CONCLUSION

THE LONG HIGH MIDDLE AGES

In the introduction, I advanced the hypothesis that the period between the second half of the thirteenth century and the Norwegian Law of 1687 was characterised by significant continuity in legislation and legal practice in regards to the criminalisation of sexual acts, punishments, and gender equality under the law. The empirical analysis presented above supports my initial hypothesis. Consequently, the traditional view of a break at the time of the Reformation needs to be dismissed.

Old and New

When the political elite finally accepted Christianity in the eleventh century, the lawthings agreed to new rules regarding daily life, belief and morals, and changes that also included new norms for sexuality. First, prohibitions of incest, bigamy, sexual activity on certain days of the week and year, and bestiality were introduced.¹ At the same time that these sexual acts were criminalised, the principle that these acts were also sinful and needed to be atoned for by doing penance was formulated in the Christian laws. Criminalisation implied that the individual became liable to prosecution. This amalgamation of crime, sin, and individual liability to prosecution, occurred already during the eleventh century. A more thorough revision of the Christian laws took place during the second half of the twelfth century, in all likelihood with Archbishop Eystein as its driving force. The development can be traced in the Old Christian Law of the Frostathing and in the Magnustext of the Old Christian Law of the Gulathing. Additional sexual acts were criminalised, for example homosexuality in the Magnustext of the Old Christian Law of the Gulathing and adultery and fornication in the Old Christian Law of the Frostathing. Finally, the younger Christian laws

¹ See chapter 3.
of around 1250 decreed the criminalisation of the complete spectrum of extramarital sexuality for the entire country.

Criminalisation led to sentences, commonly fines payable to the Church, sometimes also to the Crown. During the second half of the twelfth century, the number of crimes punishable by outlawry increased. In addition, rules for *landsvist*, a system under which an outlaw could buy back his life from the Crown, were included in the Christian laws sections in the *Old Law of the Frostathing*. The conflict between King Sverre and the Church about the level of fines due to the archbishop in cases under Christian law, points to a certain implementation of these laws by the late twelfth-century. As documentary evidence shows, public authorities collected fines for adultery by the end of the thirteenth century. Regarding the question of gender equality in law, both high- and late medieval and post-Reformation legislation treated men and women as equals in the same categories of sexual crimes, although in practice it was mainly men who were charged and sentenced. Finally, it should be stressed that there is continuity in the principle of publicity for the formalisation of betrothals and marriages in the legislation of the High Middle Ages and that of the post-Reformation period. Yet again, in practice it appears to have been difficult for these ideas to gain general acceptance, all the way from the Middle Ages until long into the eighteenth century.

During the High Middle Ages, substantial changes were made concerning the civil law aspects of sexuality. The *Landslaw* of 1274 prohibited revenge killings in cases of adultery and fornication, replacing them by compensation to the woman’s family as the only accepted resolution. Consequently, the sources allow for the assertion that the high medieval state introduced a novel and comprehensive concept of criminalisation and punishment, a point long made by Norwegian medievalists, in particular Knut Helle. Steinar Imsen describes a similar development for dealing with manslaughter, and Sverre Bagge supports this view based on his analysis of the *King’s Mirror*. The *Landslaw* introduced yet another change to the civil law aspects of sexuality. Unmarried women

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2 This is the topic of Imsen, *Norsk bondekommunalisme*. Bagge, *The political thought*, p. 84 writes: “[…] as an element in the transformation of society by the monarchy, a new view of crime and punishment is to be given practical effect, the king and his representatives are to assume responsibility for, or at least control, the execution of punishment or vengeance which for the most part had previously been the domain of individual groups of kinsmen.”