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Impartiality and Independence.

A Comparative History of Judges' Oaths of Office in Europe

Judges' oaths of office are interesting for many reasons: In most European countries, judges still take oaths of office. Judges promise to act impartially and independently. Many phrases in these oaths can be traced to the Middle Ages. It can be analysed how these phrases were transferred from one oath to another and from one jurisdiction to another, and from which sources they originally came. During the nineteenth century, many of these oaths resisted suggestions that they should be abolished. Today, we see a need to remember the roots of impartiality and independence as these judicial virtues are threatened in some European countries.

I have published two articles on the history of the oaths of judges in Sweden, one about the history of the Swedish oaths of judges and especially their religious phrases,¹ and the other about the transfer in the Middle Ages to Sweden of phrases in these oaths.² More recently, I have been able to trace some common phrases about impartiality in European judicial oaths to not only a text by Pope Innocent III but also to various *ordines iudicarii*, a text in the *Decretum Gratiani* and a text by Isidore of Seville.³

¹ "Domareden och dess religiösa inslag" in *Rätt, religion och politik. Ett rättshistoriskt seminarium tillägnat Magnus Sjöberg*, Stockholm: Institutet för Rättshistorisk Forskning, 2008.

² "Nec amore nec odio.' Domaredens tänkbara inspirationskällor" in *Från Schlyters lustgård. Rättshistoriska uppsatser 7:2007*.

³ I presented parts of this research at the conference *Justice and Judicial Process. Evolution and Development in the History of Law*, Murcia, Spain, 29 november – 1 december 2017 under the title "«Nec amore nec odio, nec prece nec precio.» Innocent III and the importance of impartiality in judicial oaths of office". – I have also discussed the judicial oaths in my dissertation *Konstitutionellt kritiskt dömande. Förändringen av nordiska domares attityder under två sekel*, Stockholm: Institutet för Rättshistorisk Forskning, 2014. See especially pp. 110, 117, 123 och 130. I also contributed to the preparatory works for a suggested new act on courts and judges (so far not approved) with different versions of a new judicial oath, see *En reformerad domstolslagstiftning*, SOU 2011:42, s. 272-275.

The development of the judicial oaths, and the transfer of phrases from an oath in one jurisdiction to an oath in another, and the origin of these phrases in other types of texts, has so far not been subject to comparative legal historical research. In this project, I would like to fill this gap in the literature. My plan is to do this in the form of a book, *Impartiality and Independence. A Comparative History of Judges' Oaths of Office in Europe*. I have divided my material into six chapters:

1. *Introduction*

The introductory chapter presents the topic of the book, and contains a general discussion about the function of oaths from the Middle Ages to today.

2. *Oaths of the thirteenth to fifteenth centuries*

The thirteenth to fifteenth centuries is the period when oaths of judges emerged in many jurisdictions, so in this chapter I will compare the form and content of these “first oaths”, at the moment German, English, Scottish, French and Swedish oaths.

3. *Sources of inspiration*

In this chapter, I will present the sources that contributed with material to the oaths of the thirteenth to fifteenth centuries – *Decretum Gratiani*, texts by Isidore of Seville, Burchard of Worms and Innocent III, and phrases from the early *ordines iudicarii*.

4. *Development of the oaths during the early modern period*

Here, I connect to chapter 2 and continue the analysis of the oaths as they developed from the sixteenth century onwards, for instance with more lengthy, baroque-style reminders to the judges of their duties.

5. *Decline of oaths, and secularization and religious pluralism, in the modern era*

In this chapter, I will discuss the critique against oaths of the nineteenth and twentieth centuries, the secularisation and differentiation of oaths for different religions and how the judicial oaths despite the critique survived in most jurisdictions.

6. *Independence and impartiality as heritage of the oaths*

Finally, I will discuss how the oaths have helped defining the independence and impartiality of judges and what we can learn from the history of these oaths for the position of judges in today's Europe. I will connect the independence and impartiality of judges according to the oaths to the modern human rights charters and conventions and the case law of the European Court of Human Rights.

So far, I have gathered material from England, Scotland, Germany, France and the Nordic countries. I will broaden my scope and also try to cover oaths from i.a. Spain, Italy, the Netherlands and Poland.
