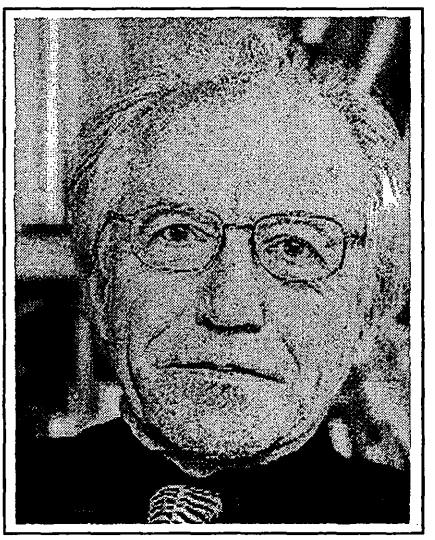

HOW NORDIC IS THE NORDIC LEGAL FAMILY?

Ditlev Tamm

I

The question asked in the headline: "How Nordic is the Nordic legal family?" needs some further explanation. What does "Nordic" mean? And is there really anything like a "Nordic legal family"? I will approach the question by a preliminary story. My second point will be some theoretical reflections and then as a third approach I will analyse a picture.

The story stems from Iceland, a country that nearly has become a metaphor for anything Nordic. One of my favourite authors, the Argentine Jorge Luis Borges in one of his essays said: "In the 13th the Icelanders discovered the novel, the art of Cervantes and Flaubert, and that discovery is just as secret and parted from the world as was their discovery of America".

In the second half of the 13th century an Icelander made up a story about the friendship between two men and the difficulties to their friendship caused by their wives. The story is known today as "The Saga of Njal" and it is one of those marvellous authentic Nordic medieval novels that pretend to describe the life of old Iceland before or shortly after Christianity was introduced. They tell us a lot about the law and even if we must be careful to use them as a source for knowledge of ancient Icelandic law we suppose that they reflect quite correctly how people settled their conflicts in the 13th century when these stories were written down. It is a story of feud and vengeance, of escalating violence, of peaceful settlement and of a sense of law as the basis for order. Njal thus quotes a sentence found in both old Norwegian and old Danish law: "With laws shall our land be built, but with disorder (ólog) laid waste". .

Two women in old Iceland firmly disliked each other and great part of the story deals with the outcome of this mutual dislike. One of the two was Bergthora the wife of Nial who was one of the grand old men of the Iceland in the time of Independence and the key figure in the Saga named after him. The other woman of the story was Halgjerd wife of Gunnar

from a place in southern Iceland called Hlidarende. She was known for her bad temper and her fair hair. Their conflict started when Bergthora at a party asked Halgjerd to move a little for someone else to sit down. The two women started arguing and suddenly they were enemies. The two women even came to dislike each other so much that they not only put a danger to the good relations between their husbands but also came quite close to the acceptable limit of teasing each other. We might say even that they crossed that border. Halgjerd had a man called Kol to help her, and one day she sent him out to kill a slave owned by Bergthora called Svart. Normally in the Sagas some quite brief words rather to the point are spoken on these occasions. Svart was found by Kol cutting wood and therefore Kol when he met him said, that other people too were cutting today and with these words placed his axe in Svart's head.

This incident was bad news for Njal and Gunnar who decided to settle the case in the traditional way in Iceland in such rather tricky cases. It is called *sjalfdóma*, and the idea is, that the person responsible just pays the damages which the other person himself estimated and asks for, and so they did and Nial who probably was aware of what would happen next took the promise from Gunnar that he would not ask higher damages if another similar case should arise and he be the person to ask for damages.

Njal knew his wife and thus had prepared himself for what actually also happened. Hasty revenge was vulgar. Some time has to pass before the grieved person would strike back. Thus Bergthora at a certain moment hired a man called Atle to help in the agricultural business. Atle was tough and did not consider it to be an unfair part of his contract if it included a duty to commit murder. Bergthora one day when Atle asked what he was supposed to do for work today, told him to go and kill the favourite slave of Halgjerd, Kol who had killed Svart. Kol was working in the field, when Atle met him and asked him how working was doing. "None of your business", Kol answered. "You still have the worst left, Death", Atle then said as he ran his spear through Kol.

The two husbands had foreseen the situation and were prepared. Nial had not touched the money which Gunnar had given him to compensate the death af Svart. He gave Gunnar the possibility to estimate himself how much he wanted for damages and Gunnar answered accordingly that he would not ask more than Nial had done. Gunnar got his money, he looked at the silver and saw that it was the same, the Saga tells us knowingly. The two men were still friends but Halgjerd was

angry that Gunnar had made a settlement. She "sneered at him", the saga says, but he and Njal took care and nothing more happened between them that year. But another year would come, matters will escalate and what happens then can be read in the nice old saga of Nial.

As lawyers we are supposed to appreciate how Icelandic literature reflects the law. There is a lot of legal business in the sagas and one of the questions to be asked is whether we ca rely on this information as a testimony of how law was in old Iceland. Most of the Sagas were written down in the 13th century but they tell the stories of people living more than two hundred years earlier. They may tell how law was in Iceland in the 13th century just before Iceland was conquered by the Norwegians and the time of independence brought to an end.

It is however necessary to stress that these spicy stories from the far North are not to be taken as information of neither what Nordic law was or what it is. Iceland is a case of its own. The peculiar institutions, the people and the literature are something very special and very much worth getting acquainted with. When in the following I speak about Nordic law however I do not think of Iceland nor of anything that has to do with Vikings or other famous topics of Northern history. Icelandic law and much more could be said about it was probably the closest we can come to some idea of something specific Nordic At that time quite different from the law of other places in the same way as the old Islandic society had its peculiarities. We meet a peculiar way of dispute settlement in a society with no central government or institutions. In a time when so called ADR, Alternative Dispute Resolution is on the schedule the Sagas remind us also that this idea is in no way new.

II

We come to the second point. Some theoretical reflections.

Iceland was different. Real Nordic - if by Nordic you understand a romantic dream of old Iceland. But Iceland is a case of its own. The Icelandic collection of law the Grágás contains really formalistic and complicated rules especially on procedure. We will now turn to the other old Nordic countries Denmark, Norway and Sweden. Is there anything like a Nordic law is therefore the next question? Is there something like a Nordic legal family, and in case, there is, how Nordic is actually that family. And thus I will turn to the more theoretical part of this lecture. We do have legislation from the 12th and the 13th century, the time of the

Icelandic sagas, in the other Nordic countries and this legislation and the traditions of a peculiar Nordic legal tradition built on them is the theme I will pursue.

Before I turn to the Nordic law however I will briefly make a few methodological commentaries. The first one is a mention of the fact that Legal history and comparative law are two disciplines that have come much closer in later years. It has even been asked: "Is comparative law anything more than legal history?" which might seem a somewhat exaggerated way of expressing the truth that people who use expressions like "legal transplants" or "a new ius commune" or similar expressions to describe what is going on, must have some background in history. Both disciplines are in some ways outsiders at the legal curriculum. The legal historians firmly believe that even if history is not a necessary condition to work as a lawyer today you definitely becomes a better one if you have grasped how law changes from time to time. Legal history is basically looking back into the past, comparative law is looking outside national frontiers but both of them are based on the ideology that a modern lawyer in the 21st century must know more about the world than just the law of the land. Historical comparative law or law in a "historico-comparative perspective" thus is a trend or an approach to both legal history and the history of law.

The concept of legal families has its place in this connexion. It is one of a variety of concepts used, when we try to grasp what we are talking of when it comes to the comparison in law. Legal systems, legal traditions and legal cultures are some of those words that each stress different strings. Order, basic information or in the case of "culture" something that sounds interesting but is hard to define. Legal family is not a very hard core concept either. It reminds us that law and legal concepts are not always too exact.

Legal family is a concept that unites legal systems from very different parts of the world in one group and at the same time it splits up regions and separates neighbours or nearly neighbours from each other. Europe is divided in civil law family and a common law family. The civil law family can even be considered as two families, a French dominated and a German dominated family. Outside this division but in Europe we find the Nordic countries, often neglected or included into the civil law family but also seen as constituting their own family. This is the case in

the *Introduction to Comparative Law* by the German scholars Zweigert and Kötz who dedicate a chapter to what in the English translation is called "The Nordic Legal Family". Those who are familiar with this book will remember how the concept of "style" is introduced in order to distinguish different legal families. The factors – according to Zweigert and Kötz - "crucial for the style of a legal system are first of all its historical background, then follows the predominant mode of thought in legal matters, distinctive institutions, kind of legal sources and ideology". What then is the distinction of Nordic law? A common historical and cultural heritage, the lack of a civil code, a more complicated not too positive attitude towards Roman law, certain lack of formalities and procedure of harmonization within the Nordic countries that has been going on since the end of the 19th century are some common features. Most of all perhaps should be noted a similarity in origin and sources, a common understanding of the law and similar but definitely not identical concepts of how to organize society.

However important differences must also be noted. Especially the difference between the two subgroups into which we can divide Nordic law should be noted. On the one hand Denmark, Norway and Iceland can be grouped together, on the other hand we find an Eastern group consisting of Sweden and Finland. The reason for this division is political. Denmark and Norway were united until 1814 (Denmark and Iceland till 1944) and Sweden and Finland until 1809. Two codes very similar to each other, the Danish and the Norwegian Code from 1683 and 1687 for a long time shaped a common legal foundation of Denmark and Norway. In Sweden and Finland it was the Code of 1734 that formed the common core of the law. So to start with we have two groups of countries and in many ways similar laws especially since the beginning of the 20th century when great parts of Nordic law of obligations and family law was framed into new statutes common to all Nordic countries. Our question again is: Is this law Nordic in a more general sense?

We may add that Nordic law has not been a great contributor to the common foundations of European law. On the other hand Nordic law has developed to a high degree in interaction with European law and legal development. This reception of European law or the legal transplants are the subject of this lecture. Roman law in the North has had less impact less than in many other European countries but more than is often acknowledged.

III

And thus we come to my third point. The picture.

Let us start by looking back unto medieval legislation. In all Nordic countries we find legislation mostly from the 12th and 13th centuries. It will be too complicated to make a detailed comparison of these often quite differently redacted laws, but I think we can limit ourselves to the fact that Norwegian laws do contain the oldest parts going back to the 11th and 12th century whereas the Swedish laws are the youngest. Danish medieval legislation mostly stems from the first part of the 13th century and consists of a body of four written statutes, all in the vernacular. The youngest on is the law of Jutland and of this law we know that it was given by the Danish king Valdemar II.

The law of Jutland is preceded by a prologue that is based on sentences from canon law mostly the *Decretum Gratiani* and also in the law itself we find examples of the influence from medieval canon law. It is one of many examples that shows us how Nordic law was part of a European legal tradition. We find among others the sentence that: "The law shall be honest and just, bearable, in accordance with the customs of the country, appropriate, useful, and unequivocal so that all men may understand what the law provides". This ideal of simplicity it's origin is a quotation from the Spanish church father Isidor of Sevilla from the time around 600. You find it quoted in legislation in Spain and other parts of Europe, but in the Nordic countries you can still hear it mentioned with reference to the law of Jutland pretended to be a true example of the Nordic legal spirit simple and easy to handle in contrast to the complications of other legal systems. An example of how that which is thought to be Nordic is actually part of a European common tradition.

Medieval legislation for more than two centuries played not only an important role in Nordic legal history. Medieval legislation simply was the main field of study. Medieval legislation was considered the core issue of the study of legal history, and even today the question of how to interpret the old laws and how to understand them in a European context remain a challenge to the legal historian. Once medieval legislation could be identified as the heart of the legal history and still in a country like Denmark medieval legislation is closely linked to ideas of national identity. History, language and law come together in the formative years

of Danish nation building in the Middle Ages.

The recognition of Danish medieval law as part of a European history of law is not much more than a hundred years old. The historiography of Danish legal history has moved several steps since in 1769-1776 the Danish legal historian Peder Kofod Ancher published his *En Dansk Lov-Historie* (A History of Danish Law), a chronological study of Danish legislation since the 10th century that still can be considered a rather advanced study for its time. For Kofod Ancher Danish law was part of Danish identity. He only wrote about Danish law, he was proud of that, and he did not raise the question to what extent Danish law was influenced by foreign law. The front cover of his book symbolically pictured Danish law as it was laid down in the Danish Code of 1683 as a tree that was nurtured from roots all being older Danish statutes from medieval and later times.

Kofod Ancher was a reader of European literature of his time. He had found this way of depicting the law in the description of the Law of the Franks in Montesquieu's famous "book of the century", "De L'Esprit des Lois" from 1748. The law is like a tree, at a distance you see its forms, coming closer you get aware of its details but only by digging up its roots you come to a real understanding of life and spirit of that particular law. So was the attitude of the learned baron of La Brède, which also in Denmark was seen as a modern and stimulating way of explaining the importance of history. History and especially legal history was there to tell what was particular in national law. The roots of Danish law according to him were only to be found in old Danish legal sources. The main task of legal history was to find the roots of a specific national way of conceiving the law. Law and national identity thus became related. "I will restrict myself to Danish legislation", Kofod Ancher wrote in his Introduction and so he did. His method was that of a critical researcher even if he did not live up to modern standards. He was reluctant to admit any foreign influence on medieval Danish legislation. One of the chapters of his book was dedicated to the complete refusal that the German *Sachsenspiegel* from the 13th century had had any impact on Danish law. Danish law was according to him a domestic fruit grown in a well protected garden walled against foreign influence.

Today we see the position of Danish law in a European context differently. If one of the questions earlier discussed in the Nordic

countries had been the possible extent of influence from foreign law the situation was now reversed. The position of Nordic law in a general European pattern is now taken as a fact. Nordic medieval legislation forms part of a general movement of legislation in the 13th century. The question today is how to define what was particularly Nordic in the Nordic law once it is stated that these laws do form part of European legal history.

Modern research into the concept of *jus commune* has been an important source of inspiration. The dichotomy of the universal *jus commune* opposed to the local *iura propria* has been refined in later years. It does not make sense anymore to discuss whether the Nordic countries were countries of *jus commune* or not. Roman law was not part of the law of the land but legal thinking influenced from the centres of learning in Southern Europe definitely had a great impact as had canon law on Nordic medieval legal thinking. However it is important to stress that in Nordic legal history the figure of the learned or scientific lawyer only appears in the Middle Ages in the role of a leading ecclesiastical figure. We find very few secular lawyers trained in the lecture halls of great European universities. The opposition of a learned tradition, a scientific laboratory, as it has been called, opposed to an unlearned legal practice has a completely other and much lesser relevance in the Nordic countries than in other European countries. It is a characteristic that should be born in mind that only at late stage – in second half of the 18th century – a legal profession started developing. Till then the law and dispute settlement was in the hands of unlearned judges.

In a not too remote past legal historians would still speak of the idea of "a Germanic law". This concept is not popular today and Nordic law therefore does not not really belong in any legal kinship or specific European legal family any more. Nordic law constitutes its own family as is also recognized by modern legal comparatists like the already mentioned manual by Konrad Zweigert and Hein Kötz. Nordic scholars have to dig out their own past. In this sense the Nordic laws are so much more Nordic today that only Nordic historians and legal historians can be supposed to take more than a distant interest in this old legislation. One of the questions to ask therefore is also whether there really exists a common core of law that can be conceived as specifically Nordic in the old Nordic laws. Is it meaningful to speak of Nordic laws or would it

rather be more convenient to talk of different Danish, Norwegian and Swedish laws which can only be seen as more distant relatives?

A new approach to medieval Nordic law not only has stressed the importance of canon law. Nordic legislation is also now seen as part of a general European trend. At the same time as Nordic laws was written down in Denmark, Norway and Sweden in the Italian city states we find a legal culture "with the most wide-ranging and far-reaching legislation known to the medieval West", as an Italian legal historian proudly says. In Saxony in Northern Germany Eike von Repgow composed his *Sachsenspiegel* that has already been mentioned. England already in the seventh century A.D. had laws corresponding to the Nordic laws and it seems probable that especially old Norwegian law in the way as Norwegian cathedral architecture may have been inspired from England. Other imposing legislative monuments from this same period who partly shows influence from the same European sources as we find in the North are the legislation of the Emperor Federico II of Sicily and the Spanish King Alfonso X el Sabio of Castille.

New ways of looking at the Middle Ages have lead to a rethinking also of the Nordic medieval laws. A new focus on the history of learning and the international community made up by a learned elite in the Middle Ages is another new trend that can lead to a more positive assessment of the contemporary importance of medieval law. Women's studies also is a focus of enthusiastic approach to Nordic medieval legal texts even if they are not too eloquent. To this should be added the history of family and kinship that also sheds new light over old legal texts. The ideas of kinship (Sippe) as one of the dominant institutions in old medieval law as already mentioned is also one of those that are contested today. Researchers point to other networks similar to the Roman concepts of *clientela* and *amicitia* as dominant in Nordic medieval history since the 12th century. Still others point to the importance of canon law and the rules on forbidden grades in matrimonial law for the establishment of a coherent system of kinship relations in the Nordic countries. If we accept that the Nordic laws have to be seen as a part of a European project also investigation into medieval legal institutions in France and Italy may shed light on Nordic law..

A cautious approach to the medieval laws as a reflection of old customary

law has been prevailing in Danish legal history. The idea that in the written sources we find expressions of very old law has been abandoned. The old law must be understood as a writing down of contemporary law that does not necessarily base itself on older law. Thus the field is open for the acceptance of a reception of a new legal culture and a complete change of the legal pattern at the time of the redaction of these laws in the late 12th and the first and second halves of the 13th century. Nordic law therefore cannot be categorized as "Germanic" law in any scientific sense of the word. Later scholars of Nordic medieval law have even more stressed that the medieval laws are not of a very old date but have to be seen as testimonies of a legal concern that had to do with the shaping of a new society around 1200. The question is to which degree it makes sense to talk about a "Nordic" law of medieval times. Therefore the question: "How Nordic are the Nordic laws?"

The time has gone when legal historians dedicate themselves only to the investigation of legal questions related to medieval legislation is over. The time therefore has come to consider what has been achieved and to discuss new ways of understanding Nordic law in the Middle Ages. As a Danish historian, Michael H. Gelting puts it: "Our main source for Scandinavian social structures in the high Middle Ages, the twelfth- and thirteenth-century law books, must be interpreted as a part of a common European trend to create a new kind of social order and predictability through comprehensive and systematic legislation"

IV

I come to my next point - the fourth – that has to do with the influence of Roman law in Denmark. Again we can use a picture: A stone set in the gateway of the town of Rendsborg in Slesvig in the most southern part of old Denmark marked the northern most limit of the Holy Roman Empire to which Denmark did not belong. The stone carried an inscription in Latin that stated *Eidora Romani terminus imperii* – the river Ejder is the limit of the Roman Empire. This inscription tells us not only that the river Ejder, which used to separate the Germans from the Danes, was the Northern frontier of the Roman Empire it also in many ways illustrates the separate position of Nordic law and its peculiar relation to Roman law.

There was a time when it was only reluctantly admitted that Danish law was influenced from Roman law or other foreign laws. In the 18th

century it was often denied that Roman law had had any significant impact on the development of what was supposed to be pure Danish law. Such was as you may already have grasped the view in the work of Peder Kofod Ancher on the history of Danish law. Kofod Ancher was too emphatic when he reduced the importance of Roman law in Denmark, but he was right in as far the old laws had been a conservative weapon in the hands of those who were against changes in the law. We see that already in a document from 1282 in which references the the "law of King Valdemar" are used to restrict the king's legislative power. In legal practice as we know it from the 16th century and onwards the old laws are clearly seen as the fundament of the law and as a protection of existing rights that should not be changed without good reason.

It was the great Danish 19th century lawyer Anders Sandøe Ørsted who in 1822 stated that such a point of view was to be considered as an "exaggerated patriotism". He in a time that did not acknowledge the importance of the concept of *jus commune* referred himself to certain examples of impact from Roman law especially within the field of family law and the law of obligations. His main argument however was the basic value of Roman law as the foundation of any scientific method in the law. Since that time it has been generally recognized that Danish law was influenced by methods and institutions of Roman law. Denmark was not divided by the schools of Romanists and Germanists. Roman law was taught at the university of Copenhagen since its foundation in 1479. It was expressly stated in the statute of the reformed University 1539 that by studying Roman law the students would learn the spirit of the law and justice in general and in that way be able to judge whether local Danish law corresponded to these general principles even in another way than Roman law did.

There is however no Danish parallel to the discussion of the " the reception of Roman law, which the Germanist Beseler in his *Volksrecht und Juristenrecht* considered a German national disaster, "a Nationalunglück. In Danish legal history Roman law still did not play an important role. However gradually canon law as we have seen was understood as a system that played an important role in the Middle Ages. The interplay between Church and Society led to a great influence that was especially seen in matrimonial law. However in a protestant country it seemed difficult to admit the general civilizing force of the Church and

of canon law. Several papal decretals addressed to Nordic archbishops were known, but it was only in 1890ies that canon law was understood as a coherent system of law worthy of its own study that could lead to important conclusions about Danish law.

Legal history in the Nordic countries has not been in the need to invent a legal past in order to find a national law. The medieval laws were such a past. And at least since the time of Kofod Ancher it has also been recognized by legal historians that there are such similarities between the medieval laws of the Nordic countries that the study of the laws of one of the other countries must be considered as useful for the understanding of medieval Nordic law in general.

This statement leads me to another point, then creation in modern times of a common Nordic law. As I told you the Nordic countries were divided into a Danish-Norwegian and a Swedish-Finnish branch and there was little relation between them in the filed of law. It was only later that the community of legal ideas found in the Nordic countries was given a high priority. It happened when in 1872 a first meeting between Nordic lawyers was convoked in order to discuss legislative questions of common interest. The inspiration to convoke such meeting came from similar meetings in England and Germany. The chief aim of making such meetings was to find a common legal path that could lead to other solutions than those found in German law. The year 1872 may be seen as the year of the birth not only of Nordic legal cooperation in the field of law but also as the year in which the idea of a legal unity the Nordic countries was born independently of historical differences.

V

Before entering into the field of Nordic legal cooperation it would like to introduce some specific features of Nordic law. One of them is that there is no civil code as today in most civil law systems. However there used to be codes and in Sweden still the old code from 1734 lies behind the system. In Denmark and Norway it is different. In 1660 Absolutism was introduced in Denmark and Norway and some twenty years later a Danish and a Norwegian code were enacted. Absolutism was legitimized by a specific Act the lex Regia that was incorporated into the Danish code but generally it was no reform code. A great part of its about 1800 articles

had their origin in older legislation as we saw on the picture from Kofod Anchers book on Danish legal history. The Danish Code was enacted in 1683 and four years later a Norwegian code was enacted that did not base itself on old Norwegian but had the Danish code as its model. The codes was divided into six books on procedure, law of the church, family law and laws on the different estates, sea law and criminal law. A friend of this old code was Jeremy Bentham who in his *A General View of a Complete Code of Laws* praised it: "Of all the Codes which legislators have considered complete, there is not one that is so. The Danish Code is the most ancient code... In the preface to the Danish code, it is expressly stated to be complete". Bentham can mention several fileds of law not mentioned in the code, but still he concludes: "It is however, the least incomplete of all the codes".

The Danish code apart from around a hundred articles is not any more in active force. It contains some basic principles still maintained as the duty to live up to promises and agreements or to restore goods which have been stolen or hired out against the will of the owner. The code however came too early to survive. Legal science under the influence of Natural law made enormous progress in the 18th century and Danish courts were not sufficiently guided by the code. Natural law was needed to fill out the gas of the law that thus developed besides the code. Also new legislation was issued that was not inserted in the code even it treated matters governed by the code. We therefore since the 18th century witness a process of decodification that has not later been remedied.

The Swedish Code of 1734 was also the law of Finland. Also in Sweden Natural law had a great impact. IN the 1660ies a new Swedish University was founded I Lund and one of the first professors of law was Samuel Pufendorf who became one of the leading European authorities in the field. His *De jure naturae et gentium* from 1672.was printed in Lund. However the presence of Pufendorf in the North was not sufficient to found a Nordic school of natural law.

Neither the Danish nor the Swedish code had modern successors. In Denmark it was discussed in the 1830'ies whether a new code should be made but the idea was discarded. The reason that no code was made was the influence from the German historical school and the opposition of F.C. von Savigny against a code. Time was not ripe for a code and Denmark was too far from France to discuss an adoption or reception of

the French code. The law should be permitted to develop itself organically and not be kept in a stiff system of a code was his argument that was also quoted in Denmark. The result was: No code and Norwegian and Swedish preparations for a code had a negative outcome.

I hope that from what has been said it is clear that Nordic law was not in modern times isolated from the general trends of European. This was evident when we consider the importance of natural law and also for legal education the German way of studying Roman law, the *usus modernus pandectarrum*. Denmark had close links to Northern Germany and German was a language commonly spoken I Denmark. Around 1800 Danish legal science was highly improved by a Danish lawyer Anders Sandøe Ørsted who was widely read in German legal science and who had also studied the Code civil and the other contemporary codes: "In all fields a study of foreign law may in many respects be useful to anyone wishing to acquire a complete insight into the current law", he said and thus acknowledged the importance of comparative law for the understanding of Danish law. Since his time Danish law
And legal science has had its own history. German legal science however still had a great impact as was also the case in Sweden whereas the Norwegians were less impressed by German law professors and their methods. Thus Danish law in its system and terminology has come close to civil law but still maintained its independence. There is no parallel to Belgian law teaching based on French sources. German law and Danish law (and the law of the other Nordic countries) is quite distinct and of course even more so after the enactment of a German civil code.

VI

Denmark is one of those small nation-states that more or less by miracle have survived until today despite wars with a dominant Sweden and later an even more dominant Prussia and Germany. However a strong Danish national identity was created especially confronting German nationalism in the 19th century. After 1871 the founding of a second German Reich was one of the factors that brought the Nordic countries closer together. It started in the 1830ies. Denmark-Norway and Sweden
were born enemies but now that came to a close. Students and poets and politicians started a Scandinavian movement of collaboration. It never lead to a political union but an important outcome was collaboration in

the field of law that was inspired by industrialism and internationalism but also the understanding of the importance of not being too small in modern world. The Nordic countries apart were not big but together they were something and out of this conviction was started a permanent work on harmonization of the law since 1872. Commercial law, the law of the sea, bills of exchange and checks were some of the subject and after 1900 the work was continued into vast fields of the law of obligations, especially sale and contracts in general and also into the field of family law. Law professors from the Nordic countries worked together and in general legislation was made in a Nordic spirit that has only been slowed somewhat down since the 1970ies. The Swedish minister of justice at that time announced that Sweden wanted to make reforms at their own faster speed. Also the membership of the European Community had had an impact as great part of the legislation is now made within the European community framework. Anyhow the importance of Nordic cooperation for the creation of something like a Nordic legal family should not be underestimated. As you will have appreciated there are common features in older law but it was only in modern times that the Danish-Norwegian and the Swedish-Finnish law family really merged.

VII

Even if we may conclude that in the field of private there is something like a Nordic legal family there are still in many files of the law important differences. Today all Nordic countries consider themselves "Welfare States" with a high level of state regulation and a sophisticated system of social aid. In Europe it is often called "the Swedish model" and in some ways the Swedish dominant Social-democratic party marked the way but the development in Denmark and Norway have been very similar to Sweden. Characteristic is also the level of taxation and the principle that social aid basically is not financed by your own savings but by taxes. This said it should be pointed out that there are many differences in the field of public due to very different historical conditions.

I will mention two examples, the constitution and the relation between church and state.

Norway was the first Nordic country to have a modern written constitution. It happened in 1814 at a moment when Norway was on its

way to independence from Denmark. Norway at that time however did not become an independent state but was united with Sweden until 1905. The constitution however was recognized by the Swedish king and thus the political relation between Norway and Sweden was completely different from the Danish-Norwegian relation in an absolute monarchy. Norway developed immensely in those years and created its own political institutions.

Denmark still was an absolute monarchy until 1848 when liberals convinced a new king to appoint a liberal government and start the work of making a constitution. The draft for the constitution was made by a member of the government basing himself very much on a selection of translations of foreign constitutions. The Belgian constitution from 1831 at that time was seen as a model constitution and it was the only the foreign constitution that was especially imitated in Denmark. The position of the King in the Belgian Constitution, the Bill of Rights was more or less copied as was also the system adopted by the Belgian constitution regarding the preparation of the budget law and the principle that taxes could only be demanded on a yearly legal basis. Denmark thus was one of the countries to which the decisive year of 1848 played a major role.

In Sweden it was different. Sweden had no revolution in 1848 and only in 1866 changed the old Estate constitution into a modern constitution based on the principle of two chambers.

Danish constitutional tradition has been to change as little as possible in the constitution. However at certain moments in 1866, 1915 and 1953 the constitution was reissued due to major political changes. The loss of Slesvig-Holstein, a change in the relation between the chambers, women's right to vote and finally the abolition of the first chamber were the reasons for a change, but still basically the Danish constitution is a 19th century constitution with few articles and an old fashioned bill of right that was supplemented In 1992 by the incorporation into Danish law of the European Convention on Human Rights. Again an example of how European countries come closer.

Norway also keeps a conservative constitution. Any changes are made in the old language of the constitution from 1814 that is nearly pure Danish. The Swedes in 1975 made a radically new constitution.

Church and state is another field in which different approaches can be appreciated within a common framework. Denmark and Norway had a Lutheran reformation in the 1530ies that meant that Catholicism was completely abolished. The catholic priest became Lutheran ministers. Only the bishops had to be substituted by new ones.
In Sweden a Lutheran reformation was imposed by the King Gutav Vasa, but it was only in the 1590ies that the Lutheran Faith was officially acknowledged and the catholic faith still due to dynastic reasons played a more important role. The Danish church was reorganised as a German princely church (Fürstenkirche). The King was not an archbishop but he had to power to organise the church and it was his duty not only to supervise the church and the faith but also to take action in ecclesiastical matters. No other religion than Lutheran Protestantism was allowed and so it continued until 1849.

In the constitution was introduced the idea of a "Popular Church" as a denomination for the church to which the great majority of Danes belonged. The church was and is still regulated by ordinary parliamentary statutes. The government appoints a minister responsible for church affairs. There is no head of the church apart from the queen. There are no assemblies or other ecclesiastical for a. The church thus continues to be integrated into the state. There is in Denmark no separation between state and church which may seem odd in a modern country but has to be understood on a historical background. So it was in 1536 and even if other religion have moved in the majority of the population is still member of the official church.

In Norway the church ia a state church but it has become more independent due to a system of parliamentary organ on different levels within the church. A similar position is taken in Finland whereas the Swedish church since the year 2000 has been separated from the state. Again we must give historical reasons. The church in Sweden was a separate estate and thus a long tradition of political independence even if still as a state church.

Different positions in countries that in other aspects may look similar.

Conclusive remarks

I come to a conclusion:

Continuity, national identity, no trained lawyers until late, that Roman law was never the law of the land, European interaction, influence from German Pandektenrecht, Nordic collaboration, a certain informality, legislation as a means to govern society, state intervention, high taxation, welfare state. These are some of the words that might define a specific Nordic family. And especially stress the late arrival of trained lawyers and legal science. I think it is just to speak of such a family as distinct from both civil law and common law. It is more like civil law than common law in the way of legal reasoning but still different. Even if the Nordic countries are more different that it may appear there are similarities that go way back into the Middle Ages when relation between the Nordic countries were strong. For a short period from 1397 until up in the 15th century the Nordic countries were united but since 1500 fell apart. Only in the 19th century did collaboration start again with the result that the Nordic countries came close in structure and law. But they are different and I am afraid that they in some ways become more separated. Danes, Norwegians and Swedes do not understand the languages of the other Nordic countries as they did before. English that was never a lingua franca in the North however now moves in as a signal that we are actually part of a much bigger community.

There is a long way to go before European law will be harmonized and I hope I have sown that even within a region like the Nordic countries there are similarities but also great variations. I like myself the idea of a diversified Europe but as a historian of law I also like tradition. The position of the Nordic countries in the field of European harmonisation of the law is pragmatic. No great problem is seen in adapting the law of the European Union. Politically there is still some reluctance against what is seen as too much union. I think that the understanding of legal history and the attitudes in the North towards the law also explain but in my view not excuse the peculiarities of the somewhat hesitating position of most of the Nordic countries and the in the European Union.