Zachry Robinson

5/12/2014

ENG 356

Will Executors as Oath-Takers: A Comparison of the Lombard Laws and Wills in the Middle Ages

Although at first glance the practices of oathtaking mentioned in the Lombard Laws and the legal function of Anglo-Saxon wills or testaments may seem different, in fact they often serve the same or very similar purposes. In the Lombard Laws, it is explicitly mentioned that one who swears an oath is expected to carry out the stipulations or actions for which he made himself obligated by swearing such a pledge. In the same way, one named as executor of a will is expected by the maker of the will, or testator, to fully carry out the instructions in the will. By accepting their role, the executor is acknowledging their role and the obligations that go with it, becoming responsible for carrying out the wishes of the deceased. Of particular note are the anathema clauses of wills which promise that great ill shall befall an executor or any individuals that knowingly go against the explicitly-stated wishes of the deceased; such a person can be seen as an oathbreaker, and their punishment is to be tormented in hell for all eternity. The religious connotation of oath-swearing can also be seen in the Lombard Laws, where oaths were often required to be sworn on the sacred gospels or on consecrated arms, and where the influence of the Christian faith can clearly be seen. Additionally, during the Middle Ages there were severe consequences for those who break oaths, such as oaths of fealty sworn to lords or the king, and those that broke such oaths were considered felons, and made outcasts to the effect that anyone was legally able to kill them without consequence.

There is much evidence that Anglo-Saxon wills originally were oral in construct. In the preface to Dorothy Whitelock's book "Anglo-Saxon Wills," H. D. Hazeltine notes that there are numerous sources that point "to the fact that oral wills made by persons who were in good health and had no fear of imminent death were also recognized by Anglo-Saxon law as binding" (xii). This demonstrates the fact that as long as an individual was in good health, and presumably not under duress, any oral will was seen as legally binding. Another important fact is that the written wills were originally "ecclesiastical in origin...developed under clerical influence for the material benefit of Anglo-Saxon churches and convents". From the beginning of the eighth century and afterwards, "ecclesiastical policy furthered the idea that spoken words were sufficient for gifts and contracts" (xii). However, concern arose about the possibility of the specifics of oral wills being forgotten, and it was decided that it was best to have concrete evidence of those words in writing. He argues that most of the documents now referred to as Anglo-Saxon "wills" are in reality "not the wills themselves...the wills were the oral declarations before witnesses; the writings were merely evidentiary" (xii). The fact that wills were often written in the vernacular is only one concrete example of such proof. Additionally, in many wills it is stated that the "quasi-testator 'declares and commands to be written what are his wishes as to the disposal of his property after his time'" (xv). In the Lombard Laws, oaths were also often spoken and hence oral in nature. In old Scandinavian law, there were two ways in which legal transactions could be accomplished and made functional: it was either "concluded before an assembly; or the transaction, already complete and binding, was announced to an assembly" (xviii). One special case is of particular interest. It concerns the will of Æthelstan, the son of King Ethelred, which provides evidence for the notion that wills were sometimes "made orally before the witan" (xvii). In his will it is written: "Now I pray all the councillors, both ecclesiastical and lay, who may hear

my will (cwide) read, that they will help to secure that my will may stand, as my father's permission is stated in my will." Although it is most likely a special case due to his high status, Hazeltine draws an interesting comparison, noting that "it is possible, therefore, that in the instance of Æthelstan 's will we have to do with an announcement to the Anglo-Saxon *witan* comparable with the announcement to the assembled *thing* in Scandinavia" (xviii). Thus it can be seen that the oral tradition of oath-swearing is very similar to the original, orally-delivered wills read in the presence of witnesses.

The Lombard Laws explicitly mention that an individual who swears an oath is expected to carry out the actions for which he made himself obligated. In the same way, one named as executor of a will is expected by the maker of the will, or testator, to fully carry out the instructions in the will. In the Lombard Laws, the specific details concerning oaths are laid out. Here, oaths function in a legal aspect. The procedures for oath-taking vary depending on the values of the fines imposed, and in a case where twenty or more solidi is involved, "the parties shall swear on the sacred gospels with twelve oathhelpers (sacramentales) selected in such a way that six of them are named by that one who brings the case" (123). If the case involves between twelve and twenty solidi, "six men shall take oath on consecrated arms," with three each being chosen by the accuser and the accused. Finally, if the case involves less than twelve solidi, only three men are involved, the accused, the accuser, and one "named by him who brings the case," and each swear on their arms. Of particular importance here is the use of the sacred gospels for cases that are more serious, those that involve twenty or more solidi. This is quite similar to the ways that wills function. Although wills do not often deal with fines, the function of the sacred gospels is quite relevant. The inclusion of the gospels in legal ceremony denotes an importance that is put on religion, specifically Christianity. Implicit in their inclusion is the idea that a higher

power, God, is present and overseeing the legal proceeding to follow, and, as God is both perfectly good and just, God functions as a witness, and in essence proves the word of those in question. One example of this can be seen in "The Will of Edwin", an Anglo-Saxon will. The will starts with a formal invocation of the Christian God: "In my Lord's name I, Edwin, make known how I grant the things which God Almighty has lent me in this life" (Whitelock 87). Here, the relation to religion is much more obvious. What follows is a specific list that details how Edwin wants all of his material positions to be distributed, including criteria that is to be met in order for certain parties to receive what was given to them. In "The Will of Wulfgyth," an example of the anathema clause can be found. It is stated:

> "And he who shall detract from my will which I have now declared in the witness of God, may he be deprived of joy on this earth, and may the Almighty Lord who created and made all creatures exclude him from the fellowship of all saints on the Day of Judgment, and may he be delivered into the abyss of hell to Satan the devil and all his accursed companions and there suffer with God's adversaries, without end, and never trouble my heirs...(87).

The severity of the anathema clause was designed to discourage the living from deviating from the deceased's wishes. As the provisions in any will would only be carried out after that individual's death, it was imperative that some control was maintained by the deceased even after their death. By adding the anathema clause, the hope was that anyone would be discouraged from altering the will or failing to properly carry out the wishes of the deceased. Another important clause can be seen in the land grant of King Æthelstan of Amounderness:

> If however, which God forbid, anyone puffed up with the pride of arrogance shall try to destroy or infringe this little document of my agreement and confirmation, let him know that on the last and fearful Day of Assembly when the trumpet of the archangel is clanging the call and bodies are leaving the foul graveyards, he will burn with Judas the committor of impious treachery, and also with the miserable Jews blaspheming with sacrilegious mouth Christ on the altar of the Cross in eternal confusion in the devouring flames of blazing torments in punishments without end (qtd in Danet and Bogoch, 132-133).

Several things are of note here. Firstly, the violator of the will is compared to Judas the betrayer, in addition to their violation being compared to blasphemy. More important is the comparison to Judas. As Judas is known for his betrayal of Christ, this firmly casts those who violate the stipulations of wills in the role of an oath-breaker, or someone who deliberately uses deceit and is not trustworthy. As those who swear oaths are giving a vow that they will uphold their word, a comparison to Judas seeks to demonstrate their dishonest nature and failure to live up to their promises.

In Anglo-Saxon law, great care was taken when naming those chosen to carry out the provisions laid out in a will. Michael McMahon Sheehan argues that "the extraordinary flexibility and effectiveness of the will as it was perfected during the thirteenth century is due in large part to the development of the executor...as the control of the will came more completely under the jurisdiction of the ecclesiastical courts, his area of activity was so enlarged that he very quickly became the representative of the testator" (148). Furthermore, "with a few important exceptions, it has been agreed by

historians for over half a century, that the executor, though associated with the canonical testament all over Europe, was not derived from Roman law, but was rather a development from Germanic institutions" (149). Quite similar in function to the testator are the oathhelpers mentioned in The Lombard Laws. In The Lombard Laws:

> he who brings the case and receives the pledges ought to name oathhelpers who are most nearly related to him. This should be done except in the case of those who have committed some grave injustice against that one who brings the case—such as striking him, consenting to his death, or transferring his property to someone else—such persons cannot be oathhelpers even though they are near relatives on account of the fact that they are enemies to or estranged from [the accuser] (123).

This explanation in The Lombard Laws demonstrates the importance of the oathhelpers. Similar to the executor, the oathhelpers were very important to the legal system and ensuring that one's wishes were carried out, and for this reason it was paramount to ensure that the executors or oathhelpers did not have interests that conflicted with those on whose behalf they were chosen. This fact was important due to the nature of the executors and oathhelpers, especially in the instances where debts were to be paid. In Ranulf de Glanvill's "Tractatus de legibus et consuetudinibus regni Angliae," it is mentioned that:

> the heir was responsible for his ancestor's debts and was bound even in excess of the amount received from the inheritance...Canon law and common law agreed that all debts should be paid before the delivery of legacies was made...Occasionally the heir was instructed to complete the

> payment of debts where the funds assigned to the executors for that purpose failed (Sheehan 155-156).

Despite funds being insufficient, the repayment of debts was considered vitally important. One explanation given for this was the "primitive religious purpose of the will," ensuring the desire that "all injustices be repaired, and that obligations of any sort be acquitted" (156). Essentially, the deceased wanted to ensure that all wrongs have been made right, all debts are paid, and all obligations be upheld, even after death. As such, the executors served a vital function. In The Lombard Laws, a similar preoccupation with repayment of debts can also be seen. One section concerns individuals who die after an oath has been given, but before its completion. It is written:

> If a man dies after giving surety for his oath and the oathhelpers have been named, and the dead man leaves sons, and if afterwards he who brought the case brings charges against the sons saying that whatever the father had obligated through pledges and a surety the sons ought to complete; then the sons, even though they may have less wealth than their father, either ought to deny by oath that their father promised these things, or they must fulfill that which their father promised (123).

Here, just as with the fulfillment of obligations written in wills, a priority is placed on ensuring that all debts be paid. Although in The Lombard Laws the importance is not necessarily due to religious ideologies, it is still declared that debts are to be paid, and if an individual dies before fulfilling their obligation as a result of a sworn oath, then the debt falls to their heirs. One difference between the two can be seen, however: whereas the executors were bound, albeit willingly, to fulfill the wished of the deceased when it

came to debts, in The Lombard Laws the heirs often were bound to the oaths of their father's, often unwillingly. This can be seen by the fact that the heirs had the option of denying that their father ever made such an oath, and that hence they are not obligated to pay any debt.

Similar to debts, many wills also dealt with gifts that were to be distributed upon the owner's passing. Many wills had the inclusion of post obit gifts, and in order to receive any portion allotted to them, the potential recipients often had to meet certain criteria or fulfill certain obligations. As such, these gifts often functioned contractually, sometimes even requiring that services, such as "burial, prayers, anniversary commemorations and alms for the donor" be supplied (Sheehan 28). Additionally, the fact that copies were produced of legal documents describing the conditions in which a gift was to be made suggests that this was done so that the donor, donee, and perhaps even a third party might be able to keep one should the need to consult it arise (28). Furthermore, the post obit gift was often considered to be irrevocable, and it is for this reason that anathema clauses in many wills explicitly states that these such donations may not be withdrawn. However, it should also be noted that there were circumstances in which a gift could be revoked, such as "the birth of a child or the failure of a donee to fulfill his promise" (28-29). These stipulations once again ensured that the deceased had some control over how gifts and inheritance were to be distributed, being granted the power to withhold or bequeath gifts, based upon whether individuals either met or failed to meet certain conditions, allowing the deceased to exercise some power even after their death.

In conclusion, it can be seen that the functions of oathhelpers found in The Lombard Laws, and the functions of executors in Anglo-Saxon wills share many similarities. Oathhelpers played a vital role in determining whether one was found to be guilty or innocent, and they were

to be chosen with the utmost care. Even if the one who is accused does not break an oath, if an oathhelper withdraws from the oath or fails to swear on consecrated arms, that oath can is considered to be broken (124-125). Similarly, will executors are granted a great deal of power, and have to ability, and duty, to ensure that the wishes of the deceased are carried out. Anathema clauses serve as a deterrent, discouraging anyone from attempting to either alter the will or fail to meet the stipulations set forth in the document. Finally, in both cases, emphasis is put on fulfilling debts, and such debts, if not paid, can fall to the heirs of the deceased, either the sons of the testator, or the sons of the oath-swearer.

Works Cited

Chaney, William A. "Aethelberht's Code and the King's Number." *The American Journal of Legal History*. 6.2. (1962): 151-177. *JSTOR*

Danet, Brenda, and Bryna Bogoch. "Whoever Alters This, May God Turn His Face from Him on the Day of Judgment": Curses inAnglo-Saxon Legal Documents" *The Journal of American Folklore*. 105.416. (1992): 132-165. *JSTOR*

The Lombard Laws.

Sheehan, Michael M. *The Will in Medieval England, from the Conversion of the Anglo-Saxons to the End of the Thirteenth Century*. Toronto: Pontifical Institute of Mediaeval Studies, 1963. Print.

Whitelock, Dorothy. *Anglo-Saxon Wills: Ed. and Trans. by Dorothy Whitelock*. S.l.: Cambridge Univ., 1930. Print.