The ARC Centre of Excellence for the History of Emotions (Europe 1100 - 1800), and the Centre for Medieval and Early Modern Law and Literature, University of St Andrews present:

EMOTIONS IN THE COURTROOM

3-4 MAY 2015, DEPARTMENT OF MEDIEVAL HISTORY, UNIVERSITY OF ST ANDREWS

EMOTIONS
MAKE
HISTORY

THE ARC CENTRE OF EXCELLENCE
FOR THE HISTORY OF EMOTIONS
(EUROPE 1100-1800)

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THE CENTRE FOR MEDIAEVAL AND
EARLY MODERN LAW AND LITERATURE,
UNIVERSITY OF ST ANDREWS

http://cmemll.wp.st-andrews.ac.uk/
**Date and Time:**
Sunday May 3 2015
3pm - 7pm
Monday May 4 2015
9:30am - 4pm

**Location:**
University of St Andrews
Department of Mediaeval History, St John’s House
71 South Street, St Andrews

### SUNDAY, MAY 3 2015

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<td>3:00 - 3:30</td>
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| 3:45 - 4:45| Hans Jacob Orning (University of Oslo) "Once again I’m in trouble, as I have received the wrath of my master”. Law, anger and mercy in Norwegian courts in the High Middle Ages
Ian Forrest (Oriel College, the University of Oxford) Faith and feeling in late-medieval litigation |
| 4:45 - 5:00| COFFEE BREAK                                                                                               |
| 5:00 - 5:45| William I. Miller (University of Michigan) Fear and anger in and around courts, saga style                   |
| 5:45 - 6:30| Reception                                                                                                   |
| 6:30       | DINNER                                                                                                     |

### MONDAY, MAY 4 2015

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<td>9:30 - 9:45</td>
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| 9:45 - 10:45| Merridee Bailey (The University of Adelaide)
*The use of the law in shaping emotions and merchant experiences in England’s courts of equity*
John Hudson (University of St Andrews)
*Frustration leads to anger: laymen and clerics in the courtroom* |
| 10:45 - 11:00| COFFEE BREAK                                                                                               |
| 11:00 - 12:00| **KEYNOTE:** Stephen D. White (Emory University)
*Trying to keep emotions out of the courtroom: courtliness and good counsel in ‘Girart de Roussillon’* |
| 12:00 - 1:00| LUNCH                                                                                                      |
| 1:00 - 2:00| Suzanne Pohl-Zucker (Independent Researcher)
*Provocation and the heat of anger: diminished responsibility and the judgment of manslaughter in Early Modern Germany*
Sebastian Coxon (University College, London)
*Laughter in court: literary models of jest and justice in sixteenth-century German ‘Schwanksammlungen’* |
| 2:00 - 2:15| COFFEE BREAK                                                                                               |
| 2:15 - 3:15| Elizabeth Papp Kamali (University of Michigan)
*The devil’s daughter of hell fire: The role of anger in medieval English felony adjudication* |
| 3:15 - 4:00| Final discussion                                                                                            |
| 4:00       | CLOSE                                                                                                      |
Hans Jacob Orning

(University of Oslo)

"Once again I'm in trouble, as I have received the wrath of my master". Law, anger and mercy in Norwegian courts in the High Middle Ages

In my paper I will discuss the relationship between legal procedures, religious penitence and political power in high medieval Norway, using a court trial between the Orcadian Earl Harald Maddadsson and the Norwegian King Sverre Sigurdsson from 1195 as a point of departure. This trial is one out of several in which the king summons magnates to answer for accusations of treachery or disloyalty. These processes are interesting, because they show that the legal idiom is intertwined with religious associations in terms of supplication and penitence, as well as the granting of mercy. Moreover, the traditional way of solving conflicts through mediation and compromise shines through in the agents' understanding of such trials. In my presentation, I will define and discuss these different ways of understanding conflict, at the same time as I will underline the interconnectedness of these conceptions, demonstrating that the courtroom is indeed filled with emotions.

Hans Jacob Orning is Professor of medieval history at the University of Oslo. He finished his PhD on Norwegian kingship in the High Middle Ages, strongly influenced by legal anthropology, in 2004 (published by Brill, 2008). Since that, he has explored and expanded this theme in several directions, publishing several articles. He has been studying the world-view of late medieval Icelanders, using manuscripts containing legendary sagas combined with charters as point of departure. Currently, he is initiating a project about Nordic elite networks in the High Middle Ages viewed in a northern European context.

William I. Miller

(University of Michigan)

Fear and anger in and around courts, saga style

This paper provides an analysis of some of the emotions that motivate or simply come with the territory of high-stakes lawsuits in the Icelandic sagas: fear, frustration, glorying, humiliation among others. Pleaders, the front men, for the causes for which they must become the mouth-piece, end up focusing hostilities on themselves, even if they are otherwise only marginally interested in the underlying claims. 'Kill the lawyer' is not all that likely an option, but it is a possibility, requiring a certain amount of courage amongst legal experts which few in that profession nowadays need muster - unless they work for drug cartels or are divorce lawyers. Above all it is glorying that I want to look at, not least because it does not get as much attention as anger - a topic which is overworked because it is so easily available in our sources, and which Steve White long ago showed may be just obligatory and hardly an emotion at all. Anyway, I will talk in and around such topics, to the frustration of some, the annoyance of others, and hopefully to the glee of a few.

William I. Miller, the Thomas G. Long Professor of Law, has been a member of the Michigan Law faculty since 1984. He has been a visiting professor at Yale, The University of Chicago, The University of Bergen, the University of Tel Aviv, and Harvard, and in 2008, was the Carnegie Centenary Trust Professor at the University of St. Andrews, where he is now an honorary professor of history. His research centres on saga Iceland, which provides the sources for his Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland (1990). He also has written about emotions, mostly unpleasant ones involving self-assessment, and select vices and virtues. His books include: Humiliation (1993), The Anatomy of Disgust (1997), The Mystery of Courage (2000); Faking It (2003) and Losing It (2011). His most recent book appeared in 2016: "Why is your axe bloody:" A Reading of Njáls Saga.

Ian Forrest

(Oriel College, the University of Oxford)

Faith and feeling in late medieval litigation

In litigation on marriage and debt late medieval people frequently 'gave faith', 'made faith' or used other faith-derived measures to establish trustworthiness. This paper will draw on the records of church courts in late medieval London, Canterbury, York and elsewhere to explore what faith meant. What sort of trusting did it imply? How was it related to faith in God? Was faith felt as an emotion? How was this multi-faceted faith used to build identity, shape memories and form relationships?

Ian Forrest is a fellow and tutor in History at Oriel College in Oxford. He has published on heresy and inquisition, social life and social regulation. His first book, The Detection of Heresy in Late Medieval England examined the development of inquisitorial procedure in England from the 1380s to the 1430s, looking at the involvement of ordinary people in the prosecution of heretics, and exploring themes of government and ecclesiastical communication and propaganda. He is currently writing a book called Trustworthy Men: Inequality and Faith in the Medieval Church and editing a series of late medieval visitation records.

Merridee L. Bailey

(The University of Adelaide)

The use of the law in shaping emotions and merchant experiences in England's courts of equity

The litigious nature of English society has long been commented upon. While merchants were not alone in showing dexterity in using the law they were certainly one of the groups who most frequently turned to the Court of Chancery. A central question I have been working on is the extent we can see law courts as actively shaping moral, emotional, and economic community norms. Evidence from petitions no doubt reflected wider community understandings about what acceptable economic and emotional practices looked like. But any attempt to push this further, to see if a court like Chancery actively contributed towards creating an emotional culture, means we need to ask different questions. It is an important issue to explore as it would allow us to see if this court [and perhaps by extension others] helped to create, as well as to reflect, the shared emotional and moral values within a particular community. By emphasising certain moral values in legal cases and witness depositions, and the emotional articulation of these values, merchants themselves placed their activities into the realm of legal, cultural, emotional and social beliefs. This paper therefore explores mercantile cases heard in England's Court of Chancery over the late medieval and
early modern period to investigate the emotional culture of urban London as well as the distinctive characteristics of the merchant community who most frequently turned to this court.

Merridee L. Bailey is a Senior Research Fellow with the ARC Centre of Excellence for the History of Emotions at The University of Adelaide. To date, her work has been on the history of book culture and issues of socialisation and morality in late medieval and early modern England. She has previously published ideas about virtue and courtesy in fifteenth and sixteenth century England and more recently has begun working on morality and emotions in merchant practices in London, c.1400-1650. She has recently published a book on childhood in late medieval and Early Modern England, Socialising the Child in Late Medieval England c.1400-1600 (York Medieval Press, 2012). She is currently co-editor of a major multi-volume series on the Cultural History of Emotions (v.4) for Bloomsbury.

John Hudson
(University of St Andrews)

Frustration leads to anger: laymen and clerics in the courtroom

This paper examines a group of court cases from the Anglo-Norman period. It explores particular stratagems employed by ecclesiastics, and the lay response to these. In particular it discusses the possibility that clerical verbal skills led to lay frustration which manifested itself in anger. It considers how far such depictions are literary topos, and how far they may reflect reality. It also notes similarities to later popular reactions to the verbal skills of professional lawyers.

John Hudson is Professor of Legal History at the University of St Andrews and William W. Cook Global Law Professor at Michigan Law. His interests focus on ninth- to thirteenth-century Britain and France, and on the late nineteenth-century study of medieval England. In 2006 he gave the Selden Society Lecture on “F. W. Maitland and the Oxford History of the Laws of England, the earliest, appeared in 2012. He is currently working on comparative studies of legal development in Europe 950-1250, and also on papers to mark the octocentenary of Magna Carta in 2015.

Stephen D. White
(Emory University)

Trying to keep emotions out of the courtroom: courtliness and good counsel in ‘Girart de Roussillon’

In Girart de Roussillon – a mid-twelfth-century chanson de geste about a lengthy war between Girart, a powerful duke, and King Charles Martel – Girart’s “courtly” nephew, Count Fouques, says to the knights accompanying him to the royal court: “We should not show any sign of arrogance in the King’s presence. Let there be no pride and no threat in our words. Let us all use the same language, so that by the end of the council, no one can say that we spoke like fools or hotheads. For a man who fights with his tongue is out of his senses.” By analyzing this passage and many similar ones from the same poem, this paper calls into question the view of medievalists, such as Stephen Jaeger, that unruly medieval nobles could learn to control their emotions and their violent impulses only from courtly clerics. Christian moralists, and/or the authors of courtly romances. The paper also points out that in this poem, at least, to be “courtly” is, among other things, to be capable of speaking and arguing well in a court-case, a council, and in any other forum.

Stephen D. White is the Asa G. Candler Professor of Medieval History (Emeritus) at Emory University, an Associate in the History Department at Harvard, and an Honorary Professor in the Department of Medieval History at St Andrews. He has published widely on French and Anglo-Norman legal and social history, and his books include Custom, Kinship and Gifts to the Saints (1998), Re-thinking Kinship and Feudalism in Early Medieval Europe, Feuding and Peacemaking in Eleventh-Century France (2005) and The Bayeux Tapestry and its Contexts: A Reassessment, co-authored with Elizabeth Pastan and with Kate Gilbert. He has been a leading figure in the study of disputes in mediaeval Europe and has also produced pioneering work on the study of literary texts. His interest in the history of emotions has centred the politics of anger and on aspects on vengeance and treason.

Susanne Pohl-Zucker
(Independent Researcher)

Provocation and the heat of anger: diminished responsibility and the judgment of manslaughter in Early Modern Germany

The paper discusses the use of anger as a mitigating circumstance in southwest German homicide cases from the sixteenth and seventeenth century. Although the Carolina, the German imperial criminal code from 1532, sanctioned “manslaughter committed in the heat of anger” with the death penalty, emotional turbulence could sometimes mitigate a slayer’s guilt. The Carolina allowed judges to use their discretion when a slayer could not sufficiently prove a claim of self-defence. In such cases, lawyers could utilize the lus Commune category of defensus excessus. Developed by medieval jurists, defensus excessus covered slayings where the slayer had exceeded the requirements of self-defense due to hot anger. These requirements concerned the manner, the timing and the cause of the slayer’s strike against his attacker. Jurists of the lus Commune offered different explanations of the emotional states of defendants who violated one of these requirements. Most commonly, jurists insisted that only just...
anger caused by the victim’s provocation could mitigate a sentence. Some jurists, however, placed less stress on the provocation. To them, it was the impulse, an impediment to the senses, rather than the provocation which constituted the mitigating circumstance. German lawyers could choose from these varying interpretations in order to justify their view of a slayer’s responsibility. However, the use of anger as a mitigating circumstance in legal practice had to be negotiated with cultural ideals that valued emotional balance and viewed uncontrolled anger in a negative light. While anger could reduce a slayer’s guilt, it could also incriminate the defendant. The decision whether emotional states were considered mitigating or exculpating hinged on a general evaluation of a slayer’s potential for reintegration, after a period of punishment and correction. The paper traces the language of anger in pleas and consilia of select trial records from the Duchy of Württemberg and the imperial city of Reutlingen.

Susanne Pohl-Zucker is an independent researcher and lives in Mainz, Germany. She received her Ph.D. from the University of Michigan, Ann Arbor, MI, in 1996. Between 1997 and 2003, she held a position as Assistant Professor of Early Modern European History at Cornell University in Ithaca, New York. Between 2007 and 2010, she taught classes as a lecturer at the University of Tübingen and at the University of Frankfurt, Germany.

Elizabeth Papp Kamali
[University of Michigan]

The devil’s daughter of hell fire: the role of anger in medieval English felony adjudication

This paper expands upon my earlier analysis of the meaning of felony, in which I posited that the medieval paradigm of felony was an act that involved deliberation and forethought, the exercise of a person’s reasoning capacity and volition in the absence of necessity, and moral blameworthiness, sometimes rising to the level of evil. Here I grapple with the complications raised by the issue of anger. On the one hand, anger was seen to be a product of an ill-formed conscience. This potentially placed anger within the felonious area of moral blameworthiness. On the other hand, anger in its more extreme manifestations was seen to inhibit a person’s ability to reason and to inspire behavior resembling insanity, thereby possibly pointing toward a partial excuse. Relying on legal records, religious writings, and literature, this paper excavates the understandings of anger that informed jurors’ attitudes toward felony defendants.

A graduate of Harvard College and Harvard Law School, Elizabeth Papp Kamali is currently a PhD candidate in History at the University of Michigan, where she is completing her dissertation, entitled A Felonious State of Mind: Mens Rea in Thirteenth- and Fourteenth-Century England. Her research interests include medieval English criminal law, the conflict between the common law and local customary law in thirteenth- and fourteenth-century England, and the impact of Roman law on the development of the English common law in the twelfth and thirteenth centuries.

Sebastian Coxon
[University College, London]

Laughter in court: literary models of jest and justice in sixteenth-century German ‘Schwanksammlungen’

Dr Seb Coxon is Reader in German at University College London. Since completing his doctorate at the University of Cambridge in 1998, he has published widely in both English and German on a number of themes in medieval German literature, focussing mostly on short comic narratives and drama. One long-standing research interest is humour and laughter, particularly the ways in which laughter could influence community formation and strengthen social cohesion in medieval urban culture. This was the subject of his 2008 monograph, Laughter and Narrative in the Later Middle Ages. His current project is a bilingual edition of Heinrich Bebel’s Libri facetiarum (1508; 1512).
Kimberley-Joy Knight is a postdoctoral research fellow at the Sydney node of the ARC Centre of Excellence for the History of Emotions. Her doctoral research, undertaken at the University of St Andrews, examined the multivalent presence of tears in thirteenth-century saints’ vitae and canonisation proceedings. Her major research project at the CHE analyses the relationship between love, desire, sexuality and marriage in medieval Norway and Iceland (c.1100-1500). In addition, Kimberley is pursuing research on the materiality of love and the role that emotions played in legal conduct and procedure.

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Jamie Page is a social historian of late medieval Germany and Switzerland with particular interests in gender, sexuality, and crime. His doctoral work, carried out at the University of St Andrews, examined fourteenth- and fifteenth-century criminal trials from a number of German and Swiss cities featuring prostitutes, and examined questions of identity and subjectivity in the records. He currently holds a post as Leverhulme Early Career Fellow at Durham University, where he is pursuing a project on the phenomenon of honour in justice and everyday life using the rich legal archives produced by the city council court (Ratsgericht) of Zurich.

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John Hudson is Professor of Legal History at the University of St Andrews and William W. Cook Global Law Professor at Michigan Law. His interests focus on ninth- to thirteenth-century Britain and France, and on the late nineteenth-century study of medieval England. In 2006 he gave the Selden Society Lecture on ‘F. W. Maitland and the Englishness of English Law’, to mark the centenary of Maitland’s death. His volume of the Oxford History of the Laws of England, the earliest, appeared in 2012. He is currently working on comparative studies of legal development in Europe 950-1250, and also on papers to mark the octocentenary of Magna Carta in 2015.

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