tynwald. In chapter two, I analyze the Norse and Irish legal traditions in order to highlight the common features shared by the two systems. From this, I argue that a relatively natural blending of these two legal traditions was possible. Further, when appropriate I contextualize these legal traditions in the larger scheme of proto-democracy to suggest that some feature appear to be to some degree universal. In chapter three, I focus on examining the Nordic and Gaelic features of the

¹⁶ Broderick, "Tynwald."

Tynwald and Man's legal system to demonstrate concretely its multicultural roots. The chapter then contextualizes these legal roots in the archeology of Norse settlement and the history of Viking expansion in the Irish Sea during the ninth and tenth century. In doing so, I suggest that the Norse adapted their political traditions to those extant traditions of the Manxmen out of a need to be pragmatic rather than attempting to impose cultural hegemony on the island. Lastly, in chapter 4, I investigate how the blending of these two legal traditions contributed to the development of the state on Man. In doing so, I draw upon the case of the development of the Kingdom of Alba as a model. Here I demonstrate how the conditions that were indicative of state formation in Scotland were likewise present in Man as a result of the fusion of the island's Norse and Gaelic political traditions.

1.2 Discussion of key terms

Before proceeding, it is first important to discuss what is meant by a few key terms, in particular, state and democracy. In this section, I discuss the common theoretical conceptions of these terms followed by how they are used in this thesis. Following this, I briefly discuss the concerns that might be raised over the significance and potential anachronism of using these terms in the context of this thesis.

1.2.1 State

The concept of the state has a long history of development. Quentin Skinner, in his detailing of the history of the word, gives the definition for the state as “an apparatus of power whose existence remains independent of those who may happen to have control

of it at any given time.”¹⁷ He argues that this usage of the word is attested since the fourteenth century and at its core remained unchanged. However, over time its meaning has been slowly refined. Originally, the state’s power was viewed as entwined with the person who exercised it. As the focus shifted from the agents to their office, their power begins to be seen not as personal but as a consequence of their position. This is likewise, what Wilhelm Hennis argues, “political power is institutional power, the power of the office.”¹⁸ It is in this context that Skinner argues the modern conception of the state as an apparatus of power developed.¹⁹

This idea of the state as an apparatus of power carries over into modern conceptions of the word. Namely, the idea of the state as having a monopoly on coercive power in the territory they control. James Scott, in his survey of the development of the nation-state, examines how this coercive power grew from managing solely the community to encompass the ability to coerce the individual as well.²⁰ In the pre-modern period, state’s power tended to stop at the level of the household where feudal dues and religious tithes were collected. As such, the state was characterized by the administrative apparatus to accomplish this, which ultimately lacked the tools to extend itself to the individual. Likewise, the territory the state administered was conceived of not in terms of strict geographic borders, but in terms of its subjects. The Kingdom of the Scots was defined in terms of where the Scots were, not by territory in an absolute sense.

¹⁷ Quentin Skinner, “The State,” in *Political Innovation and Conceptual Change*, ed. Terence Ball, James Farr, and Russell L. Hanson (Cambridge: Cambridge University Press, 1989), 102.

¹⁸ Wilhelm Hennis, “The Idea of Office and the Concept of Democracy,” in *Politics as a Practical Science*, trans. Keith Tribe (Basingstoke: Palgrave Macmillan, 2009), 28.

¹⁹ Skinner, “State,” 125.

²⁰ James C. Scott, *Seeing Like A State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999), 37-8.

Scott argues that the shift from the pre-modern state to the modern was characterized by an expansion of administrative capabilities. This was a process of standardization where the “illegible” aspects of society were transformed into a “legible” and administratively convenient format.²¹ Examples of this included standardization of weights and measures, standardizing legal language, and precisely defining land divisions; giving the force of law to things previously unregulated.²² These standardizations greatly improved the state’s ability to tax and coerce, thus enhancing its capacity. As the evolution of the state can be modeled in terms of expansion of the executive authority to coerce and administer, one might expect for the birth of the state to be characterized by the creation of this executive authority. In societies lacking a capacity to enforce law, traditionally relying on informal mechanism, a state could be said to emerge when such an executive authority with the power to enforce law arises.

This is the view that Stephen Driscoll takes in examining state formation in Scotland from 900-1300. Driscoll humorously prefaces his examination with an observation: “Certainly by the thirteenth century Scotland had all the characteristics of a mature state: only a society secure in its political workings, social institutions, and national identity could consider a four-year-old foreign girl to be a suitable monarch.”²³ In his study, he considers the state as characterized by an administration capable of controlling people and resources, and thus state formation as being the emergence of this administration.²⁴ This is the view that I adopt in this thesis.

²¹ Scott, *Seeing Like A State*, 3.

²² *Ibid.*, 2-3.

²³ Stephen Driscoll, “Formalising the mechanisms of state power: early Scottish lordship from the ninth to the thirteenth centuries,” in *Scottish Power Centres: From the Early Middle Ages to the Twentieth Century*, ed. Sally Foster, Allan MacInnes, and Ranald MacInnes, 32-58 (Glasgow: Cruithne Press, 1998), 32.

²⁴ *Ibid.*, 33.

Driscoll asserts that state formation occurred when the informal mechanism of power, such as kinship, were replaced with more formal notions of allegiance and lordship.²⁵ This results in the king and his new administration being capable of exercising powers they previously did not possess; most notably the ability to tax. While a system of rent was present in early Celtic law, it was based upon a complex system of tenure and client-ship, relying on the rent payer for its delivery. The emergence of an administrative structure gave the king the capacity to set and collect a uniform tax. The second new capacity that emerged was the king's ability to enforce law and judgments in legal cases. As is discussed in chapter two, this was not previously the case. While laws were pronounced and cases judged, there was no mechanism to enforce these beyond the informal ones, and thus no central coercive power. With the ability to tax came the ability to fund professional soldiers. Prior to the emergence of the state, kings relied on their subjects and retainers to answer his summons in times of war. Armed with tax revenue, it was now possible to fund a military class and thus, actively be able to enforce law. The emergence of an administration along with the institutional framework capable of collecting taxes and enforcing law was a marked departure from the ways of the past.

Ultimately, this system of administration gave the king the ability to govern and ensure political stability. In this way, Driscoll's model of state formation is in line with Ashraf Ghani and Clare Lockhart's conception of state building. Ghani and Lockhart consider modern efforts of state building as being concerned with resolving the issues of governance and promoting political stability.²⁶ Driscoll's model also aligns with Scott's

²⁵ Ibid.

²⁶ Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World* (Oxford: Oxford University Press, 2008) ix.

notion of the state constantly evolving to be a “more finely tuned system of taxation and conscription.”²⁷ It is this conception of state formation as the development of an executive that this thesis employs.

1.2.2 Democracy

As a word, democracy is ancient, yet its meaning has changed significantly over time. Originally, democracy referred to a specific type of political regime in Ancient Athens. In the modern day, the term can be understood to mean either an idealized model of governance or an actual government that attempts to embody the idea.²⁸ Democracy as a word comes from the ancient Greek *demokratia* “power of the people.” For the Athenians, democracy was understood to describe a particular type of regime that arose in Athens following a series of popular uprisings in 508-7 B.C. According to Josiah Ober, the regime was characterized by an empowered *demos*, the body of free Greek citizens, who exercised a collective capacity to effect change in the public realm.²⁹ In order to implement the ideology of the *demos*, various political institutions were established such as voting, lotteries for offices, and deliberative bodies for agenda-setting.³⁰ Democracy in Athens then described a particular process by which the common citizen could have a hand in the governance of his city. Participation in the political process however, was limited to citizens who had completed military training, which in reality represented only

²⁷ Scott, *Seeing Like A State*, 3.

²⁸ Robert A. Dahl, *Dilemmas of Pluralist Democracy: Autonomy vs. Control* (New Haven: Yale University Press, 1982), 4; Paul Woodruff, *First Democracy: The Challenge of an Ancient Idea* (Oxford: Oxford University Press, 2005), ix; Sheldon Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism* (Princeton: Princeton University Press, 2008), 212.

²⁹ Josiah Ober, “The Original Meaning of ‘Democracy’: Capacity to Do Things, Not Majority Rule,” *Constellations* 15, no. 1 (2008): 7.

³⁰ Ober, “Meaning of Democracy,” 7.

a minority of society. Women, minors, aliens, and slaves were excluded from participating.³¹ These were the same restrictions present in early modern attempts at democracy. In America for instance, the founding fathers were, despite the rhetoric of equality, quite fearful of a “government by the people.”³² As such, the right to vote was limited to free landholders; the economically dependent (women, aliens, servants, and slaves) were systematically excluded.

The ideology that underlies the conception of democracy in the modern day follows a line of thought inspired by the Athenian system. According to Paul Woodruff, democracy is a government “by and for the people” which allows all free adults to collectively decide “how they should arrange their lives together.”³³ Arend Lijphart refines this further by describing the ideal of democracy as a government whose actions were reflective and in line with the preferences of all of its citizens.³⁴ Unlike Athenian democracy, the modern ideal is focused on equality and inclusiveness. In a democracy, all are equal, and it is from all that the government derives its legitimacy.

The problem with this idealized form of democracy is that it is impossible to implement perfectly.³⁵ Instead when speaking of states as democracies, we are speaking of governments that attempt to, though imperfectly, implement the ideal. Robert Dahl describes a regime as sufficiently implementing the ideals of democracy when it incorporates various institutions that allow the citizens to express collectively and equally

³¹ Sheldon Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought* (Crows Nest: George Allen and Unwin, 1961), 598-9.

³² Woodruff, *First Democracy*, 4.

³³ *Ibid.*, 3.

³⁴ Arend Lijphart, *Patterns of Democracy* (New Haven: Yale University Press, 2012), 1.

³⁵ Wolin, *Democracy Incorporated*, 212; Lijphart, *Patterns of Democracy*, 1; Woodruff, *First Democracy*, ix.

their preference in governance and guarantees the citizens adequate opportunities for expressing their preference. In practice, this is often manifested in the process of elections and voting. Further, Dahl characterizes the democratic state as possessing institutions that foster a democratic society: providing opportunities for education, guaranteeing the freedom of expression, and preserving the right of the citizens to form civil society.³⁶ Democracy as a form of government then is generally characterized by institutions that manifest the will of the people in the function of government, potentially via political representatives or institutions that ensure equality between its citizens, fostering a free and equal society.

As this thesis is concerned with studying political institutions in the early Middle Ages, we cannot speak of democracy quite in the same way as understood by any of these definitions discussed so far. The scope of this thesis is concerned with Irish and Norse assembly traditions that cannot be separated from their societal context. These societies were notoriously unequal, slavery was common, and like in Athens, the right to participate in the assembly was reserved for the few free landholders. In a sense, to speak of democracy in these societies is to speak of democracy for the elite, much like an oligarchy but wider in scope. In this way, when I speak of political institutions as democratic, I do not speak of substantive democracy, or democracy in the holistic sense of a free and equal society. Instead, I use the idea of procedural democracy to refer to the various features of the assembly process that institutionalize the preference of the freemen in the political process. These are features such as the right of the freemen to

³⁶ Dahl, *Dilemmas of Pluralist Democracy*, 10-11.

elect the king, to select which laws they wish to be enacted, and to promulgate treaties and new legislation.

The fact that the right to participate in the assembly is limited to the freemen is not problematic in characterizing these assemblies as democratic. This is mainly because those who were excluded from the process, everyone who was not a free landowner, mirrored the same societal conditions that characterized Athenian democracy. However, I do not wish to characterize these assemblies as following the Athenian model³⁷ nor do I wish to characterize them as democracies according to the modern conceptions. Instead, I call these assembly traditions “proto-democracies.”

I do so for two reasons; first, because these assemblies possessed various procedures which institutionalize the preference of the freeman in the political process. In Ireland, this might take the form of election of the king’s successor or ratification of treaties by the freemen. In Iceland, this might take the form of the promulgation of law contingent on the consent of all who would be bound by it.³⁸ Second, I choose to label these assemblies as proto-democracies as they can be seen as “proto,” coming before, our modern democracies. These assemblies in their capacities as early parliaments laid the groundwork for many political institutions that were later to develop into modern democracies. While an *unbroken* lineage from these early parliaments to the present day cannot necessarily be demonstrated, the fact that many national legislatures such as the Manx Tynwald, Icelandic Althing, Danish Folketing, Norwegian Storting, and to some

³⁷ Notably, Athens was a state and, as I discussed above, the early Irish and Norse societies were not.

³⁸ This follows the line of thought that Nederman argues underlies Marsiglio of Padua’s theory of obligation: That no individual be coerced to obey a law unless he has previously consented to it. This is be discussed at greater length in Chapter 3. Cary Nederman, *Lineages of European Political Thought: Explorations along the Medieval/Modern Divide from John of Salisbury to Hegel* (Washington D.C.: The Catholic University Press of America, 2009), 42.

extent the English Parliament can trace their institutional roots back to early medieval assemblies suggests that the characterization is not undue.

Further, these assemblies could be seen as “proto” in the sense that their memory has played a role in inspiring subsequent political thought. Political philosophers such as Rousseau, Hobbes, Montesquieu, Locke, Jefferson, and Paine all drew inspiration from the idea of a democratic ancestor.³⁹ Their writings played a clear role in many early revolutions, such as the American and French, which had at their core notions of democracy. In America, the ideas these writings espoused became canonized in founding documents such as the *Declaration of Independence*, the *Constitution*, and the *Federalist Papers*, around which many casual notions of democracy center.⁴⁰ It is for these reasons that I label these early medieval assemblies as “proto-democracies.”

1.2.3 Anachronism and significance

A question may arise as to whether it is appropriate to make use of modern terms and concepts like state and democracy when referring to these early medieval institutions. I believe that it is appropriate, as the use of modern concepts to investigate historical problems can be useful. George Duby argues that applying a modern concept to a historical problem can reveal how the concept can be better refined and, by considering the concept in a new context, can open new avenues of inquiry before unseen.⁴¹ This can be the case for this thesis as well. By considering the “democratic” character of early

³⁹ They notably focused on the Germanic peoples, and ignored inequality in favor of a romantic model of these people as living in a free and equal society. Christopher Hill, “The Norman Yoke,” in *Puritanism and Revolution: The English Revolution of the 17th century* (New York: Schocken Books, 1964), 50-122.

⁴⁰ Woodruff, *First Democracy*, 4.

⁴¹ George Duby, “Preface,” in *A History of the Private Life, Vol. II: Revelations of the Medieval World*, ed. Georges Duby (Cambridge: Harvard University Press, 1988), ix.

medieval Irish and Norse assemblies, this thesis can shed light on how such a democratic character can be found in other pre-Modern assembly traditions. This could then help to broaden the study of the origins of democracy beyond the popular focus on Athens to include other relevant traditions that may have had a more direct impact in their own cultural contexts. Further, by examining how these assemblies played a role in the development of the state on Man, this thesis helps to investigate the notion of a state as characterized by an executive authority and the idea that state formation occurs when coercive power is consolidated. While this will not necessarily have much bearing on the contemporary study of states, it, like Driscoll's work, can help investigate how states arose historically.

1.3 Historical background

The Tynwald is the Isle of Man's legislature, the history of which extends back over one thousand years. The Isle of Man takes much pride in its claim to have the oldest continuously operating parliament in the world. Founded in 979, the Tynwald is upheld as a symbol of a long held commitment to the democratic process, supported by various facets of the island's history such as its constitutional independence from the United Kingdom and such social achievements as being the first western nation to grant universal suffrage.⁴²

The Isle of Man's main rival for the claim of "oldest parliament" is Iceland. Supposedly founded in 930, the Althing can certainly claim to be older than the Tynwald, but misses the claim of "continuous" as it was dissolved under the Norwegian crown for

⁴² "125th Anniversary of Women's Suffrage on the Isle of Man," Isle of Man Government, last modified October 10th, 2006, accessed February 19, 2014, <https://www.gov.im/lib/news/mnh/125thanniversary.xml>.

a period of 45 years in the nineteenth century.⁴³ Overall, these claims are certainly romantic notions. The history of the Tynwald and Man is just as pockmarked with aristocratism as any other medieval parliament. While Man might have been the first to grant universal suffrage, election of representatives came relatively late. The date of 979 is also just based on backwards speculation, as the Tynwald does not appear in the *Manx Chronicle*, for instance, until the entry for 1237.⁴⁴ Regardless, the tradition is well established and is worn as a badge of pride. To this extent, and the fact that the claim has undoubtedly attracted the interest of many to the study of Manx history, it can be considered a beneficial myth.

By the time Tynwald emerges in the historical record, Man is the center of the Viking Kingdom of Man and the Isles. The kingdom was expansive and included Man and the Hebrides (see Fig. 1.1). Once a year representatives from across the kingdom, known as keys, came to Man to attend the Tynwald. They were thirty-two in number, eight from the Outer Hebrides of Lewis, Skye, and Harris, eight from the Inner Hebrides and sixteen from Man.⁴⁵ In the mid twelfth century, the kingdom split, and the southern Hebrides under the rule of Somerled's decedents became an independent kingdom, leaving the Tynwald with only twenty-four representatives. By the collapse of the Norse kingship a century later, the Tynwald was left without representatives from the Outer Hebrides, but continued to use twenty-four keys, where it has remained ever since. The keys during this time were not elected and served for life with four keys representing

⁴³ Clyve Jones, "Prolog," in *A Short History of Parliament: England, Great Britain, the United Kingdom, Ireland and Scotland*, ed. Clyve Jones, 1-2 (Woodbridge: The Boydell Press, 2009), 1.

⁴⁴ Broderick, ed., *Chronica Manniæ*, fol.45r.

⁴⁵ John Michell, *The Sacred Center: The Ancient Art of Locating Sanctuaries* (Rochester: Inner Traditions, 2009), 87.

each of the six sheadings on the island. For much of the island's post-Norse history, the Tynwald meet irregularly and served the island as a court to decide on matters of law and advise the king or deemsters.⁴⁶ At this point, much of Manx law was oral, held in the collective memory of the Deemster and the keys. As such, the Tynwald in its capacity as legislature was not so much responsible for the creation of new law, but instead in recalling and proclaiming ancient ordinances.⁴⁷

During this time after the fall of Norse hegemony, nominal lordship of the island was passed back and forth between the Scottish and English crown. However in 1399 after a brief period of time as an independent kingdom, Man fell under the direct control of England and was granted as a fiefdom to Henry Percy in 1399 and then again to John Stanley I in 1405. The lordship of Man would thenceforth remain with the Stanley line until its revetment to the English Crown in 1765. Under the Stanleys, Man remained independent from England and continued to be governed according to its traditional laws. In 1420, Sir John Stanley II, for the first time in the island's history, commissioned the recording of the traditional law including the first detailed depiction of a Tynwald ceremony. Around 1600, the Tynwald, which had prior only meet irregularly, was established as a permanent body, and adopted the power to create new law. From this point onward, the keys came into conflict with the Lords of Man and constantly wrestled for power.

⁴⁶ The deemsters (of which there were two) were the high judges for the island, one for the north and one for the south. The deemsters, like the lawspeaker in Norse legal tradition, were responsible for presiding over the Tynwald and proclaiming the law to those assembled.

⁴⁷ For further summary of the Medieval Manx history see James Gell ed., "An Abstract of the Laws, Customs, and Ordinances of the Isle of Man," Manx Society Vol. XII (Douglas: Manx Society, 1967).

Man's status as a kingdom independent from England became strained during the eighteenth century when in 1765 John Murray, Lord of Mann, sold the island to the English Crown. This was orchestrated by England in an attempt to gain control over the smuggling run out of the Manx harbors. The Isle of Man Purchase Act and Smuggling Act of 1765 gave the British government direct power to collect taxes, control customs, harbors, and shipping for the island. This decimated any power the Tynwald had to govern yet did not affect the traditional laws leaving Man constitutionally independent from England. As smuggling in Man declined, the English government looked more favorably on the island and began to transfer back to it some degree of control over its own finances. In the later quarter of the eighteenth century, the keys petitioned England to allow the Tynwald to pass legislation to transform their position into a directly elected office. Ultimately, this request was not granted until 1866 where, for the first time in modern history, the keys became an elected body. Over the course of the next one hundred years, further reforms were implemented that slowly reduced Westminster's control of the island, transferring power away from ministers appointed by the British to officials elected by the Manx. In 1949, an executive council was created to transfer power from the Lt. Governor, a British appointed official who wielded all of the island's judicial, fiscal, and executive power, to a body of ministers accountable to the Tynwald. Over the course of the twentieth century the Legislative Council, the appointed upper house of the Tynwald, was reformed eight times to transfer power from the Lt. Governor to representatives elected by the keys.

Today the Tynwald is at the helm of the Manx government with England retaining only nominal control over the island. Calls for further reform are heard daily.

Currently the Tynwald is endeavoring to transform the Legislative council into a directly elected body. Great emphasis is placed on the Tynwald as a symbol of the Manx people, representing a long tradition of parliamentary independence often in the face of foreign opposition. Its history, rich and ancient, is checkered with periods of great strength and weakness. A study of the origins of the Manx parliamentary tradition is thus important as it adds one more chapter to the vibrant history of the Manx people.

Chapter 2: Proto-Democracy and the Irish and Norse Legal Traditions

2.1 Introduction

In the introduction, I characterized the Irish and the Norse legal traditions as proto-democracies on the basis that they both employed political assemblies that allowed the commoners to play a role in the formulation and enforcement of law. In this chapter, I summarize these two political traditions and specifically highlight their proto-democratic character. Further, I argue that due to a number of shared key features between these two legal traditions, that a blending of legal traditions should theoretically be possible. This conclusion is important as it helps to support the overall claim of chapter three, that the medieval Manx legal system represents a fusion of that of the Irish and Norse traditions. This chapter begins by examining the Irish legal traditions followed by those of the Norse. I examine these legal systems by highlighting important aspects such as the promulgation of law, the process of the resolution of disputes, and the methods by which law was enforced. I do this analysis with an eye towards what features might characterize them as proto-democratic. The chapter then concludes with an analysis of the shared features between these two legal systems, focusing on the role of the assembly, the promulgation of law, and the common mechanisms by which law was enforced.

2.2 Irish legal traditions

Early Irish law is extremely well attested and diverse, reflecting several legal schools and traditions from across Ireland. While there is a lack of unity in the details of the system, for the sake of assembly practices, a general pattern does emerge. The law

texts are found in manuscripts dating from the fourteenth to sixteenth centuries. However, on the basis of linguistic evidence they have been determined to have been originally written in the seventh and eighth centuries.⁴⁸ While covering a variety of subjects, a good portion of the law focuses on Ireland's petty kingdom, the *túath*. Often understood as "people" or "nation," the *túath* referred both to a geographical kingdom and to the people who inhabited it. As a land division, the typical *túath* was around 16km in diameter and closely corresponded to the later medieval Irish barony.⁴⁹ As a social entity, F.J. Byrne estimates that the average *túath* consisted of roughly 3000 people who lived largely agrarian lives and were ruled by the *ri túathe* "petty king."⁵⁰ The *túath* was often the most significant social entity in an individual's life. It was both the geopolitical space and the social group in which he engaged in business, formed contracts, and engaged in social affairs. In this section, I summarize the Irish legal system as it relates to the *túath* and its political assembly, the *óenach*.

2.2.1 Honor price, pledging, suretyship, distraint

Law in early medieval Ireland revolves around a complex system of social hierarchy and clientship that Fergus Kelly characterizes as markedly "hierarchical and inegalitarian."⁵¹ There existed a system of honor price, where each person was assigned a legal "worth." In the absence of a central executive power, honor price served as the mechanism through which law was "enforced" and contracts upheld. An individual's

⁴⁸ Fergus Kelly, *A Guide to Early Irish Law* (Dublin: Dublin Institute for Advanced Studies, 1988), 225.

⁴⁹ Bettina Arnold and D. Blair Gibson, *Celtic Chieftdom, Celtic State: The Evolution of Complex Social Systems in Prehistoric Europe* (Cambridge: Cambridge University Press, 1999), 130.

⁵⁰ Byrne, *Irish Kings*, 7.

⁵¹ Kelly, *Early Irish Law*, 7.

honor price, similar to the Germanic *weregild*, was the amount of money owed to an individual for crimes committed against him.⁵² The honor price was paid for cases of murder, satire, serious injury, refusal of hospitality, theft, violation of his protection and other such common offences. Additionally, an individual's honor price determined the value of the person's testimony in court and the value of contracts an individual could form.⁵³ For instance, a free farmer wishing to receive a fief of cows from a local lord could not receive any more than the worth of his honor price. Likewise, the lord could not grant a fief of cows larger than his own honor price to a client. An individual's ability to make a livelihood then was directly dependent on his honor price. Any threat to this honor price thus had very real consequences.

As such, it is only natural that honor price formed the cornerstone of the system by which law was enforced and contracts upheld. Pledging, suretyship, and distraint were the main mechanism of enforcing contracts and judicial verdicts, leveraging honor and economic wellbeing in order to see agreements upheld. Pledges were the means of ensuring that legal obligations were carried out. A pledge was an object of value delivered by its owner for a fixed amount of time into the custody of another. This signified the pledger's willingness to meet the legal claims of the one who received it.⁵⁴ One such example given by Kelly is that of an injurer providing sick-maintenance as redress for the one who he has injured. To demonstrate his willingness to provide this maintenance, the injurer gives a pledge to the family of the person he injured. In return, the family reciprocates by depositing a counter pledge. According to Kelly, this was

⁵² Ibid.

⁵³ Kelly, *Early Irish Law*, 9.

⁵⁴ Ibid., 164.

meant to demonstrate that it was in the interest of both parties to maintain the terms of the sick-maintenance agreement.⁵⁵ Another example is that of a professional judge who deposits a pledge before rendering judgment in a law case. This is so that in the event that the case is disputed, the judge can be held accountable for his judgment.⁵⁶

Sureties were a similar system meant for the enforcement of contracts. Contracts required that each party present a number of sureties before it was valid. There were three types. The first was the *ráth* who offered up his own property to guarantee that the principal would fulfill his side of the contract; if the principal defaulted on the contract, then the *ráth* is required to pay in his stead. The second type was the *naidm* who was given the legal power to distraint the principal in order to see that the contract was enforced. Distraint was the formal seizure of another's property without legal recourse and served as a powerful incentive to uphold a contract when used as a threat.⁵⁷ Because the *naidm* was given such great power in guaranteeing the contract, if the principal defaulted, he suffered by losing his honor-price. The last variety of suretyship was the *aitire* who guaranteed the contract simply by physically surrendering himself into custody on the default of the contract by the principal.⁵⁸

An individual could also suffer a loss of honor in committing a particularly heinous crime or action unfit of his rank.⁵⁹ The commission of a crime resulted not only in paying the victim their honor price, but the crime potentially threatened the loss of his own. The immediate economic loss of paying the fine coupled with the long-term loss of

⁵⁵ Ibid.

⁵⁶ It should be of note that judges who refuse to give this pledge are prohibited from further practice in that territory. Ibid., 166.

⁵⁷ For more information on distraint see Kelly, *Early Irish Law*, 177-89.

⁵⁸ Ibid., 167-73.

⁵⁹ For example, a judge judging falsely could suffer a loss of honor. Ibid., 12.

future economic opportunities gave the individual incentive to uphold the law. As with suretyship and distraint, the operation of loss of honor price was carried out by those with whom the individual did business, and did not rely on a centralized authority to enforce this loss of honor. This system was by its nature interpersonal and decentralized. Rather than relying on a central authority, the system involved only those who had a legal claim against each other. For legal support, the claimants relied on an extended network of friends, family, or clients to ensure that agreements would be fulfilled. Threat of economic loss and loss of honor held the principal accountable. If the principal defaulted or reneged, not only did he suffer economically but socially as well. Those who lent support surely would be less inclined to do so again in the future. In a society where this network of supporters was necessary to form contracts, loss of honor was disastrous for the individual's economic wellbeing. The principal's network of personal relationships provided incentive to uphold their end of the agreement or uphold the law rather than threat from an outside executive power. Due to this dependence on interpersonal relationships, this system of honor could be considered a democratic feature of early Irish law. Those who are directly impacted by (or suffer from a breach of) a contract or judicial verdict were the ones providing a mechanism for enforcement. It was communicative, between parties rather than being enforced by an outside, centralized authority.

2.2.2 Gaelic kingship

The petty king, *ri tuaithe*, in early Ireland was the center of political and social life for his *túath*. Unlike the king in the feudal tradition, the early Irish king was a highly

ceremonial position with a narrowly defined role within his *túath* and relatively little political power. The king served three main functions, to host and preside over the *óenach*, to command forces in war, and to judge in important cases.⁶⁰ In his capacity as head of the *túath*, the king also served as its representative in dealings with other *túatha* and had the power to make treaties on his peoples' behalf.⁶¹ He could commission from his subjects the building of public works such as roads, bridges, and his personal residence for which he collected a tax.⁶²

Just as there was the king of a single *túath*, there were also overkings who, in addition to having lordship over their personal *túath*, were also recognized as lord by other kings. There were two grades of overking greater than the *ri tuaithe*. First was the *rí túath* “king of many tribes” who was overking of several *túatha* and could be viewed as a regional lord. Above him was the *rí ruriech* “king of overkings” who was the provincial lord of which only a handful existed at any given time. Petty kings were required to pay their overking tribute, attend his *óenach*, and lead the forces of his own *túath* to war at the overking's request.⁶³ These treaties of overlordship, often bound on the people at an *óenach*, were beneficial to the small *túath* as well as the overking.⁶⁴ These treaties typically allowed the victim of a crime committed by a member of the other *túath* to receive legal redress, something that was not normally achievable as litigation was not

⁶⁰ Eoin MacNeill, *Early Irish Laws and Institutions* (Dublin: Burns Oates and Washbourne, 1935), 97; Kelly, *Early Irish Law*, 23-4.

⁶¹ As is be discussed below, while he had the power to form treaties, the *óenach* served forum in which they were promulgated by his people. Kelly, *Early Irish Law*, 5; Byrne, *Irish Kings*, 31-2.

⁶² Byrne, *Irish Kings*, 32-3.

⁶³ Byrne, *Irish Kings*, 43; Kelly, *Early Irish Law*, 17-8.

⁶⁴ This could be thought of as a sort of early medieval federalism.

usually possible across borders. In exchange for entering into such a treaty, the petty king could call upon the aid of his immediate overking in times of war.⁶⁵

The system of pledging, suretyship, and distraint essentially prevented the king from having a role in the realm of contract and law enforcement. Unless a case directly involved the king or one of his clients, he had no role in law enforcement.⁶⁶ This is also evident in the lack of any formal structures capable of enforcing the law or judicial verdicts. The king commanded no army (but did possess a personal bodyguard), instead relying his freemen to come defend the *túath* at his request in times of war. Likewise, the king possessed no public officials aside from his *rechtaire* “steward” to collect his taxes and manage his personal finances.⁶⁷ As a result, the king was for the most part unable to play an executive role in his *túath* during times of peace. Instead, the king’s main capacity as a political actor involved his role in the *óenach*.

2.2.3 *Óenach*

The *óenach*, meaning “reunion,” was the political assembly in early Ireland; the gathering of freemen from a single *túath* hosted at the behest of its king.⁶⁸ As with the *þing*, the *óenach* was a mix of political assembly and market-fair. It served as a rare opportunity for the entire rural farming community that was the *túath* to assemble and as such was the perfect occasion for the transaction of business, games, horseracing, the swapping of stories, and community bonding in general.⁶⁹

⁶⁵ Kelly, *Early Irish Law*, 17-8.

⁶⁶ Byrne, *Irish Kings*, 31-2.

⁶⁷ Byrne, *Irish Kings*, 31-2.

⁶⁸ In the case of an overking hosting an *óenach*, the obligation to attend was extended to all *túatha* paying tribute to him.

⁶⁹ Byrne, *Irish Kings*, 31.

Politically, the *óenach* served three main functions: for the king to bind a treaty upon his people, for the king to promulgate law, and for the people to elect the king's successor. The king's role as face of the *túath* allowed him to make treaties with neighboring *túatha* and to recognize the overlordship of another king. However, the people held the power to promulgate these agreements. This was done by the king making a pledge with his people to uphold the terms of the treaty.⁷⁰ The promulgation of law also was a power exclusively held by the people. Law itself in Ireland appeared to be rooted in tradition. The process of law creation was little more than reaffirming existing laws and legal traditions that had been grievously violated or the *túath* had recently taken to ignoring.⁷¹ The king's role in this process was to issue *rechtgae* "ordinances" at the *óenach*. These ordinances, based in the traditional law, were chosen by those assembled at the *óenach* and confirmed by the king. This was done through the taking of pledges from his people to guarantee the law's observance. This was pragmatic, as the legal system relied upon the people for the enforcement of the law; it fell to them to decide what the law should be.

The *óenach* also provided an important check on the king's already limited authority, namely, that it was here that the people elected his successor. While the actual election process is nowhere described, Byrne suspects that the decision was made by the *féni*, the land-holding freemen while assembled at the *óenach*.⁷² While the king was still living, his heir was chosen from amongst his kin and was not restricted to only his progeny. Instead it followed the rough pattern that anyone whose great-grandfather had

⁷⁰ Ibid.

⁷¹ Byrne, *Irish Kings*, 22.

⁷² Ibid., 36.

been king was eligible for election. As much of early Irish politics were based upon the relationships between kin, the election of the king's heir allowed for various branches of the royal family, each representing different political interests, to vie for power.

The *óenach* itself can then be seen as another democratic element of the early Irish legal system. Promulgation at the assembly clearly aligns with Lijphart's concept of democracy as government reflecting the preferences of the people. Government in the way Lijphart would think of cannot necessarily be said to exist in early Ireland. However, the fact that ordinances, treaties, and the king's successors required the affirmation of the people clearly demonstrates the people's capacity to see their collective will reflected in the law of the land.

2.2.4 *Brithem* and judgment

Conflict resolution and the judgment of cases in early Ireland was mostly handled by the legal class. The *brithem* "maker of judgments"⁷³ were the professional judges who were trained at various legal centers throughout Ireland. The *brithem* as a profession was often passed down from father to son and made a living by hiring himself out as an arbitrator between conflicting parties.⁷⁴ The standard legal procedure followed that claimants would hire the judge on the condition that both parties would agree to abide by the *brithem*'s verdict.⁷⁵ Beyond the simple word of the parties, the verdict was further

⁷³ The term *brithem* is anglicized as *brehon*, *bregban*, *brehowne*, etc. The name sometimes attributed to the system of law in early Ireland is "brehon law." The name of this office survives in the modern Gaelic languages as *breitheamh* (Mod.Ir.), *britheamh* (Sc.G.), and *bríw* (Mx.). On Man, this name also survives as a surname, *Brew*, and in place-names as *Ballabrew* in Krik Braddan, and *Knock y Criew* in Kirk Malew. Broderick, "Tynwald," 78.

⁷⁴ Kelly, *Early Irish Law*, 51-3.

⁷⁵ *Ibid.*, 53.

enforced via pledging, suretyship, and distraint. This placed the entire process of arbitration outside the hands of any kind of any centralized authority. In the case of contract enforcement, as the only parties involved were the two claimants seeking arbitration, it was incumbent upon them to bring a case to court. Further, as both parties agreed to uphold the verdict prior to the judgment, the legitimation of the proceedings came from the claimants themselves. This is in contrast to the courts of the later Middle Ages where such legitimation would come from a central executive authority such as the state or the king.

This is not to say that some sort of public judge for the *túath* did not exist. The king himself served as judge on occasion, often in cases linked to public security, cases involving dependents with no other superior, and cases involving his clients.⁷⁶ As the king lacked formal legal training, a public judge known as the *brithem túaithe* served as the king's advisor in these cases in order to avoid injustice.⁷⁷ In these and other high profile cases, the king along with the bishop and chief poet would preside over a court of several judges. The verdicts of the king, judges, and other officials were not arbitrary but were bound in a strict system of legal justification. Each verdict was required to have an accompanying justification from a legal source, and a verdict accompanied by an incorrect legal justification would cause the judge to suffer a loss of honor and pay a fine.⁷⁸ Ultimately these legal sources were rooted in the law confirmed at the *óenach*, and thus, in theory, was law that every claimant had already agreed to abide by.

⁷⁶ Robin Chapman Stacey, *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (Philadelphia, University of Pennsylvania Press, 1994), 126.

⁷⁷ *Ibid.*, 24-5, 52-3.

⁷⁸ Stacey, *Road to Judgment*, 112-40; Fergus Kelly, "An Old-Irish Text on Court Procedure," *Peritia* 5 (1986): 77-82.

2.3 Norse legal traditions

Much of what is known about the Norse legal comes from what is known about Iceland. Iceland has long served as an archetypical case study for the Scandinavian court system as it is extremely well attested in countless law texts and sagas. The *Landnámabók* portrays the political landscape of Iceland as dominated by a series of local assemblies, each headed by a chieftain, just as seems to be found elsewhere in the Scandinavian world. Thorláksson suggests that the Althing as a national assembly initially formed out of regular agricultural fairs where shepherds meet in an attempt to sort out island wide rules regarding the roundup of sheep, boundaries, and owner's marks.⁷⁹ The transition from agricultural fair to political assembly would have occurred naturally. It should not be unreasonable to imagine that as the farmers meet annually, that the gathering would be used as an opportunity to sell goods, swap stories, as well as engage in politics. Assemblies of this nature are not uncommon in sheep herding communities like Iceland where once a year shepherds would need to meet to gather and separate out the flocks that had spent the summers grazing in the uplands. Thus, it is likely that in Iceland, these circumstances resulted in a national political assembly that can be seen as quite similar in character to the *óenach* in Ireland. In this section, I summarize the Nordic legal tradition by relying on what is known of the Icelandic assembly tradition and do so with an eye towards the features that characterize this system as proto-democratic.

⁷⁹ Thorláksson, "Icelandic Commonwealth Period," 178.

2.3.1 Icelandic courts

While the Althing supposedly was founded in 930, the administrative reform of 964 formalized the relationship between the local *þing* and the national assembly. It was in this year that the island was formally divided into its four administrative districts known as the *landsfjórðungur* “farthing district” and the *fjórðungsping* “farthing courts” were established. The *Landnámabók* thus shows Iceland as being divided into three levels of administration, essentially operating according to the principle of subsidiarity: At the bottom are what appear to be the original assemblies of the island, the local *þing* each headed by three chieftains. The next level up consisted of the four farthing districts. Each of these districts maintained a farthing court attended by the members of each of the *þing* in the district, three *þing* for each quarter except for the north that had four.⁸⁰ Lastly, at the top was the Althing, which was attended by all of the eligible freemen and chieftains and on the island, 39 chieftains in total.⁸¹

The districts for the local assemblies were comparable to the hundred districts found elsewhere in Scandinavia and the British Isles, each consisting of three chieftains that would serve as the leaders in these courts.⁸² While it could be assumed that these assemblies served a variety of minor purposes and played a large role in the settling of local disputes, they served two major functions. First, each local assembly provided three chieftains to sit on the *lögrétta* “law council” at the Althing.⁸³ The local assembly appeared to be a forum where the local farmers could form and break alliances with the

⁸⁰ Originally, this too consisted of three local *þing*, but by the 964 reform, the population of the district grew so large that an additional *þing* was instated.

⁸¹ Elwood, *Book of the Settlement*, 27.

⁸² Stefan Brink, “Legal Assembly Sites in Early Scandinavia,” in *Assembly Places and Practices in Medieval Europe*, eds. A. Pantos and S. Semple (Dublin: Four Courts Press, 2004), 209.

⁸³ Thorláksson, “Icelandic Commonwealth Period,” 181.

chieftains, thus strengthening or weakening the political clout of each of these representatives at the national assembly. Second, the local assemblies were the courts in which local killings would be judged. The early law required that killings be tried in the local court nearest the killing site. Inevitably, problems arose in instances where a non-local was tried amongst a court of strangers. This appears to be what led to the 965 administrative reform; the farthing courts were set up in an attempt to circumvent this issue.⁸⁴ The timing of these local assemblies, held in the springtime, also appears related to the capacity of the *þing* as the lowest level court. In the case that parties in a dispute wished to appeal, they could do so in a timely manner at the Althing, which occurred later in the summer.

Where the local assemblies were headed by the chieftains, the farthing courts were instead headed by judges who were appointed to yearly terms by the chieftains at the Althing.⁸⁵ If a man wished to take another to court, the procedure for issuing a summons required that first the plaintiff state his intent to pursue a case at the Althing. After this public proclamation, the case would be referred to the appropriate farthing court. At court, judges rendered verdicts after listening to arguments. Verdicts at these courts required a virtually unanimous vote amongst the judges present as only six of the thirty-six judges were allowed to dissent, this typically resulting in many cases going unresolved.⁸⁶ The Althing, by default, served as the high court of appeal where cases unresolved in the farthing courts could be appealed and settled.

⁸⁴ Solvason, "The Icelandic Commonwealth," 39.

⁸⁵ Ibid.

⁸⁶ Solvason, "The Icelandic Commonwealth," 40.

2.3.2 The Althing

The Althing itself served as a national stage for the resolution of disputes and the formation of law in Iceland. The Althing hosted the court of appeals, decided administrative procedure, and served as the social event of the year for the people across Iceland. Even though the Althing as a social gathering likely attracted people from all levels of society,⁸⁷ the right to attend the political affairs, as was the case for the local assemblies, was restricted. The right to participate at the Althing was limited to farmers who possessed a minimum amount of property and the chieftains.⁸⁸ Thorláksson estimated that this comprised of some 4,500 Men out of a population of Iceland of 60,000 in the year 1100, a mere 7.5% of the population.⁸⁹ This figure is understandable considering the link between property and power in pre-Modern period.⁹⁰ Iceland during the commonwealth was centered around estates each headed by a single farmer. An estate could be expected to be composed of not only the farmer's family but also a number of free-laborers and slaves. As such, the farmer could be seen as the representative of his estate. Ultimately, the demographic of these privileged few does not differ much from those who were initially allowed to vote in many young democracies in the modern world or as discussed in the introduction, Athenian democracy.⁹¹

⁸⁷ In *Njal's Saga* we see many examples of families, wives, children, foreigners from abroad, merchants of unknown social rank all appearing alongside one another at the Althing. Gunnar's meeting and marriage at the Althing in chapter 33 of *Njal's Saga* is an example of this. Magnusson and Hermann, *Njal's Saga*, 93-5.

⁸⁸ Thorláksson, "Icelandic Commonwealth Period," 176.

⁸⁹ Ibid.

⁹⁰ For instance, the Latin *dominium* "ownership," an idea intimately linked to political authority.

⁹¹ In early America, the right to vote for the most part was reserved for those few free white men who owned above a certain amount of land. African Americans, Native Americans, women, young men, and men lacking land lacked the right to vote and thus were barred from participating in the political process. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 1-2.

The Althing was held for two weeks annually at Þingvellir in the south of Iceland.⁹² The proceedings were led by the *lögsögumaður*, “lawspeaker,” who was elected by the chieftains to serve a term of three years.⁹³ According to Brink, this seems to be the main mechanical difference between the local *þing* and the Althing. Where the local *þing* was led by a hereditary chieftain, the Althing was led by an elected lawspeaker, though he was usually a chieftain himself.⁹⁴ The lawspeaker would open each assembly while seated on the *lögberg* “law rock,” where he would recite one third of the nation’s laws from memory, a different third each year for each year of his term.⁹⁵ This was the core of his responsibilities, to be a repository of the complex system of law code and legal precedence in a period before writing and to serve as consultant and advisor for all matter regarding the law.⁹⁶ After this opening procedure, the lawspeaker would then lead the chieftains and the judges in a procession to the site where the courts were to be held.

2.3.3 Law making

As is the case with legal tradition elsewhere in medieval Europe, the process of legislation at the Althing was more focused on “law finding” than “law making.” The Althing’s concern was with court procedure, the definition of what actions a person could be taken to court for and found guilty of, and the listing of proper procedure for doing so

⁹² Thorláksson, “Icelandic Commonwealth Period,” 178.

⁹³ He could be reelected and oftentimes was. Magnusson, Introduction,” 61.

⁹⁴ The lawspeaker as an office is fairly universal in the Scandinavian world. Brink, “Legal Assembly Sites,” 208.

⁹⁵ Brink, “Legal Assembly Sites,” 208; O’Grady, “Judicial Assemblies in Medieval Scotland,” 54; Thorláksson, “Icelandic Commonwealth Period,” 178.

⁹⁶ In this function, he is in fact very similar to the Manx Deemster as discussed below.

rather than the creation of new law.⁹⁷ The body established at the Althing for the creation of law was the *Lögrétta* “law council.” The *Lögrétta* would sit at the Althing on a series of benches, delineated by legal rank, fenced off from the observing crowd. Inside the fence sat the chieftains, their advisors, and the judges, while outside stood all the other freemen present at the *þing*.⁹⁸ The passage of legislation was conditioned on the rule that no one was obligated to abide by a law that he had not accepted.⁹⁹ This seems to imply that the consent of those freemen assembled outside the fence was necessary for the passage of law. This is reflective of the idea of proto-democracy, the legitimacy of law was contingent on the consent of those bound to follow it.

The conversion of Iceland to Christianity is an example of a process by which new law could be formed in Iceland: the Christians and Pagans came together at the Althing, debated, and eventually decided upon Christianity replacing Paganism as the legally sanctioned religion of Iceland. This did not outlaw the private practice of paganism as the Althing was neither capable of doing so or enforcing such a prohibition, but simply established which religious practice had protection under the law. In this case, the Althing merely confirmed an existing practice and bound the people to following it. This is similar to the process of promulgation of law at the Irish *óenach*. The assembly served as the venue through which the people bound themselves to observe a particular practice.

⁹⁷ This mainly is because the Althing lacked the power to enforce law; it merely had the ability to define the series of rules which judges were expected to follow.

⁹⁸ This is the exact procedure found on Man. However, the ranking here on the benches is not by class as found on the hill in Man, but by profession: chieftains, advisors, and judges. The hierarchical division on Tynwald Hill in Man might then be ascribed to Gaelic influence. The fencing however, still appears to be Norse. Brink, “Legal Assembly Sites,” 206. Thorláksson, “Icelandic Commonwealth Period, 178.

⁹⁹ Thorláksson, “Icelandic Commonwealth Period,” 181.

2.3.4 Chieftainships

In Iceland, as in the rest of the Scandinavian world, the chieftains formed an aristocratic class, holding much of the political power of the country. The Althing served as a battleground where the chieftains made use of their eloquence and rhetoric to gain the support of followers; more followers correlated to more political clout.¹⁰⁰ The chieftains were known as *goði*, “priest-chieftains,” of which there were originally thirty-six. Prior to the conversion of Iceland to Christianity in 1000, the office of chieftain was a hybrid between that of a pagan priest and a political representative. In their capacity as priest, the chieftains were responsible for the upkeep and maintenance of their particular pagan temples and court sites, for which they received a tax from their supporters. For the most part however, their function as priest was mainly nominal as their real power lay in their personal wealth, pedigree, and the allegiance of their followers. After the conversion, this aspect of the office dropped away completely.¹⁰¹ The chieftainships themselves, while largely hereditary, like most positions of power in the medieval world could be bought, sold, temporarily borrowed, or shared amongst multiple individuals.¹⁰²

Ultimately, the power of any individual chieftain depended on the number of free farmers who supported him. Households above a certain level of wealth, those free farmers who had the privilege to attend the Althing, were required to lend their support to a chieftain. In this, they were required to attend the Althing in support of him and if not, were required to pay a tax. In return for their support, the chieftain was required to

¹⁰⁰ Thorláksson, “Icelandic Commonwealth Period,” 180.

¹⁰¹ After Iceland converted to Christianity, the chieftains retained their political role, abandoning the religions association. Magnusson, “Introduction,” 19.

¹⁰² See chapters 109 and 141 of *Njal's Saga*. Magnusson and Hermann, *Njal's Saga*, 229-31;298-300.

provide his supporters protection and provide legal backing in court cases. The farmer had the choice of supporting any chieftain who resided in their district and as a result, the chieftains had to curry the favor of the local farmers to draw supporters and retain their favor through honorable acts.¹⁰³ If a chieftain did not retain enough followers, he could lose his political influence in the Althing and possibly even his chieftainship.¹⁰⁴ The chieftains could be seen as elected in the sense that they relied upon the support of their followers in order to lead. A loss of support meant a loss of power and sometimes office.¹⁰⁵ The relationship between chieftain and follower was mutually dependent. This aspect of the legal system could be thus characterized as democratic: Those who exercised power required the support of those over whom they ruled.

This is in line with Hennis's concept of representative democracy. According to Hennis, the foundation of representative democracy is not popular sovereignty exercised through proxies but the office of the representative itself. It is in the office of representative that all legal power is vested and the trust of the people is placed. According to Hennis, this trust is what endows the representative with the power for realizing the desires of the community.¹⁰⁶ This is exactly what we see in the chieftains. They themselves make laws and pass judgment on the behalf of the community, but are only able to do so out of support of their followers, reliant on their trust. Hennis characterizes modern elections as campaigns to gain trust and likewise place the trust of the opponent in question, viewing "trust as the spiritual foundation of representative

¹⁰³ Magnusson, "Introduction," 21.

¹⁰⁴ An example of this being Mord Valgardsson in *Njal's Saga*. Magnusson and Hermann, *Njal's Saga*, 227-8.

¹⁰⁵ The catch here was that while a chieftain could lose his office, the pool of people actually capable of holding a chieftainship was relatively small.

¹⁰⁶ Hennis, "Idea of Office," 30.

democracy.”¹⁰⁷ Characterizing the chieftains then as an early medieval equivalent to of our modern elected representatives is not farfetched. Both the modern representative and the chieftain exercise political power on the behalf of the community, compete for the trust of the community, and are dependent on this trust of the community to be able to exercise political power.

2.3.5 Norse kingship

The early Scandinavian king was elected at the *þing* by the chieftains, presumably from amongst their own, similar to the election of the law speaker.¹⁰⁸ Typically, the king served as leader in battle and general protector of the people. In early Germanic society, the relationship between the lord and retainer was the basis for much of the social contract.¹⁰⁹ The king would maintain a host of retainers who, in exchange for their service, would receive from the king gifts and status. To be without lord was considered especially piteous as the plight of the lordless was a frequent motif in Anglo-Saxon literature.

Early depictions of Scandinavian kings show a degree of deference to the chieftains and the *þing*. One example of this is found in the *Vita Ansgarii*¹¹⁰ where Björn, king of Birka in central Sweden, was faced with the decision of whether or not to allow St. Ansgar and his priests to preach Christianity amongst his people. Rather than making this decision for himself, Björn put the question before the chieftains and discussed the

¹⁰⁷ Ibid., 32.

¹⁰⁸ Brink, “Legal Assembly Sites,” 206.

¹⁰⁹ Francis J. Byrne, *Irish Kings and High Kings* (London: Batsford, 1973), 28-9.

¹¹⁰ This manuscript is the biography of St. Ansgar written by Rimbert circa 875. It details the missionary journeys of the saint in Scandinavia and is valued for its portrayal of daily life during the Viking Age.

case with them. The decision was then brought before the *þing* where it was announced what had been decided. After hearing the proclamation, the people assembled at the *þing* lent their unanimous support and St. Ansgar was permitted to preach.¹¹¹

This example clearly shows the king's relationship with the people and the *þing* as two fold. First, while the king was the one to whom this particular question was presented, likely out of his capacity as representative and defender of the people, he did not dare make such a decision without joint consultation with the leaders of the community: the chieftains. Second, the decision made by the king and the chieftains was predicated on the approval of the people assembled at the *þing*, a system that certainly appears to operate with some semblance of democratic thinking. A decision that was to affect the people required the approval of the people themselves.

2.3.6 Conflict resolution

Outside of the courts and assembly system, conflicts were resolved through a process of arbitration. Both parties jointly selected an arbitrator and agreed to abide by the verdict given. The conflict was then described to the arbitrator who rendered a verdict after which the conflict was then said to be legally resolved.¹¹² As per their agreement, both parties are expected to abide by the decision of the arbitrator. This system of arbitration seems only to be the first step in the process of conflict resolution; many circumstances required the case to be subsequently referred to a court. The courts in

¹¹¹ Brink, "Legal Assembly Sites," 206-7. Chapter XXVII of the Life of Ansgar, Charles Robinson, trans., *Ansgar, The Apostle of the North, 801-865, translated from the Vita Anskarii by Bishop Rimbert his fellow missionary and successor* (London: SPCK, 1921) <http://www.fordham.edu/halsall/basis/anskar.asp> (accessed 5 December, 2013).

¹¹² Most conflicts in the *Njal's Saga* are settled this way. When the attempt to settle in this manner fails, then the cases were taken up in the courts. Thorláksson, "Icelandic Commonwealth Period," 182.

general appeared to serve as a deterrent due to their mercilessness in deciding cases in an attempt to make parties negotiate first.¹¹³ Only once negotiations failed or a settlement could not be reached would the parties take their case to court. In particularly difficult or large cases, resolution would not be reached without being brought before the Althing.¹¹⁴

As there was no executive power in Iceland capable of enforcing verdicts and sentences, the arbitration process mainly relied on the wish of each party involved to retain their honor by upholding the terms of settlement. This appears to be a reflection of the old Germanic social code where self-reliance, loyalty, and obligation to one's kin¹¹⁵ underlay the system of conflict resolution. Much like in Ireland, in Iceland a loss of honor entailed a loss of personal support and thus a loss in political power and social standing.¹¹⁶ As such, society in Iceland relied on the individual to uphold the law and honor settlements. As with Ireland, this ties back into Woodruff's conception of democracy as the people's attempt to collectively decide how they should arrange their lives together. The ones who would be harmed by an individual's infraction of the law were the ones who provided the means to see such subsequent judgment enforced. Thus, law becomes the will of the people, both in its promulgation and its enforcement.

2.4 "Compatibility" of the two traditions

The Irish and the Norse legal traditions share quite a few commonalities, notably the functions of their political assemblies, and the method of enforcing law. In this

¹¹³ Ibid.

¹¹⁴ Magnusson and Hermann, *Njal's Saga*, 54.

¹¹⁵ Magnusson, "Introduction," 20. A breach of one's own honor was also a breach of the honor of one's kin.

¹¹⁶ Thorláksson, "Icelandic Commonwealth Period," 182.

section, I hope to demonstrate the “compatibility” of the two legal traditions. That is to say, I highlight the major points of overlap in order to suggest that in a situation such as the Norse settlement on the Isle of Man, a blending between these two legal traditions would be possible. Further, I argue that the major points of overlap between these two traditions relate to their nature as proto-democracies. In the absence of a coercive executive power, only so many mechanisms for the creation and enforcement of law can exist. Thus, it should not be surprising that two proto-democracies, both relying on a popular assembly for the conduction of politics, should have in common many political institutions.

2.4.1 The assembly and the king

In both the Icelandic and Irish traditions, it was at the assembly that the community gathered to play games, transact business, share news, and arrange marriages.¹¹⁷ In both instances, while all sorts of people would have likely attended the assembly, the right to participate in the political proceedings was limited to those free farmers with a certain amount of land. The political proceedings themselves were also similar, as in both cases the assembly served as a venue for the promulgation of law. In Iceland, promulgation was the prerogative of the *lögrétta* who would decide upon new legal procedure and bind it to the people. In Ireland, promulgation appears to be at the center of the king’s political obligation to host an *óenach*, to bind upon his people ordinances and treaties, requiring their approval in order to pass into legal effect. In both these cases, the democratic characteristics of the assembly appear. It was at both the

¹¹⁷ Brink, “Legal Assemblies and Judicial Structure,” 69.

óenach and the *þing* where kings were elected. In Iceland, the consent of the freemen at the assembly was required for the passage of legislation. In Ireland, it was the freemen themselves who chose the laws that they wished the king to promulgate and bind to them.

In relation to the assembly, the king in both traditions filled a rather similar role. In both cases, the king was elected at the assembly. In Ireland, he was elected at the *óenach* by the land owning men assembled there from amongst the eligible candidates who had a legal claim to kingship. In Scandinavia, he was elected by the chieftains at the *þing*, presumably from amongst their own. In both traditions, the king is responsible for the defense of his people and their representation in foreign affairs. As seen in the example from *Vita Ansgarii*, the Scandinavian kings relied on the approval of their people at the *þing*. Likewise, in the Irish tradition, treaties were only valid upon their promulgation by the people at the *óenach*. The functional parallels between the two kingship traditions likely arise from the simple observation that both Ireland and Scandinavian world were mainly agrarian societies. These societies were bound together by political assemblies and relied on a single leader to protect the community in times of war. Further, as the king enjoyed no real executive power within the community, there were relatively few roles for him to fill. The similarity then between the kingship traditions should not be surprising. As such, a blending of the two traditions would really result in a king that had largely the same responsibility to the assembly.

2.4.2 Enforcement of law

In both Ireland and Iceland, the enforcement of law rested not in the hand of an executive authority but with the people. In Ireland, the legal system was regulated by an

individual's honor-price. A person's honor-price determined their status in society, the ability to participate in political proceedings, and their ability to make contracts and conduct basic business. As such, a degradation of one's honor-price, or in the worst case its loss, meant a loss in capacity to interact with the public sphere, both politically, socially, and economically. It was on this threat that the legal system of suretyship was based. As a loss of honor was disastrous, incentivizing the individual to uphold his end of the contract. In Ireland, honor was a defined legal mechanism, but in Iceland honor was much more abstract. An individual's honor was related to the old Germanic sense of duty to one's comrades and kin, socially correlating to one's ability to receive help from others, to be trusted, and to obtain others support in legal affairs. All of these were vital to Icelandic society, so that, as in Ireland, a loss of honor meant a lessening of one's ability to participate in the public sphere.¹¹⁸ Thus, the incentive to uphold an agreement, contract, or verdict of a legal case was just as strong. In both of these cases, informal mechanisms are what bound the people to uphold the law. This is to be expected as in both cases, there was a lack of central coercive authority.

In Iceland and Ireland, the resolution of conflict, while involving courts, relied on the claimants to bring the case to court and enforce the verdict. The judgments in Icelandic conflicts were either settled at the local *þing* or privately mediated by a neutral arbiter. Likewise, in Ireland, professional judges hired out their services to mediate conflicts. If the conflicts were especially large in scope, the cases would be settled at a formal court, presumably at the *óenach*. In both Iceland and Ireland, conflict resolution was the providence of the claimants who sought out a neutral arbitrator. If the conflict

¹¹⁸ Thorláksson, "Icelandic Commonwealth Period," 182.

was large in scale, affecting many people, it was resolved at the assembly. The general philosophy appears to be that if a conflict was large enough to in some way affect the whole of the community, its resolution became the business of the community and the assembly was an appropriate place for its resolution.

As proto-democracies, both the Irish and the Norse legal system heavily relied on the commons as a source of legitimacy. In both traditions, law was promulgated at the assembly. In Iceland, the *lögrétta* was where chieftains decided on law and it was confirmed by the people; in Ireland, law was chosen by the *óenach* and proclaimed by the king who pledged the people to uphold it. The general sentiment appears to be that those responsible for abiding by the law should also play a role in the laws creation and enforcement. Law enforcement was one of the most important aspects that were shared by the two legal systems, and the parallels support the blending of traditions.

Chapter 3: Legal Multiculturalism on the Isle of Man

3.1 Introduction

In the previous chapter, I argued that large degree of similarity between the Irish and Norse legal traditions suggests that the two traditions should be relatively compatible. If people from these two legal cultures were to find themselves living together, a blending of the two individual traditions to produce a single legal system should be expected. It is not unreasonable to assume that the Norse settling on Man brought with them a legal system similar to what has been observed in Iceland. In fact, the *Landnámabók* mentions that some of those who initially settled Iceland were from *Sodor*, the Norse holdings in the Hebrides and possibly Man itself.¹¹⁹ With the settlers of both islands having roots in the Norse controlled Irish Sea, it is likely that they inherited their assembly traditions from the same source. Considering this, studying Icelandic assembly practices gives us insight into what sort of political traditions the Norse would have brought with them when settling on the Isle of Man. However, the key difference between Man and Iceland is that those settling on Man did so amongst a native population with established legal traditions. However, the presence of two legal traditions cohabiting on the same island is not enough to say that a blending of traditions occurred. After all, if the two communities remained isolated from each other or if the invading Norse attempted to stamp out all aspects of native culture, then we should not necessarily expect both legal traditions to blend.

¹¹⁹ T. Elwood, trans., *The Book of the Settlement of Iceland* (London: T. Wilson, 1898), 72.

The idea that legal multiculturalism occurred on the island is supported by the island's medieval statutes and chronicles, which reveal the presence of both Irish and Norse legal traditions. The presence of these traditions in post-Norse statutes suggests that the island's legal system was born of a fusion of Irish and Norse traditions. In order to claim that the Norse traditions blended with the Irish, it must first be established that an Irish system of law was present on the island to begin with. Next, I analyze the circumstances of the Norse settlement on the island. In this, I suggest that the Norse settlement of the island was pragmatic. The observed practice of intermarrying between the Norse and the native Manxmen and the rapid observed conversion of the Norse to Christian traditions of the islanders suggests a blending of the two communities. As a result, it is not unreasonable to suggest that their legal traditions blended as well. Lastly, I summarize the Gaelic and Norse features of the island's post-Norse legal system. In doing so, I again argue that the Manx legal tradition is a result of legal multiculturalism, the fusion of Gaelic and Norse legal traditions.

3.2 The Celts on the Isle of Man

The Isle of Man has had a history of inhabitants ever since the island was formed by rising sea levels ten thousand years ago. It was not until the beginning of the island's Iron Age, however, that the first archaeological evidence for Celtic inhabitants appears in the form of promontory forts and round houses.¹²⁰ Evidence for a specifically British-speaking inhabitants of the island, while scant, is most clearly attested in inscribed stones

¹²⁰ For more information on the Iron Age on the Isle of Man, see Peter Gelling, "The Iron Age," in *Man and the Environment in the Isle of Man*, ed. Peter Davey (Liverpool: British Archaeological Reports, 1978), 233-43.

bearing bilingual Brythonic Latin inscriptions.¹²¹ The Romans, while aware of the island, appear to have left it alone and not much can be said about this early history until the advent of Christianity and the Irish in the fifth century. The Irish settlement of Man is most clearly seen in the archeological finds and Ogham stones that suggested that while they settled in great force, the settlers did not necessarily fully displace the Brythonic presence. Man's position as the crossroads of trade in the Irish Sea meant that control of the island was attractive for any regional powers wishing for commerce. Because of Man's centrality in the region's main economic thoroughfare, many cultures would come to find themselves on the island. Megaw points out that prior to the Norse settlement in the tenth century, as many as four cultures and languages were found to be represented on the island: British, Gaelic, English, and Latin, the Irish being the roots of the modern Manx language.¹²²

The most influential of these powers on the island were the Irish who, despite being relative new comers to Man by the time the Norse settle the island, managed to have the most impact on the island's legal and cultural history. Their influence appears to be so strong that scholars such as Gelling have suggested that most of the Irish traditions on the island could not have predated the Norse arrival. Instead, she argues that the Gaelic language, and by extension culture, was reintroduced via a second wave of Gaelic migration to Man in the period immediately following the fall of the Norse at the end of the thirteenth century.¹²³ This claim however has since been sufficiently refuted by Megaw who exhaustively showed the survival of the Gaelic language and culture from

¹²¹ R.L. Thomson, "The Continuity of Manx," in *The Viking Age in the Isle of Man, Select Papers from the ninth Viking Congress*, ed. C.E. Fell (London: Viking Society for Northern Research, 1983), 169-170.

¹²² Megaw, "Norseman and Native," 291.

¹²³ Gelling, "Norse and Gaelic in Medieval Man."

the early middle ages through the period of Viking control.¹²⁴ In this section, I discuss the pre-Norse traditions present on Man prior to the Norse arrival. Specifically, I discuss the Irish legal traditions that appear to have been brought to Man. I do this so that I may later demonstrate that by observing traces of the Irish legal tradition in the post-Norse Manx statutes, these traditions manage to survive the period of Norse hegemony.

3.2.1 Manx land tenure

Before proceeding with the discussion of the Irish traditions on Man, it is worth briefly noting the system of Manx land tenure. This is significant as the island's land divisions serve as the basis for much of the island's administrative structure. The highest division is the so called "deemster division" named after the fact that each half has its own deemster or high judge. This division is demarcated by a mountain range that runs along the long axis of the island from the northeast to the southwest forming a natural barrier that divides the island in two (see fig. 3.1). Aside from the deemster division, the island's main land division is the sheading, of which there are six, three in the north and three in the south. The sheading in the past served as the main administrative division for the island, the largest unit responsible for tax collection, and watch and ward of the coast. In the modern day, the sheadings function as the bases for electoral districts. The sheadings are further divided into two or three parishes with a total of sixteen parishes on the island.¹²⁵ The parishes themselves are composed of treen estates, the main unit for tax collection during the medieval period. The smallest unit is the quarterland farm, which

¹²⁴ Megaw, "Norseman and Native in the Kingdom of the Isles."

¹²⁵ Currently there are seventeen parishes. The parishes of Marown and Santon in the south of the island appear to have been a single parish at one point.

comprises the treen estates. Where the treen is the base unit for rent collection, the quarterland is the base unit for landholding.

The origin of this system is much debated, mainly concerning the antiquity of the treen estates and quarterland farms. For most of its history, the debate centered around whether the treen owed its origins to the Norse settlers or was of an older providence. However, Moore changed the course of the debate by suggesting, based on parallels in Welsh law texts, the system of land divisions in fact date from the Brythonic milieu.¹²⁶ Overall, the divisions appear relatively static and while the exact borders of the treens and quarterland have certainly been observed to change over the centuries, the general divisions have not.

3.2.2 The Irish and Tynwald Hill

To claim that the Irish brought along with them their legal traditions when settling Man without providing further evidence might leave one skeptical. After all, how do we know that the Irish did not merely adapt to the extant traditions of whoever was already living on the island? Fortunately, the archeological excavations of Tynwald Hill appear to indicate that the Irish settling on the island brought with them their own political culture. Tynwald Hill and the St. John's plain has long been a site of ceremonial importance with the earliest known features of the site, the main ceremonial hill, dating to the Neolithic period. Two other features, a small barrow to the north of the hill and an enclosure ringing the two hills appear to date from the early Bronze Age.¹²⁷ In this early period, it is clear that the site was of ceremonial importance, mainly as a sacred burial location, but

¹²⁶ Moore, "The Manx Multiple Estate."

¹²⁷ Darvill, "Tynwald Hill," 220.

scholars such as Darvill are skeptical that the site was ever used as a political assembly.¹²⁸

It was not until what Darvill calls the site's "second phase of activity" circa the sixth century that Tynwald Hill can be linked with any particular legal tradition. This coincides with the settlement of the Irish on the island. At this point, St. John's was transformed from a singular enclosure to a complex encompassing much of the surrounding plain, bearing many features similar to the politically significant sites of Navan and Tara in Ireland (see fig. 3.2). During this time, the enclosure ringing the two hills was reinforced and a religious structure on a hill to east was built, similar to the layout at Tara.¹²⁹ To the east of Tynwald, where the present chapel of St. John's stands, a burial ground dating from this period has been found accompanied by an early *keeill*.¹³⁰ The surrounding area was transformed into an expansive complex evidenced by woodland clearings, the presence of metalworking, and wealthy imported pottery. The transformation of St. John's in the period of Irish settlement, mirroring sites of political and ceremonial importance in Ireland, suggests that the settlers appropriated the site for a similar function.

As such, it could be rather safely assumed that the Irish settlers brought with their own legal traditions with them to the island. As it relates to the Tynwald Hill, this could be thought to include many of the Irish legal traditions associated with the assembly: the

¹²⁸ Ibid., 221.

¹²⁹ Darvill, "Tynwald Hill," 221; Richard Warner, "Notes on the Inception and Development of the Royal Mound in Ireland," In *Assembly Places and Practices in Medieval Europe*, ed. Alike Pantos and Sarah Semple, 27-43, (Dublin: Four Courts Press, 2004), 28-30.

¹³⁰ It is of note that while some *keeills* appear to have been built in the sixth or seventh century, it is now thought that most date from towards the end of the Viking period. As such, the dating of the *keeill* at St. John's is uncertain. Darvill is willing to date the *keeill* to the Irish phase of construction whereas Wilson is not as sure. Darvill, "Tynwald Hill," 221; Wilson, *Vikings in the Isle of Man*, 124-5.

holding of the *óenach*, the judging of important cases, the promulgation of law, and the making of kings. In particular, as the Tynwald appears to parallel higher status sites in Ireland representing overlordship, it is conceivable that Man also possessed many *túatha* and Tynwald Hill was the inaugural mound of the island's overking and the location of its royal *óenach*.

This leaves us with the natural question: if Tynwald Hill was used as the ceremonial seat of an overking, how many petty kings were on Man, or simply, how many *túatha* settled on Man? This question, while seemingly innocuous is quite significant and the answer has consistently evaded scholars. Broderick speculates that, based on estimates of Man's population in the eighth century as around 10,000 and Binchy's calculation of a *túath* being around 3000 people, that Man would have roughly held three to four *túatha*.¹³¹ Darvill on the other hand, in his investigation of potential pre-Norse assembly sites on the island seems to imply (though not directly) that there were six.¹³² Davey however, takes a different approach to the issue. Rather than attempt to ascertain the number of *túath* on Man, he focuses instead upon the observation of that up until the modern period Man appears to have been ruled as two separate smaller kingdoms united by a singular island-wide king.¹³³ The proposed divide aligns with the deemster division, running north to south along the island's mountain chain.

Functionally, this divide is observed in the islands two deemsters (the keepers of the Manx customary law) with Davey observing that customary law differed slightly for the

¹³¹ Broderick, "Tynwald," 73.

¹³² Darvill, "Tynwald Hill," 224-227.

¹³³ Peter Davey, "At the Crossroads of Power and Cultural Influence: Manx Archaeology in the High Middle Ages," in *Mannin Revisited: Twelve Essays on Manx Culture and Environment*, ed. Peter Davey and David Finlayson (Edinburgh: Scottish Society for Northern Studies, 2002), 95-99; Broderick, ed., *Chronica Manniae*, fol.33r., fol.34v.

North and the South. Likewise, he argues that these two Manx kingdoms explain why the island had two castles, monasteries, and even two dialects of Manx, each on opposite sides of the island. If Davey's suggestion of at least two regional kingdoms on Man is true, we should expect a single overking for the whole of the island. The parallel of Tynwald Hill to royal sites of overkings in Ireland supports this.

The religious overtones of the medieval Tynwald ceremony also reinforce the idea that the Tynwald's origins lay in the Irish *óenach*. In Ireland, the *óenach* was held at regular intervals and while it is not certain whether the *óenach* held by petty kings occurred at fixed dates at fixed locations, it is clear that *óenach* hosted by overkings took place at specific, ceremonially significant sites on important holidays each year. One such example of this is the *Óenach Tailten* hosted by the king of Tara on *Lugnasad* each August.¹³⁴ The earliest records of the Tynwald in the thirteenth century would suggest that this was also the case on Man. When the Tynwald first appears in the Manx Chronicle in 1237, it is reported that the court was held on the 24 of October.¹³⁵ Currently the Tynwald is traditionally held on Midsummer's day; however, as the Midsummer was not a typical Gaelic holiday, the Tynwald occurring on the 24th of October suggests that it might have originally been associated with the Gaelic festival of *Samhain*.¹³⁶ *Samhain*, the Gaelic harvest festival, has strong connections with the Otherworld which, during sacred times such as the harvest, was said to be accessible though the *síd* "fairy mounds."

¹³⁴ Lugnasad is one of the four major pagan holidays in Ireland held in early August marking the beginning of the harvest season. *Lugnasad* is associated with Lugh, one of the mythical pagan gods of Ireland and its pseudo-historical high king. D.A. Binchy, "The Fair of Tailtiu and the Feast of Tara," *Ériu* 18 (1958): 113-138.

¹³⁵ Broderick, ed., *Chronica Manniæ*, fol.45r.

¹³⁶ Broderick, "Tynwald," 89. The four major Goidelic festivals were Imbolc (1 February), Beltane (1 May), Lugnasad (1 August), and Samhain (1 November). Three of these survive as the Manx Gaelic names for months: Boaldyn, Lunastyn, and Mee Houney.

It is not unlikely that Tynwald was held at this time out of convenience and ceremonial importance. With the people already gathered for this festival, holding a political assembly was convenient. Further, with the Tynwald traditionally being held on a grave mound identifiable with the *síd*, the idea of calling the ancestors to bless the proceedings at a time when the Otherworld connection was strong is not farfetched.¹³⁷ Further, where the *óenach* at Tara was aligned with the deity Lugh the patron of the Tynwald festival was (and still is) Mannanan mac Lír, the Irish god notable for his role as the lawgiver. Given this further parallel with royal sites and *óenaige* in Ireland, it should seem reasonable to suggest that the Irish legal tradition was firmly established on Man by the time the Norse arrived on the island.

3.3 The “multicultural” nature of the Norse settlement

With it clearly established that Irish legal traditions were present on Man prior to the Norse settlement of the island, the nature of the Norse settlement then becomes of great interest. If there was to be a blending of legal traditions between the Irish and the Norse, then we should expect their settlement to be reflective of this, relatively peaceful and “multicultural” in nature. In this section, I discuss the circumstances of the Norse settlement on Man with a specific focus on their rapid conversion to Christianity and their practice of intermarrying with the native Manxwomen. As the Norse were seen to adopt Manx practices and settle amongst the native community, I argue that this supports the notion that a blending of legal traditions likewise occurred.

¹³⁷ Warner, “Royal Mound in Ireland,” 32.

3.3.1 Norse settlement on Man

The Norse settlement on Man began in the late eighth, early ninth century during a period of great turmoil in the Irish Sea. The Vikings had only recently established permanent settlements along the Irish coast in the 830s with Dublin quickly emerging as the most powerful. Growing envious of the profitable ventures of these free-raiding Dublin Vikings, the emerging king of the established Viking settlements in the Hebrides began to take action against the lordless settlement in an effort to establish control over its profits. By the 850s, the Hebridean king had managed to take control of the settlement and move his main operations from the Isles to Dublin proper, marking the beginning of the powerful kings of Dublin.¹³⁸

Following this brief period of infighting, the Norse Vikings in the Irish Sea coalesced under the rule of a single king. With this newfound stability, in 870 the Vikings began to turn their attention to the conquest of the Britons of Strathclyde and south Pictland.¹³⁹ At this point, the Norse influence in the Irish Sea was so strong that upon the death of Ímar, King of Dublin, in 873, the *Annals of Ulster* record him as *Imhar rex Nordmannorum totius Hibernie 7 Britannie* “Ímar, King of the Norwegian Vikings of the whole of Ireland and Britain.”¹⁴⁰ While it is not exactly clear what was meant by the “whole of Ireland and Britain,” Ó Corráin interprets the statement as characterizing Dublin as the capital of a vast sea kingdom comprising of the Isle of Man, Northern Scotland (Orkenys, Caithness, Sutherland), the Western Isles (to include Argyll, Ross,

¹³⁸ Donnchadh Ó Corráin, “The Vikings in Scotland and Ireland in the Ninth Century,” *Peritia* 7 (1998): 325.

¹³⁹ *Ibid.*, 330-1.

¹⁴⁰ While the connection is somewhat uncertain, this Ímar appears to be the founder of the Uí Ímar who would rule Dublin, Man and the Isle relatively uncontested until the end of Norse presence in the Irish Sea circa 1300. *Ibid.*, 334.

Cromarthy, and the Coastline of Inverness) and the newly conquered peoples of the British Strathclyde and southern Pictland.¹⁴¹

The Viking dominance in Ireland came to a temporary end in 902 when the Irish defeated and expelled the Norse from Dublin.¹⁴² Little is known about the Dublin Vikings in the period after their expulsion until they reemerge, first in 914 in Waterford and then again in 917 to reestablish an urban center in Dublin.¹⁴³ A few references can be found in the annals regarding the expelled Vikings. In particular, the *Fragmentary Annals* record the Viking leader Ingimund, after fleeing, attempted to settle with his fleet in Anglesey, but was instead driven on to Chester. Archeologically, a third wave of Viking settlement in the Irish Sea is seen in Norse graves in Cumbrian and Wirral¹⁴⁴ and it is generally accepted that these settlers were the refugees who fled from Dublin to Norse controlled (yet unsettled) lands across the Irish Sea.¹⁴⁵

It is in this context that the Norse appear to have arrived on Man. Wilson suspects that the Viking settlement of Man was due to a secondary migration of refugees from Dublin coming by way of Northern England.¹⁴⁶ This is supported by the archaeology of the Viking graves corresponding to the first two generations of settlers on the island. Notably, the burial rituals found on the island closely mirror those found in Cumbria.¹⁴⁷

¹⁴¹ Ibid., 335.

¹⁴² James Graham-Campbell, "The Early Viking Age in the Irish Sea area," in *Ireland and Scandinavia in the Early Viking Age*, ed. Clarke et.al. (Dublin: Four Courts Press, 1998), 106.

¹⁴³ Donnchadh Ó Corráin, "Vikings in Scotland," 336; James Graham-Campbell, "Early Viking Age," 107.

¹⁴⁴ The first wave of settlement was the in the Hebrides between 813 and 821 followed by the establishment of *longphuir* in Ireland in the 830s. The third wave of settlement then was the expulsion out of Ireland to the northern coast of Britain. James Graham-Campbell, "Early Viking Age," 106; Donnchadh Ó Corráin, "Vikings in Scotland," 297.

¹⁴⁵ Donnchadh Ó Corráin, "Vikings in Scotland," 335-7.

¹⁴⁶ Wilson, *Vikings in the Isle of Man*, 55.

¹⁴⁷ Ibid.

Riding equipment has been recovered from a boat burial¹⁴⁸ found in Balladoole, reflective of high status warrior burials in Cumbria, but absent from earlier burials found in Dublin.¹⁴⁹ Further, grave clothes recovered from child burials on St. Patrick's Isle, while paralleling styles found in contemporary Iceland, appear to have been made in England.¹⁵⁰ Other grave goods in the Peel Castle cemeteries appear to be of Danelaw style or origin, supporting the notion of the Viking's migration to Man from North-West England.¹⁵¹ In addition to Man, it appears that much of the Norse settlement of South-West Scotland was caused by a secondary migration from North-West England as well.¹⁵²

The Norse settlement on Man initially appears to have been carried out by pagan warriors in a violent fashion. Early Norse burials are observed in two locations on the island, one set to the North in Knock-e-Dooney and the other in Balladoole, to the south, near Castletown.¹⁵³ These sites are both boat burials and, along with other burials throughout the island, paint a picture of the Viking settlers as pagan warriors who, Wilson suggests, took the land by force. In addition to the obviously pagan character of these settlers, there was a surprising dearth of female burials suggesting that these supposed refugees did not bring their families with them. Perhaps then, those who initially found themselves on Man were young, taking advantage of the chaos caused by their expulsion from Dublin to try their worth on in a previously "unconquered" land.

¹⁴⁸ Two boat burials have been found on the island at Balladoole and Knock y Doonee. This practice is notably uncommon in the rest of Viking Age Britain. Wilson, *Vikings in the Isle of Man*, 44.

¹⁴⁹ James Graham-Campbell, "Early Viking Age," 118.

¹⁵⁰ Wilson, *Vikings in the Isle of Man*, 47.

¹⁵¹ James Graham-Campbell, "Early Viking Age," 119-20.

¹⁵² *Ibid.*, 120-21.

¹⁵³ Interestingly enough, these two settlements are on opposite sides of the island. Davey interprets this to indicate that in the early phase of settlement, the Norse respected the island's native North-South divisions. Davey, "Crossroads of Power," 91.

The initial tension caused by the Norse settlers seizing of land appears to have dissipated fairly quickly. Wilson estimates the settlers initially numbered around 400 as compared to the population of Manxmen of around 10,000.¹⁵⁴ The settlers, he reasons, would eventually need to find a way to placate the Manxmen; otherwise, they would find themselves “unable to sleep at night.”¹⁵⁵ Regardless of what relieved the tension between the two communities, what is apparent is that many social barriers began to dissolve within the first two generations of settlement. This is seen most clearly in the conversion of the Norse to Christianity and their practice of intermarrying.¹⁵⁶

3.3.2 Christianization and intermarriages

Despite the fact that those Vikings who settled upon Man were pagan and lived in Christian communities, religion does not appear to be a source of conflict. The tolerance of the Christian burial rite by the Vikings, as seen in the placement of pagan burial mounds within established Christian burial grounds, suggests that the Vikings did not attempt to force the Manxmen to convert to paganism.¹⁵⁷ In addition, the Church in the north was relatively tolerant of paganism (or perhaps too weak to force conversion) and it is likely that the Christian Manx did not forcibly try to convert the settlers to Christianity by legal means as seen in Iceland and England.¹⁵⁸ The result is that the conversion to

¹⁵⁴ Wilson, *Vikings in the Isle of Man*, 55.

¹⁵⁵ Ibid.

¹⁵⁶ This quick conversion from paganism to Christianity and intermarrying with the native Christian population is also observed in the burial rites of the remainder of the Dublin refugees who settled in North-West England. James Graham-Campbell, “Early Viking Age,” 115.

¹⁵⁷ Wilson, *Vikings in the Isle of Man*, 49-51.

¹⁵⁸ In Iceland, conversion to Christianity was achieved by legal means through a decision made in the Althing. In doing so, all except for private expressions paganism were outlawed. According to Magnuson, what is remarkable is that after this forced conversion, Iceland never reverted to paganism, even temporarily as seen in other Scandinavian countries. In England in 878, it was recorded that Danish Viking were forced to convert to Christianity as the terms of a treaty with King Alfred. None of this occurred on

Christianity on the island was seemingly voluntary and without conflict. From a pragmatic perspective, this conversion makes sense. As the Manxmen were Christian, the Viking's conversion to Christianity would have served to legitimize their rule within the established political order.

By the middle of the tenth century, burial practices notably changed, indicating that the population of settlers had converted (at least nominally). No burial with grave-goods, an exclusively pagan practice in the British Isles, are observed for dates later than 940, coinciding with the emergence of Norse inscribed crosses marking the settler's graves instead.¹⁵⁹ This quick conversion most likely occurred within the first two generations of settlers. The ornately decorated pagan burial mounds of the first Viking settlers have been interpreted by Wilson to be indicative of a people proudly displaying their pagan religion in the face of a Christian population.¹⁶⁰ While these settlers had most likely been exposed to Christianity while living near Christian communities in Ireland and England, their display of pagan pride on Man would suggest that initially they had no intent of conversion. However, it is clear from cross inscriptions that the settlers intermarried with native Christian women.¹⁶¹ In doing so, it could be expected that their children were raised by Christian mothers in the Christian tradition, explaining the quick conversion. Another explanation is that this new generation of Vikings on Man, seeking to legitimize their rule, could have seen converting to Christianity as a tool to engender

Man. James Ingram trans., "The Anglo-Saxon Chronicle," The Avalon Project: Documents in Law, History, and Diplomacy, Yale Law School: Lillian Goldman Law Library, http://avalon.law.yale.edu/subject_menus/angsax.asp (accessed 1 November, 2013); Magnusson and Pálsson, *Njal's Saga*, 216-26; Wilson, *Vikings in the Isle of Man*, 81.

¹⁵⁹ Wilson, *Vikings in the Isle of Man*, 55.

¹⁶⁰ *Ibid.*, 46.

¹⁶¹ James Graham-Campbell, "Early Viking Age," 115.

the favor of the Manxmen. Unlike their fathers, they likely would have had no aversion to Christianity, as they would have been raised, at least partially, in a Christian context (by native Christian mothers within a Christian community). Likewise, it could be inferred that the political traditions underwent a similar process. In order to engender the support of the native population that they sought to rule, the Norse settling on Man adapted their legal traditions to fit with the extant Gaelic assembly.

The integration of the two communities is particularly evident on the crosses that the Norse began to raise (see fig. 3.3). One of the oldest stone crosses on the island, possibly erected as early as 925, bears the inscription of the names of a man and his son, both of which are Gaelic.¹⁶² The inscriber of the cross then signs his name *Gautr*, a Norse name that has been found on many other stones across the island. The presence of Celtic names carved by a Norse man would imply that the two communities cooperated with each other to the extent that they were willing to adopt each other's practices¹⁶³ and engaged in trade.¹⁶⁴

The crosses are also our main source of evidence that the two communities frequently intermarried and affected each other's language. This intermarrying is clearly indicated by the presence of inscriptions attesting mixed family relationships, such as numerous accounts of Norse-named men with Celtic-named wives.¹⁶⁵ Further, the presence of Gaelic male names alongside Norse ones suggest that more than just Manxwomen were integrated into the Norse community.¹⁶⁶ The complex familial picture

¹⁶² Wilson, *Vikings in the Isle of Man*, 77.

¹⁶³ The raising of a cross is a Celtic practice that in this case was performed by a Norseman.

¹⁶⁴ This cross was presumably commissioned from a Norse man by a wealthy Manxman.

¹⁶⁵ Wilson, *Vikings in the Isle of Man*, 77.

¹⁶⁶ *Ibid.*, 87.

that emerges certainly indicates that the Norse settlers quickly came to integrate themselves with Manx society. This mixing is also seen in the inscriptions themselves that indicate a breakdown of the linguistic purity of the Norse settlers. Old Norse, as seen in inscriptions in Scandinavia, makes use of a strict system of accentuation that is seen to breakdown in Manx inscriptions as would be expected in a community of mixed Gaelic-Norse speakers.¹⁶⁷ This certainly suggests that the Norse and Manxmen had enough social contact, such as business interaction, familial relationship, or political relations, as to affect each other's language in this way. This is not surprising since, in order to sustain themselves, the Vikings settling on the island would have had to cooperate in some way with the native Manxmen. Trade, intermarrying, and establishing an amicable relationship with the Manxmen would have been necessary for survival.

Given the extent that the Norse controlled land, intermarried, and seemingly occupied a position of power on the island, it would not seem likely that they governed themselves as an isolated community. Whether out of a desire to mitigate the Manx opposition to their attempt to rule, out of a purely pragmatic attempt to survive in their new home, or both, the Norse settlers appear to have integrated with the native Manx, albeit forming an upper class of sorts. As Wilson mentions, complete subjugation of the entire population of the Manx would have been foolish or downright impossible, and consequently Norse attempts to rule on Man would have required some degree of compromise. Socially, it could be argued that this was reflected in the conversion to

¹⁶⁷ Page, "The Manx Rune-Stones," 138.

Christianity and the intermarriages. Likewise, we should expect something similar with regard to political traditions.

As discussed in the previous chapter, the legal traditions of the Norse and the Irish were similar enough that a blending of the two traditions should not be considered unreasonable. Further, earlier in this chapter I have demonstrated that the pre-Norse legal traditions of Man were likely those of the Irish settlers who came to the island some four hundred years prior. Given the social multiculturalism observed between the Norse and the Manx, it should be expected that a blending of legal traditions occurred. I suggest the Norse, naturally seeking to rule on Man, would have injected their own legal practices into the established traditions of the Manx. This process would not have necessarily been manipulative, but was likely the result of two parties coming together in an attempt to work out a common system of law; a legal pidgin so to speak. The task that remains is then to demonstrate that this is what in fact occurred.

3.4 Gaelic traditions on Man

While the Nordic aspects of the Manx legal system had been known and written about for centuries, Broderick was the first to discuss the supposed Irish roots of the island's legal traditions. Broderick noticed a number of parallels between the early depictions of the Tynwald and Manx legal system and the eighth century Irish law tracts I summarized in chapter two.¹⁶⁸ He argues that these parallels indicate that the Tynwald ceremony and the Manx legal system, rather than having purely Norse roots like previously assumed, was rather was a mixture of legal traditions. What has been

¹⁶⁸ Broderick, "Tynwald," 60-8.

discussed in this chapter thus far is in line with Broderick's argument (and partially based upon it). Having established that Irish legal traditions were present on the island prior to Norse arrival in conjunction with showing that similar traditions were present in post-Norse depictions of the legal system implies that these traditions were preserved through the period of Norse rule. Further, this indicates that the Manx legal system was born of a blending of Irish and Norse legal traditions, the product of legal multiculturalism.

3.4.1 Deemster as the *brithem*

An important Manx legal office to single out when discussing the Irish roots of the legal system is the deemster. The deemster is a complicated figure to sort out and appears to be a mix of Irish and Norse traditions. Man possessed two deemsters, one for the North and one for the South. These deemsters were responsible for officiating the Tynwald ceremony and were called upon to judge important matters of law. Prior to the initial recording of law, the deemsters were responsible for remembering the whole of the Manx customary law that they passed on from father to son along with the office.¹⁶⁹ This strongly parallels the Irish *brithem túaithe* who was responsible for providing sound legal advice to the king. The Irish office to begin with is a close parallel to the Norse lawspeaker, so sorting out whether the deemster was of Norse or Irish origin would be nearly impossible. The name does not do much to help sort out the office's origins either. While the name "deemster" appears to be related to the Norse *dómr* "court of judgment," and cognate with the Scots *doomster*, the Manx term *briw*, Broderick claims, comes directly from the Irish *breth* "judgment."¹⁷⁰ However, as the *brithem tuaithe* played such

¹⁶⁹ Peter Edge, *Manx Public Law* (Douglas: Isle of Man Law Society, 1997), 79-81.

¹⁷⁰ *Ibid.*, 76.

a central role in the Irish legal system, according to Broderick, the deemster as a Manx legal office would almost certainly have predated the Norse arrival on Man.¹⁷¹

3.4.2 Tynwald as an *óenach*

Upon inheriting the Manx throne from his father in 1414, Sir John Stanley II traveled to the island in 1417 and commissioned the ancient laws of the island to be put into writing. Prior to this, the island's legal system had been kept entirely as an oral tradition. Stanley commissioned the recording of law to educate himself in his role as King of Man.¹⁷² These papers are our earliest picture of the Manx legal system and essentially reveal that in ceremony, the Tynwald functioned like an Irish *óenach*. Like the *óenach*, the Tynwald was presided over by the king who was seated upon the hill and joined by his nobles and officers. Around the hill, the commons of Man also gathered. This gathering served as the yearly opportunity for the barons and the commons to swear “faith and fealtie” to the king and renew themselves as tenets to the land.¹⁷³ This particular practice of renewing contracts to the land was not a particular Irish practice but instead a feudal one. Further, the gathering of the commons while in line with the *óenach* was not exclusively Irish. This was the case in the Norse *þing* tradition as well; however, the hosting of the gathering under the auspice of the king to reaffirm their oaths was not.

A stronger connection between the Tynwald and the *óenach* was the subsequent interaction between the king and the commons. This interaction included the inauguration

¹⁷¹ Ibid., 89.

¹⁷² “A Short Account of Sir John Stanley the Second King in Mann of that Name in Family,” in *The Manx Notebook vol. 3* (Douglas: G.H. Johnson, 1887), <http://www.isle-of-man.com/manxnotebook/manxnb/v09p001.htm> (accessed 30 March, 2014).

¹⁷³ J. Frederick Gill, *The Statutes of the Isle of Man Vol. I* (London: Eyre and Spottiswood, 1883), 4.

of the king, the election of his heir, and the promulgation of law. The 1417 commission makes it clear that one of the primary purposes of the commons gathering at Tynwald was the inauguration of the king. Arriving at Tynwald, the king would be seated upon a ceremonial chair under a white pavilion on the hill. This, Broderick argues, was reminiscent of the Irish practice of kings being enthroned within ritual houses in the presence of their vassals.¹⁷⁴ The inauguration proceeded with the commons and barons swearing their allegiance to the king and staff of government being presented to the king. This reflects the Irish requirement of the people affirming the new king as their lord. The presentation of the staff of government, Broderick argues, reflects the Irish practice of the inaugurated king receiving a white rod symbolizing his protective role over his people.¹⁷⁵

Likewise, the election of the king's heir at the Tynwald reflected another Irish practice. This practice on Man is actually observable in the *Manx Chronicle* some two hundred years prior to the 1417 commission. The *Chronicle* relates the story of King Olaf establishing his son as heir to the kingdom and proclaiming this at Tynwald. It then follows that the people gave their assent to the proclamation via an oath.¹⁷⁶ This is reflective of the Irish practice of electing the king's heir during his lifetime. As in the Irish case, the election is promulgated by the taking of oaths by the king from the people. However, unlike the Irish practice, it is the king himself who selects his heir; it is not unlikely that this was a Norse innovation. This practice continued on Man into the period of English rule. William le Scroop, the first English King of Man, presented his brother

¹⁷⁴ Broderick, "Tynwald," 6-7.

¹⁷⁵ Eleanor Megaw, "The Governor's Staff of Office," *Journal of the Manx Museum*, 5 (1945-46): 173-3. Broderick, "Tynwald," 78.

¹⁷⁶ Broderick, ed., *Chronica Manniae*, fol.40r.

as heir to the Tynwald in 1393 and John Stanley II himself was proclaimed heir to his father at the Tynwald.¹⁷⁷

Finally, the most important function of the Tynwald was the promulgation of law, which is in the vein of the Irish tradition. To this day, the bulk of the Tynwald ceremony consists of the reading of law before the commons in both English and Manx. In the past, this promulgation also required the assent of the king and the affirmation of the commons at the ceremony. No piece of legislation is considered to carry the weight of law until it is promulgated at Tynwald in this fashion. On the surface, this would appear to be a tradition rooted in either the Irish or the Norse traditions. Observing that the site of Tynwald Hill has been in continuous use as a place of assembly since the Irish settled on the island suggests that this tradition predates the Norse arrival. It would not seem likely that the Irish who settled on Man and renovated the site in elaborate form would use it for every function associated with assembly with the exception of promulgation of law. The preservation of other aspects of the Irish assembly into the medieval protocols suggests that the Manx tradition of promulgation of law would have been preserved as well. Due to the high degree of similarity with the Norse practice of promulgation at the assembly, it is likely that through the Norse period this tradition was strengthened.

Despite the largely ceremonial nature of this relationship between the King of Man and the commons at the Tynwald, vestiges of proto-democracy can be seen preserved. While the people's role in inauguration, election, and promulgation at this point in the Middle Ages was nominal, it is still reflective of an older practice rooted in the Irish tradition that once carried actual weight. The reliance on the commons to

¹⁷⁷ Broderick, "Tynwald," 79.

legitimate the political proceedings at Tynwald was the avenue through which the non-elite could express a voice in the political process. Even when their role became largely ceremonial, the need to present the laws before the people insured that all had the opportunity to be made aware of its content. The transition away from the commons playing a politically significant role in the Tynwald then is important to the study of the political history of the island. Specifically, I later argue that this transition was the result of state formation and the consolidation of political power in the hands of a centralized executive. At this point, the king could enforce the law upon the people rather than relying upon them for its enforcement, as was the case with early Irish law. Thus, their consent in the legal process was no longer necessary, but illusions to it managed to survive in the Tynwald traditions.

3.5 Norse traditions on Man

So far, I have only mention in passing that Norse traditions are clearly observable in the Manx legal system. In general, the notion of the Tynwald as a *þing* has long been taken for granted, though the connection is not undue. Given that the Norse settled upon Man, that there is a long tradition of a representative assembly on the island, and that statutes mention chiefs of the island meeting to debate points of law, the connection is justified. Further, the name of the Manx assembly itself, Tynwald, is from the Norse *þing-völlr* “assembly field,” and is cognate with other notable *þing*.¹⁷⁸ It is not unreasonable to characterize the Manx legal system as having a Norse origin. This is the main argument of the chapter, that the Norse settling on Man fused their legal traditions

¹⁷⁸ These are *þing* such as Dingwall in Scotland, Tingwall in Shetland, Þingvellir the site of the Icelandic Althing, Tingvoll in Norway, and many other sites.

with those of the Manxmen, combining the *þing* with the *óenach*. In this final section, I show in more detail what aspects of the Norse legal tradition are reflected in the Tynwald.

3.5.1 Manx chieftains and lawspeakers

Just as the deemster has clear Irish roots, the connection with the Norse traditions is even stronger. As stated before, the term deemster certainly connects the office with the Norse legal tradition and is most identifiable with the lawspeaker. On Man, the two deemsters were responsible for keeping “breast law,” the oral legal tradition of the island. As such, it was their job to function as legal consultant, reciting the law when asked and providing legal advice. This is exactly the role of the lawspeaker as discussed in the previous chapter.

The Manx keys are also identifiable with the Norse legal tradition. The keys were the representatives to the Tynwald from across Man with, by the time they emerge in the records, four from each sheading. As a body, they voted on matters of law, sat in judgment on cases, and in general served as advisors to the king. This appears to parallel the Norse tradition of chieftain. In early Icelandic law, while all landowning freemen were allowed to attend the Althing, the chieftains were the significant political actors. The collective body of chieftains formed the *lögrétta* and equally represented each district on the island. It is likely then that the Norse brought to Man this practice of a representative assembly, especially since no such practice is seen in the Irish *óenach* tradition. This has long been the prevailing view and the cornerstone of the claim of the

Tynwald as the “oldest continuously operating parliament.” In general, the *þing* tradition of the Norse can be characterized by this idea of representatives making law.

As this is the case in Man, there are significant implications for the dynamic between the established Irish legal traditions of law making and the newly imposed ones of the Norse. In the Irish tradition, new laws to be promulgated at the assembly were chosen by the people and bound to them by the king. With the advent of the keys following in the Norse tradition, there was no longer any room for the commons in the legislative process; they were replaced by a small body of elites. In this case, the fusion of Irish and Norse traditions resulted in the removal of a legal practice that helped characterize the Irish system as proto-democratic. This would remain the case on Man until the late nineteenth century when the keys became an elected representative body and the Tynwald was once again responsive to the people’s will.

3.5.2 The king and the keys

The relationship between the king and the keys seems reminiscent of the accountability of the Norse king to the *þing*, where chieftains acted as his foil. As seen in the *Vita Ansgarii* for example, the king often showed deference to the chieftains, and other sources indicate that the chieftains occasionally demonstrated authority over the king. This relationship is clearly seen on Man. The *Manx Chronicle* makes mention of the chieftains of the islands acting against the king or in his stead. One such case involved the rule of King Olaf, youngest son of Godred Crovan and successor of Lagmann who abdicated the throne. With viewing Olaf as too young to rule, the chieftains of the island requested that the King of Ireland appoint an interim ruler for Man until Olaf had come of

age.¹⁷⁹ The chiefs intervened again under the reign of King Godred Olafsson. When he began to act tyrannical and deprived the chieftains of their legal privileges, the chieftains sent one of their own to the warlord Somerled who was at the time consolidating power in the Isles in opposition to the Manx king. They requested that he come to Man and depose King Godred.¹⁸⁰ The behavior of the island's chieftains in these occasions align with the Norse tradition as the practice of local chieftains acting as foil to the king appears not to be common in Irish law. The Tynwald as being a body of political empowered chieftains in addition to being a ceremonial assembly can then be seen as the product of Norse legal traditions on the island.

3.5.3 The Tynwald as a *þing*

Aside from its name and the many other traditions discussed so far, the first feature of the Tynwald that suggests that it might be connected to the Scandinavian *þing* tradition is the fencing of the court. At Tynwald, before the proceedings began the presiding deemster commanded the fencing of the court where by the coroner of the sheading of Glenfaba¹⁸¹ read a protocol commanding those assembled to honor the proceedings and not unlawfully interfere. This is also accompanied by a cord run around the hill physically delineating those who were a part of the proceedings and who were not. This is directly reflected in the Icelandic *þing* procedure. In the case of the Althing, when the chieftains met to decide matters of law in the *lögrétta*, they sat according to

¹⁷⁹ Broderick, ed., *Chronica Manniæ*, fol.33v.

¹⁸⁰ *Ibid.*, fol.37v.

¹⁸¹ The coroner is a Manx officer with roots in the medieval period. He was primarily responsible for the collection of rents and maintaining the defense of his sheading. Glenfaba is the particular sheading in which Tynwald Hill and St. John's resides.

rank and were fenced off from the crowd of commons gathered there, only those who sat within the fence who had a say in the proceedings. As such, this aspect of physically separating the commons from the political elite at the Tynwald is clearly a Norse contribution.

The second feature of the Tynwald that clearly marks the Norse's influence is the role of the deemster as master of ceremonies. The Tynwald, the deemster was responsible for commanding the fencing of the court, the reading of the laws, and in general officiating the ceremony. Specifically, his part in proclaiming the laws before the commons is a direct parallel to the Norse role of the Lawspeaker. In the Althing, it was the law speaker who initiated the ceremony, proclaimed the fencing of the *lögrétta*, and each year recited a third of the law. Like with the fencing, the connection with the Norse *þing* traditions is unmistakable. This is especially true since the Irish *brithem*, while serving as the legal consultant for the king, is not mentioned in the Irish law texts as playing any large role outside the courts. Thus, this role of the deemster as master of ceremonies for the Tynwald clearly represents the Norse influence on the office and the ceremonial tradition.

The final feature that connects the Tynwald to the Norse *þing* tradition is the function of the Tynwald as high court. While in the current day Tynwald ceremony this function is not readily apparent, for much of the island's history the Tynwald served as its high court. Both occasions where the Tynwald was held at the request of Sir John Stanley II in 1417 and 1422 functioned as courts to pass judgment on the perpetrators of the rebellions Stanley in these cases traveled to the island to suppress. Further, the Tynwald in its capacity as the body of keys mainly possessed the power to advise the king on

matters of law and judge in important cases. We see this paralleled in the practice of the Althing as high court in Iceland. When a case was appealed to the Althing, it was presented before a body of judges chosen from amongst the chieftains. The Tynwald serving as high court also is in line with the Irish tradition of the *óenach* being the judgment site of major cases. The monopoly of judgment by a select number of representatives rather than the Irish practice of a king and the singular *brithem túaithe* places the Tynwald court more in the providence of the Nordic *þing* tradition. Though overall, this is another point of overlap between the Irish in Norse traditions on Man.

The previous chapter discussed how in theory, the Norse and the Irish legal traditions should be compatible based on a number of overlaps in legal procedure and general similarity. As we have seen in this chapter, the Isle of Man serves as an example of this concept in practice. The circumstances of the Norse settlement on the island appear to be amicable. The rapid Christianization along with the apparent practice of intermarrying suggests that the Norse had no qualms about integrating with the native community. As such, it should not be unexpected that in attempting to introduce their own legal traditions to the island, they did so by navigating and blending with the existing legal traditions. This expectation is confirmed by an analysis of the post-Norse statutes and chronicles, which show traces of both Irish and Norse legal traditions. As a result, it can be said that the Manx legal tradition was a product of legal multiculturalism. This multiculturalism is significant. I argue next that it is the fusion of these two separate legal traditions, which aided in the formation of a state on Man.

Chapter 4: State formation in the Isle of Man

4.1 Introduction

In this chapter, I examine the effect that multiculturalism has had on state formation on the Isle of Man. In addition, after analyzing the process of state formation on the island, I discuss the impact that state formation had upon proto-democracy on Man. The shift towards a state on Man naturally appears to entail a shift away from proto-democracy. Proto-democracy relied on the informal mechanisms of kinship and honor as the basis of political power and enforcement of law. Through the assembly, the commoners played a role in developing the law that governed them. Further, they were bound to the law by interpersonal forces, obligation to kin, honorable standing in the community, and adherence to tradition. The shift away from informal mechanisms towards the formal, coercive authority residing in the state resulted in the loss of that which characterized these pre-state institutions as proto-democracies: reliance on the commons.

State formation on Man should thus be defined by criteria that captures this shift away from informal mechanisms of power to more formalized ones. I rely on two criteria to characterize state formation on Man. First, the transition away from “kinship” and “localness” as the basis for political authority, and second, the emergence of an administration which enables the king to exercise coercive authority and furnish himself with the ability to obtain the resources to do so (i.e. collect a tax). These criteria are an attempt to characterize the idea of state formation discussed in the introduction in a format applicable to the Irish Sea towards the end of the Viking age. Specifically, these

criteria are based upon Driscoll's case study of state formation in Scotland from 900 to 1300. The idea that underscores both my criteria and Driscoll's is that the emergence of a state marks a departure from ancient philosophies of who should hold political power and where legitimacy is derived. Namely, this is a shift from a reliance upon kinship and local ties to power being exercised on behalf of a centralized authority, such as the king.

I begin this chapter by first summarizing Driscoll's examination of state formation in Scotland. In his case study, Driscoll examines the formation of two institutions in Scotland that he argues reveal the emergence of a state, the development of thanages and the introduction of the parish system. Following this summary, I then examine analogous institutions present in Man. I argue that the introduction of the parish system and the office of the coroner and the key reveal the process of state formation. In examining these institutions, I discuss in what way they are analogous to the Scottish case and how they help satisfy the criteria laid out above. Following this analysis, I conclude with a discussion of how multiculturalism on Man had an effect on state formation and how state formation affected the Tynwald and the proto-democratic tradition.

4.2 Manx parallels to Scottish case of state formation

In Scotland, Driscoll argues that evidence of state formation can be observed in the development of the system of thanes and the emergence of the parish system over a period of centuries spanning 900 to 1300. He specifically focuses on these institutions as they reveal the development of "sophisticated techniques of controlling people and

resources.”¹⁸² These techniques of coercion along with the creation of an administrative apparatus to implement them, in his mind, characterize state formation. He views this as synonymous with the growth of royal authority, and thus looks to the institutions of the thane and the parish as they appear to aid in the consolidation of authority in the kingship and exercises this authority on the king’s behalf. In this section, I argue that parallels can be seen between the institutions of the thane and the parish in Scotland and the key, coroner, and parish on the Isle of Man. As institutions integral to state formation in Scotland were present in Man and developed in similar circumstances, I suggest that this indicates that a state developed in a similar manner as it did in Scotland.

Both the thanage and the parish, Driscoll argues, provide the state with an administrative apparatus capable of allowing the king to exercise coercive authority at the local level.¹⁸³ This is done through the collection of taxes, estate management, and the enforcement of law through secular force and religious ceremony. The thane was a royal official who was the lord of a local administrative district known as the thanage. As an administrator, the thane was responsible for collecting for the king a tax from those living in his thanage and maintaining the local order. The parish was the familiar local church districts. These served as the units for the collection of tithes for the regional dioceses and due to the close relationship between the king and the bishop, allowed for the affirmation of the king’s emerging authority via the local priest. Both of these institutions Driscoll argues have deep historical roots.

Prior to the emergence of a strong Scottish king, each individual thanage and parish operated at a local level and were relatively independent from each other. As such,

¹⁸² Driscoll, “Mechanisms of State Power,” 33.

¹⁸³ Driscoll, “Mechanisms of State Power,” 34-5.

they were dominated by local politics and kinship. Driscoll's main argument is that the state really began to emerge when these seemingly disjoint institutions became integrated around a central figure (the king) and ceased to rely on kinship as their main source of political authority. According to Driscoll's model, state formation could be said to occur when ancient, disjointed, local institutions are transformed and reorganized into a national system accountable to the king, with legitimate political authority shifting from the local community and kin to the singular central figure of the king. As such, demonstrating that this process occurred on Man would indicate the formation of a state. Further, demonstrating such a shift in political authority from the local to the central should also signal the death of proto-democracy.

4.2.1 Parochial reform

The twelfth century in Scotland saw the reorganization of the religious landscape into a national system of dioceses. This reorganization of the disjoint local bishoprics and monasteries into a single system allowed the state to free chapters from local, kin-based influences and managements.¹⁸⁴ In doing so, it developed a national parochial system capable of helping the state "affirm the authoritative order."¹⁸⁵ Analogous to the thanage, the parishes redefined the landscape of the kingdom into legally legible divisions that allowed for the systematic coercion and collection of tithes. This is exactly in line with what Scott discusses as occurring in the transition from the pre-modern to the modern state. In an effort to consolidate power, states systematically redefined and standardize the landscape in order to improve their ability to tax and coerce. Driscoll views the

¹⁸⁴ Driscoll, "Mechanisms of State Power," 50.

¹⁸⁵ *Ibid.*, 35.

church, and through it the parish, as instruments of administration, helping to enforce law by impressing upon the parishioners the importance of loyalty to one's lord (as one should honor his lord as one honors the Heavenly Lord).¹⁸⁶ Further, the parishes provided the state with the administrative skills necessary for land management. As Driscoll so concisely puts it, "in the context of the emerging state, the large religious establishments provided the technical means of administering the expanding and increasingly unwieldy realm."¹⁸⁷

Due to the large role that the King of the Scots played in this reorganization, Driscoll views the parish as an essential outgrowth of the state and is symptomatic of both a strong kingship and the development of a more administratively oriented state.¹⁸⁸ Prior to the twelfth century, royal patronage of the church mainly took the form of the erection of monuments. Driscoll argues that the shift of royal patronage to the endowment of religious houses indicates that the administrative skills locked up in the monasteries became sought after.¹⁸⁹ By reorganizing the monasteries into a national structure, the king was thus able to patronize their skills for the administration of finances, estates, recordkeeping, and the basic skills of reading and writing. The king's involvement in this process then reveals two important aspects of the developing state. First, the kingship was wealthy enough to endow religious houses and influential enough to commission their reorganization. Second, the use of the church and the parish as an administrative tool indicates that the king and his state had developed to such a point that it needed the administrative skills and training the church could provide.

¹⁸⁶ Ibid., 48.

¹⁸⁷ Driscoll, "Mechanisms of State Power," 48.

¹⁸⁸ Ibid., 47.

¹⁸⁹ Ibid., 48-9.

Traditionally, the development of the parish system in Scotland is attributed to King David I. Raised in the court of King Henry I of England, David I would have been exposed to Henry I's efforts to reorganize the English church, likely influencing his own efforts. As such, the parish system could be viewed as the "normanization" of the older land division. His efforts entailed the reorganization of older bishoprics into national dioceses and the integration of "rouge" monasteries such as Dunkeld and Dunblane into the system as well.¹⁹⁰ In eastern Scotland, Driscoll observes that the parish itself appeared to have been based upon the thanage. While not territorially identical, he remarks that the territory of the thanage appears to have served as a guide for that of the parish. He notes that this is not surprising as parishes elsewhere in Celtic Britain appear to be fashioned after older, politically significant land divisions.¹⁹¹ This further reveals the parishes' role in the development of the state; it provided religious backing for state authority.

The parish system on Man develops in an almost identical manner as in Scotland. The system itself can be dated to the reign of King Olaf. Partially raised in the court of King Henry I of England, like David I of Scotland, Olaf would have been influenced by King Henry's efforts to reform the English church.¹⁹² As king in Man, Olaf implemented sweeping reforms of the Manx church and introduced a parish system closely paralleling that of David I in Scotland. Revolutionary for his time, Olaf also invited two monastic orders to establish abbeys on the island. He granted land for the Savignac house of Furness to establish Rushen Abbey in 1134 in the south of the island and for the

¹⁹⁰ G.S.W. Barrow, *Kingship and Unity: Scotland, 1000–1306* (Edinburgh: Edinburgh University Press, 1981), 67-8.

¹⁹¹ Here Driscoll cites Steven Bassett with regard to parishes on the Welsh Marches and Wendy Davies for parishes in Wales. Driscoll, "Mechanisms of State Power," 50-1.

¹⁹² Russell McDonald, *Manx Kingship in its Irish Sea Setting, 1187–1229: King Rognvaldr and the Crovan Dynasty* (Dublin: Four Courts Press, 2007), 194.

Cistercian Abbey of Riveaulx to establish Myrosough Abbey in the north.¹⁹³ Olaf also reformed the Diocese of the Isles under the jurisdiction of the Archbishop of York, and for a time personally nominated the Diocese's bishops.

The analogs to the Scottish case are clear. King Olaf, being influenced by the same source as King David I, implemented sweeping reform of the existing episcopal structure, like David I creating parishes and endowed monastic houses. Through the parish churches, state authority could be reinforced via religious ceremony. Local lords, who swore oaths to the king, would have their "sacredness" impressed upon them through the local clergy, reinforcing royal power. The endowment of the monastic houses would have also provided the king with repositories of technical skills such as estate management, record keeping, and other such clerical abilities important for the development of an administration.

The ability for the king to implement these reforms also speaks volumes. The endowing monasteries required a considerable amount of resources, which Olaf had access to, either by strength of office or political connections. Additionally, Olaf directly provided the new monasteries with their land. As Davey so kindly pointed out to me, by examining the treens surrounding Rushen Abbey, one can see that the land the Abbey stands on appears to have hobbled together from bits and pieces of surrounding estates.¹⁹⁴ This might suggest that Olaf commanded enough authority as king to exercise some sort of medieval eminent domain. As for parochial and bishopric reforms, he clearly

¹⁹³ Davey, "Crossroads of Power," 97.

¹⁹⁴ Peter Davey and Jim Roscow, *Rushen Abbey and the Dissolution of the Monasteries in the Isle of Man* (Douglas: Isle of Man Natural History and Antiquarian Society, 2010). I was made aware of this book by Peter Davey, however, as it cannot be found in the United States, I have been unable to obtain a copy prior to my defense.

commanded enough authority in his realm as David I and Henry I had in their own. As such, I do not think it unreasonable to say that the emergence of a parish system in Man evidences state formation much in the same way as it does in Scotland.

4.2.2 Manx parallels to the Scottish thane

Driscoll argues that the institution of thanage developed out of an effort to manage more effectively the resources necessary for the King of the Scots to make raiding expeditions into northern England. These expeditions were costly and Driscoll suspects that the king relied on local Pictish chiefs to contribute men and supplies to these raiding campaigns.¹⁹⁵ These raids were only an effective source of revenue so long as the Scots had a weaker neighbor to exploit. As England began to recover strength towards the end of the Viking Age, Driscoll suggests that the King of the Scots turned inward for a source of revenue, formalizing his informal relationship with these Pictish chiefs.¹⁹⁶ The result was a system of thanes whom the King of the Scots relied upon for revenue and the supply of soldiers.¹⁹⁷

In the ninth century, prior to the formation of the Scottish state, thanes would have acted as local lords supporting local petty kings. Their role would have been cognate to the Welsh *maer*, who collected rent and provided for the defense of the local estate on behalf of his lord. The role the thane played in state formation was not necessarily by providing a new service, but by aiding in the consolidation of power.¹⁹⁸

¹⁹⁵ The name thane appears to be borrowed from the English. The Pictish name for this institution, if it does indeed exist, is unknown.

¹⁹⁶ Driscoll, "Mechanisms of State Power," 37.

¹⁹⁷ *Ibid.*, 39-40.

¹⁹⁸ *Ibid.*, 35-6.

Integrating the disperse thanages owing allegiance to different lords then provided the single Scottish king with an existing apparatus to manage the multitude of local estates.

The thanes provided the King of the Scots two key attributes of a state. First, they gave the king a monopoly on coercive power throughout the kingdom.¹⁹⁹ The thanes served as agents to enforce the king's decrees, verdicts, and judgments, transforming law from being kin-based and local to being uniform and national. Where the king could proclaim law and judgment, the system of thanes gave him the ability to enforce it. Second, the thanes gave the king an administrative structure.²⁰⁰ Individually, the thanes only formed local networks of rent collection and defense. Military action on a larger scale required a hosting organized within a complex network of kingship and overlordship. By uniting the thanes, the King of the Scots was now able to call upon them unconditionally for military might and tax revenue. In this way, their local networks became integrated to form the larger apparatus of a national administration.

Driscoll argues that this transformation of thanes into agents of a national administration is most clearly underscored by the transformation of their office itself. Originally, these thanes were nested in the complex system of kinship typical to the Celtic legal system. What Driscoll argues marks their transition to an apparatus of the state is when these offices are "freed from kinship as their sole basis of tenure."²⁰¹ As agents of the state, the thanes were either selected or approved by the king and swore their loyalty to him.²⁰² While the king might have continued to appoint the thanes from amongst the traditional kin-group, and while they might have still been influenced by

¹⁹⁹ Ibid., 40.

²⁰⁰ Ibid.

²⁰¹ Driscoll, "Mechanisms of State Power," 40.

²⁰² Ibid.

local affairs, the office of thane became a function of the state and no longer dependent upon these ties of tradition and kinship.²⁰³

On Man, a similar system can be observed in the Manx key and the coroner. A key term that Driscoll associates with the thane is *toisech*, the Gaelic term for local chieftain.²⁰⁴ He notes that the terms *toisech* and thane describe the same office and, according to Gillies, this office was the head of the tribal unit in in pre-Norman Gaelic society.²⁰⁵ With regard to Man, this is significant in that the Manx keys also appear to be connected with this term. Broderick points out that in the 1422 *Proceedings of the Court*, the keys are mentioned as having originally being called *taxiaki*. Interpreting this word he claims is quite difficult but suggests that the word could be of Gaelic origin and understood to mean something along the lines as the Scottish *toisech* or the Irish *taoiseach* meaning “chief.”²⁰⁶ In addition to the key and the thane, the Manx office of coroner appears connected to the Scottish thane as well. In Manx, the coroner is known *toshiagh jioarey*. Broderick identifies this name as related to the Scottish *tosch-derach*. He, citing Gillies, suggests that the office extends back to early Gaelic society in the office of the *tóiseach daor-raith*, “principal daor-rath,” the officer responsible of the collection of food rents on behalf of the lord. This linguistic connection might indeed suggest that either the key or the coroner could be the Manx parallel to the Scottish thane.

It is quite odd that two Manx officials demonstrate a nominal connection to the Scottish thane, especially considering how they are, in character, quite different. The

²⁰³ Ibid., 39.

²⁰⁴ Ibid., 36.

²⁰⁵ William Gillies, “Some Thoughts on the Toschederach,” *Scottish Gaelic Studies* 17 (1996): 134. Driscoll, “Mechanisms of State Power,” 36.

²⁰⁶ This he does on the basis of interpreting the “x” as the palatalized sibilant /s'/ or the voiceless velar spirant /x/. Broderick, “Tynwald,” 65.

coroner was the medieval official responsible for the collection of rents and the maintenance of defense in the Sheading, which is quite comparable to the Scottish thane. The key on the other hand served as a representative to the Tynwald and appeared to be derived from the Norse chieftain. However, as both are associated with different units of land division on Man, they in fact reveal the development of the state in different ways. After all, since Man's history is different from Scotland, we should not expect perfect parallels between the two. Simply, the Scottish case serves as a guide for investigating how the state developed on Man.

The coroner rather nicely fits into the model of a state formation on Man. The office appears to be rooted in the island's ancient system of land management and associated with the sheading. Both Megaw and Moore discuss the sheading as paralleling the Welsh commote. In this comparison, the sheading would have had an administrative center where rents were collected and local disputes settled. The political center of the commote would have been a special *tref* estate named the *maertref*, to which all other *tref* estates would travel to pay rent. The administrator of this *tref* on the behalf of the lord would have been the *maer*. On Man, a similar system exists. The Manx *tref* can be identified as the *treen* while the *maertref* Megaw identifies as a specific *treen* in the sheading that shared its name. The Manx *moar*, likewise, can be identified with the *maer* as they share the same root and serves a similar function. While in the modern period the *moar* was an office of the parish, earliest records for the island indicate that the *moar* was originally an office of the sheading.²⁰⁷ This "moar of the sheading" was responsible for

²⁰⁷ Gill, *Statutes of the Isle of Man*, 4.

the collection of rent and the provision of defense for the sheading and has commonly identified by Broderick and others as the coroner.²⁰⁸

The coroner's role as an agent of the state is then clear and conveniently parallels the Scottish thane. Originally rooted in an ancient land division, the coroner (moar, or whatever they were originally called) rendered service to the local lord by collecting rents from the various estates and maintaining the sheading's defense. At some point under Norse rule, the local lords were displaced by a single Manx king and the coroners' loyalty was subsequently transferred. Like the thanes, the coroners would have no longer existed as products of whatever local or kin-based forces granted their power but became apparatus of the king's state, deriving authority of office from him. This is seen in the Tynwald ceremony where new coroners swear allegiance to the king. The coroners are presented with a rod symbolizing the transference of power from their lord unto them. The fealty of all the coroners then, like with the thanes in Scotland, provided the singular Manx king access to the existing administrative structure creating a centralized system of tax collection, treen estate management and defense.

The key's role in the development of the state is much harder to sort out. In attempting to do so, our biggest clue comes from the 1422 *Proceedings of the Court* which records that "in King Orryes Days" there were twenty-four representatives to the Tynwald, eight from the "out isles" and sixteen from Man.²⁰⁹ These "out isle" were the Manx kings holdings in the Outer Hebrides of Lewis and Skye. Prior to the division of the kingdom in 1156, the Inner Hebrides also sent eight representatives (see fig. 4.1).

²⁰⁸ Broderick, "Tynwald," 90.

²⁰⁹ Gill, *Statutes of the Isle of Man*, 11.

Broderick suggests that the sixteen representatives from Man could simply correspond to one per parish.²¹⁰ While I agree with this, I suggest that this can be broken down more rigorously. As seen in the administration of Iceland, the Norse had a tendency to divide their administrative districts into quarters. If we follow Davey's model of Man as two separate estates managed by the single Norse king, then the number of keys present at the Tynwald can be considered eight for North Man, eight for South Man, eight for the Outer Hebrides, and eight for the Inner Hebrides (prior to 1156). This neatly divides the Kingdom into four quarters. Additionally on Man we end up with eight parishes in each division, which, like Broderick observes, is one for each key.

This connection is significant in that it places the key in the same role as the Scottish thane. As discussed above, the thanage appeared to serve as the base for the parish in Scotland. If the key is understood to be associated with the Manx parish, then this would directly parallel the thane in Scotland. However, associating the key with the parish is dangerous as the parish only dates from the time of King Olaf. Instead, by drawing upon Moore's Manx Multiple Estate model, it could be argued that the key was a kind of local chieftain (whether of Norse or Celtic origin) rooted in an earlier Manx proto-parish. In this way, when Olaf commissioned the ecclesiastical reforms and introduced the current parish system, he was drawing upon the political division of a local chieftainship already in place. This is exactly what Driscoll observes happened in Scotland; the parishes were patterned after the domains of local chieftains who would then serve as the basis for the system of thanage. Further, Driscoll points out that parishes

²¹⁰ Broderick, "Tynwald," 66.

found elsewhere in Britain appear to have roots in older chieftainships, thus further supporting the idea that this happened on Man.

The use of the parish as the geopolitical unit associated with the key parallels the Norse chieftainships in Iceland and the Scottish thane. In Iceland, the chieftains were grouped according to assembly district, three chieftains formed a single assembly district; three districts formed a farthing district; and four farthing districts composing the national assembly. This system is also reflected on Man. The chieftain is associated with the parish with three parishes per sheading.²¹¹ Likewise, there are three sheadings per deemster division and, without accounting for the subdivisions of the Isles, four major administrative units making up the whole kingdom. Thus, the parishes could be seen as parallels to the Icelandic chieftainships, the sheadings to the assembly districts, and the deemster divisions to the farthings. In Iceland, the whole body of chieftains is what composed the Althing; in the Tynwald, each of the four administrative districts is represented by eight keys and on Man at least, each parish gets one representative.²¹² As such, the Norse rulers of Man and the Isles were able to make use of existing land division and political offices to reproduce their own assembly traditions.

We are left then with two pictures of the Manx key, one being in line with the Celtic tradition, the other in line with the Norse. This can be viewed as representing how both the Celtic and Nordic system came together on Man to reinforce one another. The key as an analog to the Norse chieftain would have held a monopoly on all matters regarding law: creation, interpretation, and judgment. As for the Celtic role, the chieftains would have been responsible for local enforcement of law and collection of rent. As such,

²¹¹ This is except in the cases of Middle and Glenfaba sheadings that only have two parishes each.

²¹² Or rather each “proto-parish” or whatever land division was associated with the earlier chieftainship.

the fusion of both the Norse role of the chieftain (ability to create and judge law) with the Celtic role (the ability to enforce it) leaves us with a Manx chieftain who is a perfect tool for the developing state. As in Scotland, we could model the Manx chieftain as forming an island-wide network providing the king with the administrative resources useful in the development of the state.

4.3 Legal multiculturalism and proto-democracy in state formation

We have seen so far that state formation on Man appears to parallel that of Scotland. Many of the institutions that allowed the Scottish king to consolidate power and create a national administrative structure appear to have been present in Man as well. In this section, I claim that these institutions were themselves a product of legal multiculturalism. Both the Irish and the Norse brought to Man various institutions that when blended, provided the necessary conditions for state formation. It is this very act of state formation however, that resulted in a loss of the proto-democratic character of the independent traditions.

Hennis in his discussion of the idea of office and democracy asserts, “the monarchical or democratic character of office is decided by the effective localization of sovereignty.”²¹³ This is what we see occurring here. The democratic character of the office of coroner or key lay in the fact that it was local. The officer was accountable to his community and derived his authority from them. With state formation, this allegiance is transferred to the king and the office is no longer reliant on the local. What Hennis says

²¹³ Hennis, “Idea of Office,” 39.

indeed in the case, the institutions that characterized the Irish and Norse legal traditions as proto-democratic no longer derive their authority from the local and thus cease to be “democratic” and instead become “monarchical.”

4.3.1 Keys and coroners

As parallels to the Scottish thane, the keys and the coroner mark the development of the state on Man by enforcing central authority at a local level via the collection of tax, provision of defense, and the integration of local assembly courts into a national structure. As with Scotland, the process of state formation was subtle and was not necessarily about forming new public offices or structures but about revamping the existing system, taking local, kin based institutions, and integrating them into a national apparatus. The existing system, in this case, was the keys and the coroners, which I argue were products of multiculturalism themselves. The fusion of Irish and Norse legal traditions is what allowed for the keys and the coroners to develop in a manner capable of providing the emergent kingship with the resources necessary to centralize power.

As discussed, the keys appear to align with the Norse legal tradition of the chieftain. These chieftains led local courts that served as the venue through which local politics were conducted and conflicts resolved. The assumed introduction of these chieftains and courts into the Manx system based in Gaelic traditions is in itself multicultural. This is especially true as such institutions, while present at the *túath* level in the Gaelic tradition, appear to be absent at a more local level. Further, the discussed connection of the key with the Gaelic *toisech* suggests legal multiculturalism. The key might represent a repurposing of an existing Manx office to align with the newly

introduced Norse chieftain. As such, legal multiculturalism produced an institution that would prove useful for state formation. The local assembly provided the growing king with an institution that allowed the political affairs at the local level to be integrated into a national court system. At the top of this court system was the Tynwald, presided over by the king. Thus, affairs conducted at and cases argued in local courts were ultimately accountable to the Tynwald and the king.

The coroner is also the result of legal multiculturalism. Seemingly the “moor of the sheading” and thus apart of the island’s ancient system of rent collection, the coroner would have been integral for the proper functioning of the sheading and the local lords. The office’s multicultural aspect is less apparent but it seems to center around the observation that these officers became accountable to the singular king. The Norse presence on Man was military in nature. From the initial Norse settlement in the early tenth century until the time of Olaf in the thirteenth, the Manx crown was shuffled back and forth between powerful Norse families. The island was seen as a strategic location and often served as the staging point for emerging young warlords to take control of Dublin or a waypoint for Dublin kings to seize control of the Isles from their rivals. Because they were constantly engaged elsewhere, the Manx kings would have had need to rely on local officials to maintain the defense of the island. Naturally, they would have turned to the coroners, as provision of the defense of the sheading was their responsibility. As a native office responsible for the local collection of rent combined with the Norse’s reliance upon them for the provision of the island’s defense, the coroners were clearly a product of multiculturalism that were able to provide the developing state with the resources it needed. The transition of the coroner from a local

official to a component of a national administration was as simple as reaffirming their loyalty to the king in providing local defense and rendering to him their services as tax collectors. In this way, they allow the king's authority to be exercised at the local level.

4.3.2 Manx parish

While the influence of the Norman traditions of Henry I on Olaf's efforts at parochial reform is certainly one multicultural aspect of state formation on Man, more significant is the fusion of the Norse and Celtic legal traditions that laid the groundwork for these reforms. The reforms themselves centralized royal authority by reaffirming the sovereignty of the king through religious ceremony at the local level. As a local *þing* likely was already in place where locals would gather to practice politics and resolve disputes, the restructuring of the ecclesiastical system to introduce a parish church at this same level serves to link the religious with the political. The king was the patron of the church and by aligning it with the local *þing*, he communicated to the local people that their political assembly and religious practices were not isolated, but a part of a larger, national system.

This intrusion of the growing royal power into the local level via the church was really only possible because of the blending of Norse and Celtic traditions. As Megaw and Moore assert, the parish division itself appears to be rooted in the island's ancient system of land tenure. The arrival of the Norse on Man and the apparent co-optation of these divisions for use by local chieftains as local assemblies is multicultural itself. In order not to "rock the boat," the Norse relied on existing practices as an avenue to introduce their own. Thus, when Olaf reformed and centralized the island's ecclesiastical

system, the proto-parish already in use as an assembly district served as the perfect tool. While the desire to implement state building reforms might have been influenced by his time spent in Henry I's court, the island's multicultural legal system provided Olaf with the resources to do so.

4.3.3 Manx king

The Tynwald itself was an institution that was inherently multicultural. As discussed in the previous chapter, it combined the ceremonial focused Gaelic assembly with that of the Norse where the king exercised actual political power (albeit in deference to the chieftains). The Tynwald played an integral role in reaffirming the power of the newly developing state by using ceremony to legitimize the authority of the king. At the national level, the Tynwald and keys provided the state with a mechanism for the formulation of law and exercising of executive power. More than its administrative function, the Tynwald provided a venue through which the power of the state could be made real through ceremony. From ancient times up into the present day, the Tynwald provided an opportunity for the whole of Man to gather to promulgate law and settle disputes. More than this, the enactment of ceremony helped to impress upon the people the authority of the state. Previously in the Gaelic tradition, the use of the assembly for the coronation of the king and promulgation of law was largely innocuous as the duty remained with the people for its enforcement. Now the ceremony took on a frightening new power, as the king was actually equipped with mechanisms of coercion. The ceremony then served to remind the people of this fact. Further, it was at this ceremony that the agents of the state's power were affirmed in their role. It was here that his

coroners and various state officials swore allegiance to the king. The Tynwald then can be seen as having transformed from an assembly where the people helped to constitute the legitimacy of law to one where the power of law was impressed upon the people.

4.3.4 Loss of proto-democracy

The very act of forming state institutions on Man appears to have removed aspects that once characterized the Norse and Irish traditions as proto-democratic. In discussing the Icelandic local assembly tradition, I raised the idea that the chieftains could be considered in some way elected by the people they represented at the Althing. This election of the chieftains was an avenue through which the members of the community could see their will expressed in the national legal proceedings, contributing to the idea of the legal tradition as proto-democratic. If they did not support that chieftain and his personal goals and ambitions, they could transfer their allegiance to another. The chieftains were grouped in threes within a given assembly district so the farmer could freely choose to whom he would lend his support. However, on Man, as the Celtic chieftains appear to be firmly locked with a geographic region, one per proto-parish, transferring support was not possible. The arrival of the formal parish system solidified this. Not only was the farmer accountable to the local chieftain, but the local parish church as well. Thus the legal multiculturalism which saw the Norse idea of a chieftain attached to native land divisions resulted not only in aiding the development of the state, but in removing an aspect of the Norse system that characterized it as democratic.

Likewise, the promulgation of law underwent a transformation. In the Irish tradition as the king held no authority to enforce law, the legal system relied on a

complex system of honor price and kinship instead. Likewise, in the Norse tradition, the enforcing of law and the honoring of judicial verdicts relied on the people themselves. In both systems, the personal networks that allowed one to maintain a social life and engage in business exerted pressure on the individual to uphold the law. Violating the terms of a settlement or transaction resulted in a loss of honor and thus a loss of social and economic status. As such, it was only natural that the ordination of new law requires the approval of the people who were the ones responsible for enforcing it. In the Manx context when the king becomes equipped with the ability to enforce law, there is no longer a need for the people to be involved in the promulgation of law; it can now be enforced with or without their consent. Thus, promulgation of law at the assembly is no longer the providence of the people but the duty of the king. The proto-democratic character is lost.

4.3.5 Legacy of proto-democracy on Man

While the democratic character might have disappeared from the island's assembly traditions, they left important institutional artifacts. As discussed in the introduction, the idea of proto-democracy is intended not simply to describe the "democratic" characteristics of these early assembly practices, but to underscore the fact that the cultural memory of these institutions later inspired the birth of modern democracy. On the Isle of Man, the institution that proto-democracy left behind was the Tynwald. Due to its multifaceted nature, the Tynwald survived state formation by becoming enshrined at the center of the state's ceremony. Aspects that I considered to have originally been democratic were preserved: the gathering of the commons, the

gathering of keys, the promulgation of law. In the modern day, a “memory” of these institutions was evoked to justify democratic reforms. The keys became elected and the democratic character of the Tynwald restored. Even though state formation on Man appears to have been a death knell for proto-democracy, the state enshrined its institutions to insure its revival in the modern day.

Chapter 5: Conclusion

5.1 Revisiting the research question

The main concern of this thesis was investigating the relationship between proto-democracy, multiculturalism, and state formation. In the introduction, I expressed the desire to ascertain how legal multiculturalism on Man could be viewed as a product of the shared proto-democratic character of the Irish and the Norse legal traditions. Further, I wished to explore how this multiculturalism influenced the development of the state on the island and, coming full circle, what multiculturalism and state formation meant for the future of proto-democracy on the island. In this thesis, I have concluded that many of the institutions that have fostered state formation on Man, such as the keys, coroners, and parish, were themselves a product of legal multiculturalism. Further, I have argued that this legal multiculturalism and state formation in turn resulted in a loss of institutions on Man that characterized the separate legal traditions as proto-democracies.

I have gone about supporting this claim via a three-part approach. First, I surveyed the Irish and the Norse assembly traditions. In doing so, I analyzed these traditions based upon what institutions could be viewed as proto-democratic. This revealed that in both the Irish and the Norse legal traditions, political power was legitimized via the commons. Responsibility to enforce law and uphold judicial verdicts ultimately depended upon a system of honor and the personal accountability of the individual in his network of economic relations and kin. Law was enforced collectively without relying on a centralized executive authority. As such, it was only natural that promulgation of law rested upon those who would ultimately enforce it. This point in

overlap between the two legal traditions is what I argued allowed the legal cultures to be “compatible.” I theorized that if both legal traditions were to be forced into contact, such as was the case on Man, a natural blending would be likely to occur.

In the next section, I went on to demonstrate that this was indeed the case. The circumstances of Norse settlement on the island indicate that the settlement was relatively amicable. Rather than living as two separate communities or attempting to expunge the island of the native Manxmen, the Norse appear to have cohabitated, intermarried, engaged in trade, and blended cultures. From this, I concluded that as other aspects of culture were mixed, that a fusion of legal traditions likely occurred as well. I continued to demonstrate that this was indeed the case. Building upon Broderick’s argument, I showed that the post-Norse legal statutes of the island contain both aspects of the Norse and Irish legal traditions. Further, the statutes reveal concretely that Irish and Norse legal traditions were present on Man, rather than just assuming that this was the case based on settlement. This, in conjunction with other observed forms of multiculturalism, suggests the Norse settlement amongst the Irish legal tradition did in fact produce legal multiculturalism as was predicted.

Finally, I proceeded to examine how this legal multiculturalism affected state formation on Man. I did this by examining Driscoll’s analysis of state formation in Scotland. By examining parallels to the Scottish case, I was able to identify the various institutions, such as the keys and coroners, that could be viewed as helping to consolidate coercive power in the hands of the king. Importantly, I then showed that these institutions were themselves products of legal multiculturalism, there by linking the Irish and Norse legal multiculturalism with the development of the state. This had important implications

for proto-democracy on Man. Once coercive power became consolidated in the king, law and judicial verdicts were able to be enforced independent from the people. As the commons were no longer necessary in the enforcement of law, neither were they necessary in its creation/promulgation. Further, prior to state formation, offices such as the coroner were local in nature and thus accountable to the community. Once organized into a national structure, they became agents of the state, accountable to the central king, losing the ties with the local and as a result, any proto-democratic character the office possessed. The process of state formation then is characterized by a shift in where legitimacy was derived, from the local community to the central king.

5.2 Analysis and implications

I view my analysis of the proto-democratic character of the Irish and Norse legal traditions as an important. The history of democracy often emphasizes the rebirth of democracy in the early modern age, focusing on the various revolutions and political thinkers. Investigations into democracy's earlier history are usually limited to discussions of the Greeks and Romans. Scholars do this for good reason; the history of democracy in the ancient world is well known and well attested. This is not the case with proto-democracy in Northern Europe. The dearth of historical texts directly referring to any democratic aspect of early Ireland and Scandinavia makes studying the topic difficult. What this thesis does is help to fill in the intervening space. These traditions are significant, as they have left traces of their proto-democratic character to be remembered by future generations. Eventually, as was the case with the English Civil War and the Manx election reform, these memories played a role in legitimizing the calls for

democratic reform in the modern era. This thesis helps to overcome this obscurity by analyzing these lesser-known legal systems with an eye towards their democratic character and the effects these proto-democratic institutions had on the common development of the state.

Another implication of this thesis is found in the analysis of the proto-democratic character of the Irish and Norse legal traditions. Chapter two demonstrated that many of the features that characterized the separate legal systems as proto-democratic were in fact shared. As a result, the blending of these traditions in a multicultural context should be expected to occur naturally. The potential implication here is that this should not necessarily be unique to the Irish and the Norse context but might be expected of most, if not all, proto-democracies. In the absence of an executive, there are relatively few mechanisms by which law can be created and enforced. It could be expected that when a political system makes use of an assembly for practicing politics, as is the case with proto-democracies, that it would also make use of many of these same legal mechanisms (election, the enforcement of law through honor, representation through a system of chieftains, etc.) Further, it should be expected that legal multiculturalism should be possible amongst these proto-democracies as well.

In discussing the history of the state, much emphasis is placed on the state building efforts of the early modern period, where states developed into efficient apparatuses of administration, taxation, and coercion. This thesis helps to contribute to the less emphasized scholarship on the initial development of the state, the point at which societies devoid of an executive, coercive authority develop one. Further, this work brings to the center of this discourse on state formation Man, an island that is often

overlooked in general political histories of Europe. Yet in this instance, Man finds itself as an equal to Scotland and England, its contemporaries in state formation.

5.3 Discussion of limitations

This thesis due to its scope has many limitations. Importantly, with regard to state formation, I was only able to discuss Man in comparison to Scotland. Both Iceland and Ireland, whose legal systems I based my arguments around, were notably not discussed with regard to the formation of their own states. It would have serious implications on my claim that state formation on Man resulted from legal multiculturalism if it could be shown that states formed in Iceland and Ireland in a similar manner in the absence of legal multiculturalism. Further, this thesis did not address whether state formation in Scotland was itself also a product of legal multiculturalism.

Another serious criticism that can be levied against my argument is lack of a close investigation into the relationship between Olaf's reforms and those of David I of Scotland and Henry I of England. State formation in England and Scotland was contemporaneous with Man. As both David I and Olaf were educated in Henry I's court and likely exposed to his own state building efforts, it could be argued that this Norman exposure played a greater role in the development of the state in Man than did legal multiculturalism. This should not be understood to mean that multiculturalism played no role in state formation, as clearly many of the institutions useful for state formation were the product of this legal multiculturalism. Instead, I simply wish to suggest that a more in depth analysis of Henry I, David I, and Olaf's relationship could cast light on the overall significance of legal multiculturalism in state formation on Man.

Aside from these notable limitations, this thesis could be greatly improved if it could incorporate additional data that was unavailable to me at the time of writing. Notably, the discussion of the ecclesiastical and parochial reform would have been strengthened by an examination of the letters between Olaf and the Archbishop of York and the charters commissioning the founding of the island's monasteries. These could have shed more light on the nature of the reform and its relation to the existing legal/ecclesiastical structured.

Additionally, the argument regarding the keys as parallels to the Norse chieftains would have been strengthened if archeological data was available regarding local assembly sites. Currently, the only known assembly site to be excavated on the island is Tynwald Hill. Scholars such as Darvill and Broderick have suggested other potential locations for *ping* hills, some of which are alluded to in the island's historical record; however, none of these proposed sites have been excavated or confirmed as connected with the Norse (or for that matter Irish) assembly traditions. If this data were to be made available, it would be a valuable contribution to not only this thesis, but also any other investigation into the assembly and legal traditions of the island.

5.4 Avenues for future research

One clear aspect of this thesis that has remained undeveloped was the discussion of the island's land division. The divisions themselves are a treasure trove of information regarding Man's legal past. Moore's work on their connection with the Welsh land system only scratched the surface. In investigating the Irish legal traditions on the island, it would be valuable to turn to the land division in light of the connection I proposed

between the parishes and the Irish chief. Specifically, the mystery of how many *túatha* settled on Man could be better investigated in light of this connection. Further, it would be worth investigating the Norman invasion of England (or Ireland) within this framework of legal multiculturalism and state formation. While the Anglo-Saxons, as inheritors of the common Germanic assembly traditions, could be certainly considered proto-democratic, the Normans would not necessarily be. Thus, investigating the effect of multiculturalism on the development of the English state would bring an interesting new perspective to the study of Norman England. There is so much untapped potential in the study of ancient and medieval political systems. By framing the importance of proto-democracy in the development of the Manx state, it is my hope to inspire the study of other proto-democracies and foster an interest in how they played an important role in the development of many of the modern political institutions we know today.

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Appendix A: Figures

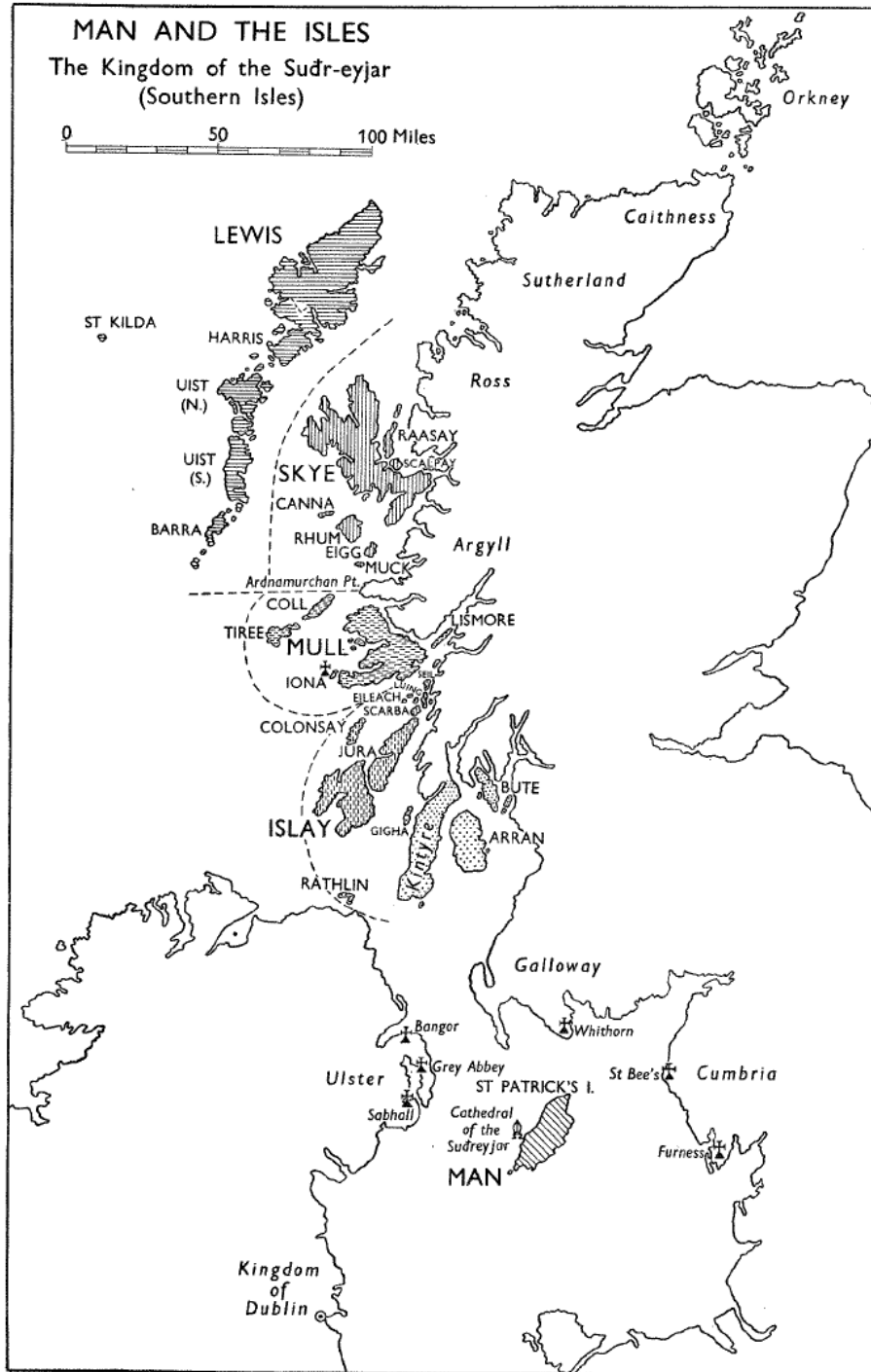


Figure 1.1, The Kingdom of Man and the Isles. *Fair Use*
 The kingdom here is divided into four regions: Lewis, Mull, Islay, and Man. The regions of Mull and Islay and the island of Harris fell to the rule of Somerled.
 Source: Map from Basil Megaw and Eleanor Megaw, "Norse Heritage in the Isle of Man," in *The Early Cultures of North West Europe*, ed. H.M. Chadwick (Cambridge: Cambridge University Press, 2013), figure 14.



Figure 3.1, Land divisions of the Isle of Man

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Source: Map from Basil Megaw and Eleanor Megaw, "Norse Heritage in the Isle of Man," in *The Early Cultures of North West Europe*, ed. H.M. Chadwick (Cambridge: Cambridge University Press, 2013), figure 15.

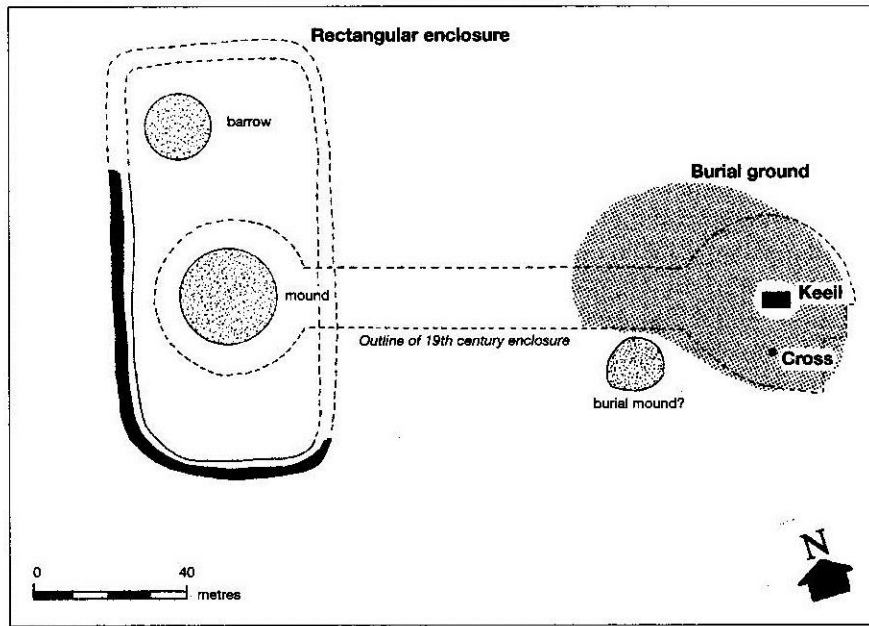


Figure 3.2, Tynwald Hill in the later first millennium A.D. *Fair Use*
 Source: Map from Timothy Darvill, "Tynwald Hill and the 'things' of power" in *Assembly Places and Practices in Medieval Europe*, ed. Aliko Pantos and Sarah Semple, 217-32. (Dublin: Four Courts Press, 2004), figure 10.3.

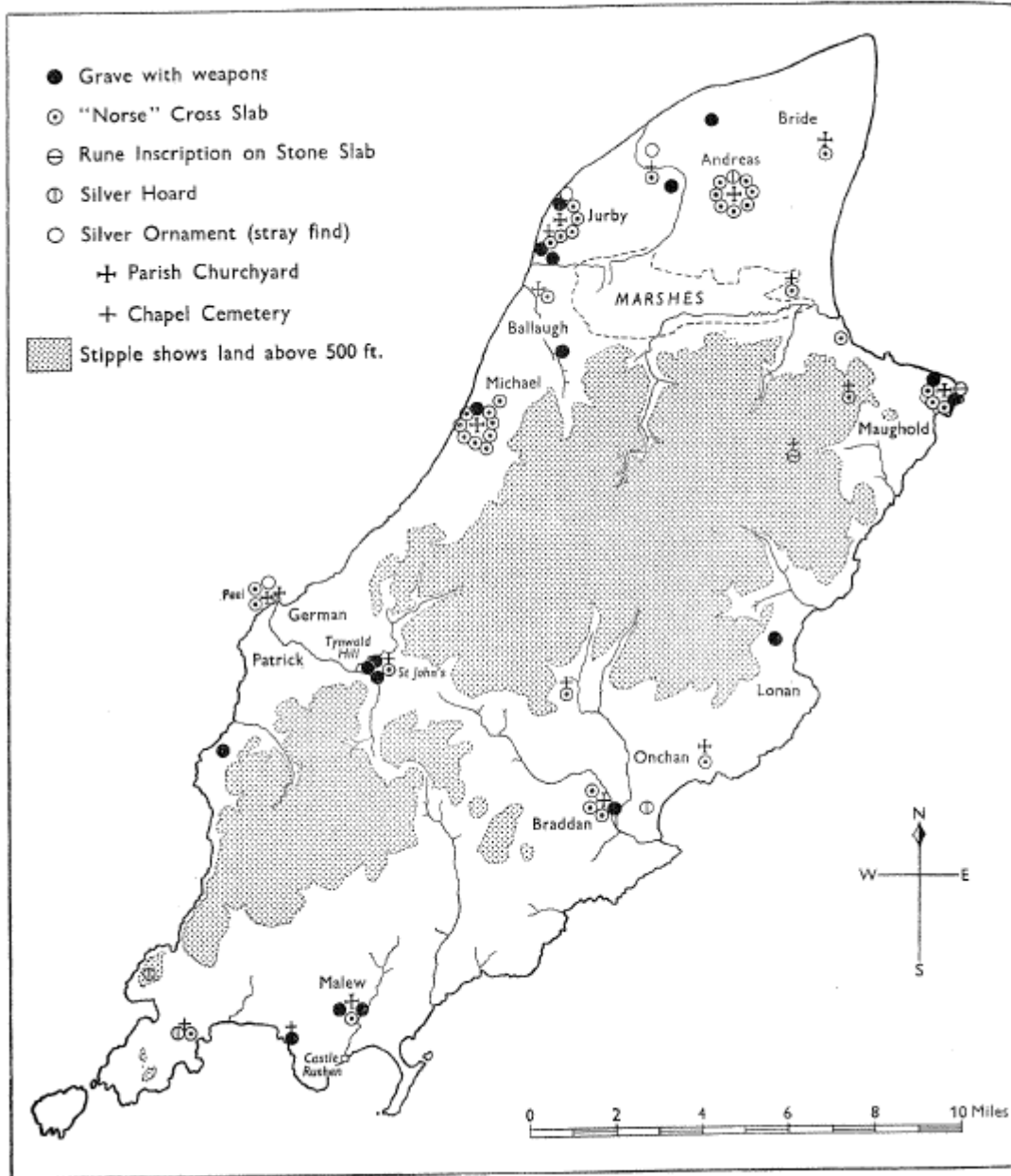


Figure 3.3, Norse burials and inscribed cross locations

Fair Use

Source: Map from Basil Megaw and Eleanor Megaw, "Norse Heritage in the Isle of Man," in *The Early Cultures of North West Europe*, ed. H.M. Chadwick (Cambridge: Cambridge University Press, 2013), figure 13.