PARTIES TO COURT ACTIONS IN SAGA AGE ICELAND (930-1030AD)

VOLUME I

by

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PHD THESIS

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ABSTRACT

This study considers the legal and practical factors affecting the right and ability of individuals in Saga Age Iceland (930-1030AD) to prosecute and defend court actions. It is based on 118 law suits in historical sources and family sagas about the Saga Age which are listed in the Appendices, 96 being outlined in detail and 78 of these being included in Summary Tables.

The 12th century laws of Grágás are used as a base for the study of the formal law in the law suits, as there was probably little major developement in the law between the end of the Saga Age and the writing of Grágás, although it cannot be relied on for details of Saga Age law. The formal laws concerning parties to court actions are considered in terms of the responsibility for law enforcement and the duty to prosecute, financial, social, mental, age and sex restrictions on who could appear in court, the right to transfer a suit, and the variations in rules between different courts.

The practical problems faced by litigants because of abuses of the law by other litigants are considered, including the use of force and violence, abuse of legal process and of trust by goðar, pursuit of suits relentlessly to the limit of the law, and acquisition of unjustified wealth by helping others with their suits.

The final chapter summarises the evidence for individual equality and independence in prosecuting law suits, and considers some of the historical background to the apparently relatively high degree of concern for the individual in early Iceland. The legal equality and independence of males in litigation is shown to have been quite high, although the practical problems an individual could face severely reduced this, and females appear to have been more restricted in their rights.

WITH LAWS SHALL OUR LAND BE BUILT UP

BUT WITH LAWLESSNESS LAID WASTE

Njáls saga ch. 70

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PREFACE

In May of 1979 Iceland lived up to its name. Snow still lay in mounds at Akureyri. Freezing winds chased me off the slopes behind Hveragerði and drove the biting dust down the gorge at Gullfoss, considerably detracting from the beauty of the waterfall. I was told that such winds could sand blast a car in minutes in the interior. Long cups of coffee over a newspaper and swims in the open-air heated pools were more than welcome retreats from the severe outdoors! It was unusually cold weather for the time of year, with sheep having to lamb indoors, but it was nevertheless an apt introduction to the bleakness of the country - at that time of year there was nearly 24 hours of light; such weather in 24 hours of darkness must require great hardiness of character indeed! And for the early settlers without modern comforts it must of course have been that much worse. "Forests" of trees years old, but still only inches high, and vast expanses of rough lava further emphasized the difficulties of the land. Yet it is a country which developed complex laws, a unique political system, and a great literature during its early history.

Knowledge of these developments adds a sense of romance to a visit to Iceland, whether standing at the Law Rock at Þingvellir, the scene of many memorable incidents in the sagas, or sitting looking over the plains where Njáls saga was enacted, or visiting Skálaholt, the home of Gizurr the White, or sitting in Austurvöller Square, thought to have been the homefield of the first settler Ingólfr Arnarson, or walking down the valley of Eyjafjǫrðr, the home of Helgi the Lean, Víga-Glúmr (Killer Glúmr) and Guðmundr the Mighty.

Place names are a constant reminder of the early history, with few changes in over 1000 years, and even the early legal tradition is still preserved on police cars, whose insignia reads "Með Lǫg Skal Land Byggja", with law shall the land be built up, a quotation from Njáls saga.

And in spite of itself it is a beautiful country, with high snow capped mountains, deep cut fjords, spectacular waterfalls, hot springs and geysers, unusual lava formations, and of course the ever present sea surrounding the island. It is not difficult to understand how the early settlers were attracted to this unihabited land in the years following 874AD. By 930AD it was fully settled, primarily by Norwegians who were used to a harsh climate. The society they established was a rural one, based on well spaced out family farmsteads, with no towns or villages. This lack of communal living is perhaps all the more remarkable given the adverse natural circumstances. Large gatherings of people did, however, take place at the 36 to 39 local spring assemblies (várþing) and autumn meetings (leið), and at the one National Assembly in June, the Alþing, all of which were established very early in Iceland's history, probably in 930AD. At these meetings most of the country's legal, political and constitutional business was carried out, under the supervision and direction of the 36 to 48 goðar, who were the only rulers the country knew. Every person was required to affiliate to a goði, but independent farmers were free to choose whichever one they wished. The country was not subject to any foreign king, and had no central monarch or autocratic ruler of any kind. It was thus quite unique in Dark Age Europe, where the trend was to ever increasing centralisation

of government under kings. Indeed, a conscious reaction to such developments in Norway may have been one of the factors which led to the settlement of Iceland (see below, chapter 5).

This independent country, known as Commonwealth Iceland, was to survive until 1262, when it finally submitted to monarchical rule under the king of Norway. During its existence it was to develop a very rich literature, partly historical, partly legal, partly religious. But the most notable feature of their literature was the saga, which made the first 100 years of Iceland's settled history (930-1030AD) famous as the Saga Age. In addition to being vivid accounts of life in the 10th century, many of these sagas are great literary works - indeed it is difficult to know where the line between history and literature is to be drawn (see further below chapter 1, part B).

Early Iceland has therefore attracted both the political historian, intrigued by the unique constitution, and the literary scholar, fascinated by the rich literature. But from early in their history Icelanders also showed themselves very concerned with legal matters, from the introduction of laws and a constitution with Úlfljótr's code in 930AD, to the decision to remain subject to one set of laws in 1000AD with the official adoption of Christianity, to the writing down of the laws in 1117-1118AD. This concern with law is reflected in the literature, both in rich legal detail in the sagas and in extensive legal codes. Commonwealth Iceland has thus also drawn the attention of legal historians, and it is to the law of the Saga Age that I direct my attention in this thesis. The issue which attracted me was the extent to which this interest of the early Icelanders in law reflected a concern for the rights of the

individual. This can in part be answered through the study which I have undertaken here of parties to court actions, including the rules which governed them and the difficulties they faced, from the viewpoint of the equality and independence of access to court.

For the reader new to the history of Commonwealth Iceland who desires further background, general histories can be found in Jón Jóhannesson, A History of the Old Icelandic Commonwealth* and Knut Gjerset, History of Iceland.* For an introduction to the period during which the literature was written down see E.Ó. Sveinsson, The Age of the Sturlungs.* But to get a real flavour of Saga Age Iceland and its people it is best to read one or two of the sagas themselves. Several are conveniently available in English in Penguin Classics (Egils saga, Laxdæla saga, The Vinland Sagas, Njáls saga, Hrafnkels saga) and in Everyman (Egils saga, The Saga of Gisli, The Saga of Grettir the Strong, The Story of Burnt Njal).* All of these make good reading, although they are of varying worth as historical sources (see further below chapter 1 part B).

No convenient introduction to Iceland's law exists in English, outside the general histories already mentioned. Extensive tombs are available in German, particularly the work of Konrad Maurer,* and the Danish work of Vilhjálmur Finsen* is also valuable, although all make heavy reading.

I should like to thank my supervisor Dr. A.P.Smyth, who was always ready with help and advise when needed, but who also gave me the considerable freedom and independence to do as I wished which has made my work on this thesis so enjoyable. I should also like to thank Professor Peter

* See the Bibliography, below p. 223, for full references

Foote for his considerable assistance, particularly in making available in manuscript form an English translation of Grágás. The prompt and accurate typing of Jo Parker has been much appreciated. I am also much indebted to my husband Tay Wilson for his encouragement and support, and for allowing me all the time I wanted to complete this work.

ABBREVIATIONS

W	Law Suit, West Quarter	(see Appendices I and III)
N	" " North "	
E	" " East "	
STH	" " South "	
S	Landnámabók, Sturlubók	(see Bibliography, Landnámabók, for full references)
H	" Hauksbók	
M	" Mélabók	
Þ	" Mélabók (Þórðarbók)	

V&P Vigfusson & Powell, Origines Islandicae, 2 volumes, noted as V&PI, V&PII (see Bibliography for full reference)

Finsen Ia, Ib, II and III refer to the standard editions of Grágás, with page reference, then chapter. See Bibliography under Grágás for full references.

GLOSSARY

Commonly Occurring English Translations

Assembly, þing: a public meeting, generally dealing with political and legal matters.

Spring Assembly, várþing: There were 13 spring assemblies, 3 in each quarter except the north, which had 4. Three goðar were responsible for each spring assembly, which was a legal, political and social gathering for the area, held annually before the Alþing. Many of the law suits considered in this paper were brought to a spring assembly, see Table IX in vol. II, also vol. I, ch. 2, p. 80 and ch. 3 p. 152. A list of the spring assemblies can be found in Dr. F. Boden, "Die isländischen Häuptlinge", Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte, vol. 24 (1903), p. 181-91, with his list of goðar.

Autumn meeting, leið, pl. leiðir: Such a meeting was held in each assembly area, to report on the business at the Alþing, and transact other business of the area. It was not a meeting to which law suits were brought. See Finsen III, p. 638, leið.

Assembly attendance dues, þingfararkaup: These were paid by people who did not attend an assembly to those who did. See below, vol. I, ch. 2, p. 66.

Assembly participant, þingheyjandi: See below Vol. I, ch. 2, p. 65-69.

Confiscation court, féransdómr: This was a court held after a person had been outlawed, at which all his property was assessed, confiscated, and distributed. See below vol. I, ch. 2, p. 73, ch. 3 p. 127-8. Finsen Ia p. 83-94, ch. 48-54, p. 112-116, ch. 62, p. 118-119, ch. 67, p. 120 ch. 69.

Freedman, leysingi: A slave who had been freed. See below vol. I ch. 2 p. 70, ch. 3 p. 117-120. See also Finsen III p. 710 (þræll).

Lawspeaker, logsogumaðr: A public official appointed for a three year term, responsible for reciting the laws at the Alþing. See below vol. I ch. 2, p. 52, ch. 3 p. 103-106. See also Finsen Ia p. 208-10, ch. 116.

Murder, morð: A secret killing, not acknowledged by the killer, a more serious crime than the far more common manslaughter. Only one example occurs in the law suits considered below, and that is E8. See Finsen Ia p. 154, ch. 88.

Outlawry: Lesser, three year outlawry, fjorbaugsgarðr:
Lesser outlaw, fjorbaugsmaðr.
Full outlaw, outlaw for life: skogarmaðr.
Sekr (adj): A difficult word which is interpreted

to mean both outlawed and sentenced. See for example below, vol. II, law suit W17 outline, Comments. But it seems generally assumed to mean a person was outlawed when there was no further qualification of the word; see Lúðvík Ingvarsson, Refsingar á Íslandi á Þjóðveldistímanum, Reykjavík, 1970, p. 94, and Konrad Maurer, Altisländisches Strafrecht und Gerichtswesen, Leipzig, 1910, reprinted 1966, p. 154-157.

Primary prosecutor, aðili, sóknaraðili: The person with the first right to prosecute a law suit. See below vol. I, ch. 2, p. 58. See also Finsen III, p. 579, Maurer, Strafrecht, p. 461.

Primary defender, varnaraðili: The person with the first right to defend a law suit. See Finsen III p. 581, Maurer, Strafrecht, p. 461.

Quarter, fjórðungr: Iceland was divided into four for political and legal purposes, the west, north, east and south quarters. The division occurred in about 963AD, and was carried out by Þórðr gellir. See Íslendingabók ch. 5, and below vol. II law suit W14.

Icelandic Words Retained in the Text.

Alþing: The annual General Assembly for Iceland, a political, legal and social gathering. It was held in June at Þingvellir in the south west.

bóndi, pl. bœndr: A farmer, see below vol. I p. 65-6. (Also means husband, but it does not occur in this sense in this paper.)

goði, pl. goðar: There were 36 of these men in Iceland, later 39 (963AD), later still 48 (1004AD), with 9 in each Quarter (12 in the north after 963AD). Every person in Iceland had to affiliate to a goði; a bóndi was entitled to choose his goði, and to change this affiliation once a year; the rest of his household took the same goði as the bóndi. These men affiliated to a goði were his þingmenn. The political and legal system was based on the goðar. They sat on the Law Council (Lǫgrétta) which determined the law of the land, appointed the courts at the Alþing and spring assemblies, and generally were overseers of all the political and legal processes. (See Finsen III p. 617 goði). They were also the guardians of law and order in their own districts, which included helping their þingmenn with their legal problems; the extent to which they did so in the 10th and early 11th centuries is one of the subjects of this paper (see below vol. I ch. 2 p. 54-56, ch. 3 p. 102, p. 133, ch. 3 p. 146, ch. 5 p. 214-216). Concerning their role in the 12th century see Gunnar Karlsson, Goðar og bændur, Saga X (1972) p. 5-57 (an English summary of his findings appears as "Goðar and Höfðingjar in Medieval Iceland", Saga Book of the Viking Society, vol. XIX (1977), p. 358-370). The exact identity of all 36 to 48 goðar at any particular time in Iceland's history is not easy to determine, although particular goðar are often identified in the sources; some have goði suffixed to their name; some are said to have

held a goðorð; and others to have had þingmenn. There are also extant three lists of leading men at three different times in Iceland's early history which are often assumed to be lists of goðar, although none of the three claims to be this. The first is a list of the leading settlers, found in Landnámabók, Sturlubók ch. 170, 262, 335 and 397, and Hauksbók ch. 354. The second in a list of the leading chieftains (hǫfðingjar mestir) in the land after the land had been settled for 60 winters (ie 930AD, but many of those listed were unlikely to have been influential until 950AD or later. For example, Þórðr gellir and Tungu-Oddr died in the late 960's, Eyjólfr Valgerðarson about 983AD, and Egill Skalagrímsson in his 80's in about 990AD). This list is found in Landnámabók, Sturlubók ch. 398, Hauksbók ch. 355. The third list is of the strongest chieftains (stœrster hǫfðingjar) in the land when Bishop Frederick came to Iceland about 981AD, and is found at the beginning of Kristni saga (V&PI p. 376-7). A useful list of goðar compiled from all all these sources can be found in Boden, "Die Isländischen Häuptlinge", p. 148-210.
The term goði is often translated "chieftain", as is hǫfðingi. This seems in part based on the assumption sometimes, but not always, made explicit, that the two terms are synonymous anyway, an assumption which I believe has not received sufficient investigation. The identification of goðar from the two of the lists mentioned above also depends in part on this assumption.

goðorð: the power and authority held by a goði, and perhaps also the community or group of which the goði was head (see ch. 5 p. 212, note 18).

heimamaðr, pl -menn: An employee of a householder.

hreppr, pl. hreppar: A local welfare organisation. See below vol. I ch. 1 p. 33, ch. 2 p. 62.

hreppssóknarmaðr, pl.-menn: Men who enforced the law of the hreppr, see below vol. I ch. 2 p. 82.

hǫfðingi, pl. hǫfðingjar: Chieftain, influential man, sometimes assumed to be synonymous with goði, see above, goði.

landnámsmaðr, pl.-menn: Settler of Iceland during the period 870-930AD.

lýsing: A publication or notification, a method of commencing a law suit as an alternative to a summons. The notice was given at the Alþing at the Law Rock. See below, vol. II, law suit STH11 outline, "How Commenced" and the references there.

nýmæli: A new law. This word often appears opposite clauses of the law in Grágás, indicating that the provision is relatively young

þingmaðr, pl. -menn: See above, goði.

CHAPTER 1: INTRODUCTION

INTRODUCTION

This study deals with the legal and practical factors affecting the right and ability of individuals in Saga Age Iceland (930-1030AD) to prosecute and defend court actions. The topic is considered from three different viewpoints,- what the actual rules were (Chapters 2 and 3), the extent to which Icelanders showed themselves to be law abiding citizens by complying with the rules (Chapter 4), and the the social implications, particularly in terms of the equality and independence of the individual (Chapter 5).

The ability of an individual to get redress for wrongs done, or to defend himself when charged against all other individuals in any situation, through recognised and accepted dispute resolution procedures, is of fundamental importance in assessing social relationships in a society. The importance of the ability to do so in court depends to a large extent on the alternatives available and the relative importance of court procedure to them. This is the first issue dealt with in this Introduction (section A). Section B considers in some detail the sources used, including assessments of their historical reliability and their relevance to the Saga Age. This is followed by a short description of the law suits (section C), which are the main source material for the discussions in Chapters 3, 4 and 5 of this study. The Introduction concludes with a brief note on references (section D).

A. The Importance of Court Action as a Dispute Resolution Procedure in Light of the Alternatives Available

The major alternatives to court action in early Iceland were violence and settlement. As we shall see, both played their part in the resolution of law suits, but they were also used independently of law suits to resolve disputes.

One way of assessing the relative importance of these procedures is to count how often each was used. Andreas Heusler found in the sagas 297 "vengeance deeds", 104 cases submitted to arbitration, and 119 court actions. Of the court actions he found 9 stopped by violence and 60 settled,

with 50 being decided in court.[1]

These figures suggest that violence played a rather disproportionate part in the resolution of disputes and that physical strength could be of greater importance than justice. This finding agrees well with the role violence played in law suits themselves as discussed below (Chapter 4). However, the large percentage of cases which were taken to court also seems notable. A certain percentage of people will always react violently to a wrong done them and settlement on both an informal and formal basis is normally sought (at least in civil matters) before the adversary situation of court is resorted to. A lawyer in the modern world would not be seen to be doing his job properly if he pressed on with expensive legal proceedings without making extensive attempts to settle first, but court action remains the ultimate right and sanction.

In considering the importance of the large numbers of examples of the use of violence in dispute resolution we must also consider the attitude of society to violent resolution of conflict, the extent to which violence did achieve settlement of disputes, the legal status of resort to violence, the availability of it to ordinary men, together with the situation and factors associated with the use of violence.

Legal Killings

As is pointed out below (p.76-7 p.132 and p.147), in certain situations a person was entitled to kill another in direct vengeance for some wrongdoing. In such situations the original offence was a full defence in any court action which might be brought for the killing. This type of violence is also permitted under modern English law in certain situations - one is entitled to use appropriate force to defend oneself.

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[1] Andreas Heusler, Das Strafrecht der Isländersagas, Leipzig, 1911, p. 40. For a discussion of reservations concerning the historical reliability of the sources on which these findings and the remainder of this Section are based, which are the same sources used in this study, see Section B.

The right appears to have been more extensive under Icelandic law, a husband being, for example, entitled to kill someone he found having sexual intercourse with his wife. These differences reflect both differences in values, and the lack of a police force to apprehend offenders.

But we will also see that it may have been required that where a person claimed to have killed another legally, he had to bring a court action against the dead person for the offence for which he was killed. The law suits suggest that such charges were not always brought, but the existence of the rule indicates a feeling that in all cases the court was regarded as the place where disputes were finally resolved, and that disputes should not be seen to end in violence.

Hólmgang

Another form of violence which enjoyed considerable legal recognition was the duel, or single combat (hólmgang or einvígi).

Bø[2] has summarised the theories concerning the legal nature of the single combat in Iceland under three headings.

1. It was like an ordeal, and its outcome had the force of evidence.
2. It was used to decide a case where the normal legal process had broken down.
3. It had no sanction in law whatsoever.

These categories do not, however, cover all the legal issues relating to single combat and seem further to be relevant only to challenges issued in the context of a court action.

[2] Olav Bø, "Hólmgang and Einvígi: Scandinavian Forms of the Duel", Mediæval Scandinavia, 2 (1969), p.136-7.

The most basic issue is whether the single combat was legal - were there any penalties for taking part in a duel? Was it necessary to pay compensation for death or injury inflicted in a duel? Could a person be outlawed for taking part in a duel? Until the early part of the 11th century the answer to all these questions, for both Iceland and Norway seems to be no. There appear to be no examples in any of the sources of penalties or compensation resulting from participation in duels. The sagas tell us, however, that early in the 11th century the practice was made illegal in both Iceland and Norway, in Iceland about 1006 by the Alþing after the duel between Gunnlaugr and Hrafn (Gunnlaugs saga Ch. 11)[3] and in Norway by Earl Eiríkr before he left for England to support King Knut, i.e. probably in 1015 (Grettis saga Ch. XIX).

After the abolition a hólmgang took place in Valla-Ljóts saga, but court action over the killing in it was taken and compensation paid, in other words, it was treated like any other manslaughter.

The second issue is what the role of single combat was in the settlement of legal disputes, the issue with which Bø's categories are concerned. The first point to be made is that the use of single combat was not restricted to legal disputes. All the sources seem to agree that both in Norway and Iceland challenges could be made for things to which the challenger had no legal claim.

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[3] Full references to the sagas will be found in the Bibliography under their individual names. Chapter references are normally given according to the Íslenzk fornrit editions, but if this does not exist, they are according to the first editions named in the Bibliography.

> It was considered a scandal in the land [Norway] that pirates and berserks should be able to come into the country and challenge respectable people to the hólmgang for their money or their women, no weregild being paid whichever fell. Grettis saga Ch. XIX (see also Gisla saga Ch. 1 and 2, Glúma Ch IV). It was duelling law at that time that if a man challenged another in any matter and the one who issued the challenge won the victory, then his due as victor was whatever the challenge had been made for. Egils saga Ch.64.

The use of hólmgang in early commonwealth Iceland suggests that there too, challenges could be issued without a legal claim. There are several examples in Landnámabók of challenges by new settlers for land of those already there, not backed by any special claim to the land (S70/H58; S326/H287; S389/H343; S86/H74 and Eyrbyggja, Ch.8; H346; S325/H286).[4]

Challenges for, or concerning, women are perhaps the most common type mentioned in the sources, particularly in Norway. These involved not only berserks, but also more legitimate suitors and the relations of the women. Again there is seldom any legal claim involved, only frustrated hopes or sentiments of honour (Gisla saga Ch. 1 and Ch. 2, Glúma Ch. IV, Egils saga Ch. 64). The hólmgang in Gunnlaugs saga between Gunnlaugr and Hrafn in Iceland came about because Hrafn married Gunnlaugr's betrothed. Gunnlaugr had no legal claim as the three year period he had set for the betrothal had expired before Hrafn married her, but nevertheless Gunnlaugr felt badly treated:

> You know that you have taken my own betrothed and shown yourself no friend to me, and now, for that, I want to challenge you to a duel here at the Assembly, to be on Óxará Islet after three days respite.

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[4] In Citations of Landnámabók S refers to Sturlubók, H to Hauksbók, the two main manuscripts used in the Íslenzk fornrit edition. For full details see the Bibliography under Landnámabók.

The saga further explains:

> it was legal at that time for a man who thought himself to be unfairly dealt with by another to issue a challenge.

Hó͡Imgang was not resorted to very often in law suits, but when it was it seems to have been used in the spirit of this last quotation. In Egils saga we have a specific statement of the right to resort to a duel in law cases in Norway. Egill found he was not going to get what he considered a just decision from the court:

> When Atli went to the courts with his oath-swearers Egill went to meet him and said that he was not willing to let these oaths be set against the property. 'I wish to offer you a different law, namely that we meet in a duel here at the Assembly, and let the one who gets the victory have the property'. It was valid law that Egill cited, and an ancient custom that any man had the right to challenge another to a duel whether he was defender or prosecutor. (Egils saga Ch. 65).

Occasional references in the law suits suggest that this law may have been imported to Iceland and used in a similar way, to attempt to avoid an unjust court judgement. There is, however, only one example in the main group of law suits considered in this paper (see Appendix I), and that is in N18[5], a law suit from Ljósvetninga saga which probably occurred in 1014 or later, and thus well after the abolition of hólmgang Other examples occur in Vatnsdæla saga (Ch. 33 lawsuit N33), Kormáks saga (Ch. 21, law suit N43), Hall͡freðar saga (Ch. 10 lawsuit N44) and Njáls saga (Ch. 8 law suit STH 11 and Ch. 60 lawsuit STH 14).

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[5] The law suits are listed in Appendix I according to the Quarter in which they occurred, and the numbering system refers to this. Thus N18 refers to lawsuit 18 in the North Quarter. The other abbreviations are E for East Quarter, STH for South and W for West. For further discussion of the law suits used see below p 47 .

As Bø argues, these examples provide little evidence that the hólmgang was used in law suits like the ordeal, its outcome having the force of evidence. Rather, if one party felt he was not getting a just decision by legal means, he might challenge his opponent to a hólmgang. As Bø rightly points out, the process was always initiated by the parties, not by any court official, and there were certainly no formal rules to bring it into effect[6]. But nevertheless, it seems to have been at least an occasional last resort for getting justice in legal cases and therefore played a part in the legal process[7].

In this regard it has been pointed out as significant[8] that the banning of it in about 1006 was related to the institution of the Fifth court in 1004, which provided a legal appeal procedure in some cases, thus providing parties another opportunity for gaining justice where the legal system had frustrated it[9].

The third legal issue with respect to hólmgang is its legal effect. Did the victor acquire legally enforceable rights? It is one thing to say two people should be allowed to fight if they wish, without legal penalty, it is another to say that the terms they agreed in advance would be recognised as valid and enforceable by the rest of society.

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6 Bø op cit, p.137

7 Sigurður Nordal and Guðni Jonsson, Íslenzk fornrit Vol III, Reykjavík 1938, p.93 note 2.

8 Konrad Maurer, Altisländisches Strafrecht und Gerichtswesen, 1966 reprint p.709-10; Felix Wagner "L'organisation du combat singulier au Moyen Age", Revue de synthèse XI (1936), p.59.

9 See Grágás, Konungsbók Ch.44, Finsen Ia p.77-78 for the situations where this appeal procedure could be used.

In Egils saga it is stated concerning the law in Norway:

> It was duelling law at that time that if a man challenged another in any matter and the one who issued the challenge won the victory, then his due as victor was whatever the challenge had been made for. If he were defeated, he was obliged to ransom himself by an agreed sum. But if he fell in the duel, the fight lost him all his possessions, and the one who had killed him in the duel inherited from him. Egils saga Ch. 64,

Payment of a hólmgang ransom is mentioned in Gísla saga in reference to a duel in Norway, Ch.(2), twice in Kormáks saga, once with reference to a duel in Norway, once with one in Iceland (Ch. 1 and 10) and in Glúma with reference to a duel in Norway. In Egils saga Egill was able to take possession of his wife's inheritance which he won by a duel(Ch. 65). He was unable to collect the property of the berserkr he killed for Gyða (his wife's 1st cousin once removed), but only because the King had taken possession of it and was not well disposed towards Egill. Both Egill and Arinbjǫrn (Gyða's brother) treated it as his legal right. There are few other examples of resistance to the claims of successful duellers. In Gísla saga

Gísli (an uncle of the hero) was able to prevent a berserkr, Bjǫrn, taking the wife of his brother Ari, whom Bjǫrn had killed in a duel in Norway, but only by challenging him to another duel and succeeding (Ch. 1). In Njáls saga Mǫrðr Fiddle lost a suit against Hrútr because he did not accept Hrútr's challenge to a duel (see law suit STH 11). Later in the saga it is stated that the law suit could be revived despite the challenge. It is arguable that, in law suits at least, a challenge to a duel could only affect legal rights if it was accepted, although this does not fit in with other uses of the duel and would also have meant that Hrútr, who refused to fight Gunnar after the revival of the suit, could also have brought a suit for the money he paid over after the challenge. But perhaps he

forfeited this right by his original challenge to Hrútr, which proved his willingness to have the matter decided in this way. It is also possible of course that the author of the saga did not faithfully reproduce the rules of hólm-gang here, twisting them somewhat for his own literary purposes[10]. Later in the saga he has Gunnarr issue another challenge against Úlfr in a suit which Ásgrímr was losing against him due to a technical flaw

> I shall challenge you to single combat, Úlfr Uggason, if people are not to get their just rights from you. Ch.60.

Úlfr did not fight, and paid the claim, there being no suggestion this time that he could do anything else about it.

In the land claim cases in Landnámabók one was indecisive and the parties were later reconciled (S70/H58), in a second the challenged person refused to fight and moved away (S326/H287) in a third he chose, it would seem, an exchange of land (H346) and in two further cases the challenger killed the other person and moved onto his land, (S389/H343; S86/H74, M26 and Eyrbyggja saga Ch. 8). It is probable that in both these latter cases the descendants of the killed person retained some portion of his land. This is quite clear in the case of Hallkell who killed Grímr who lived at Búrfell. Hallkell is not said to have taken over Búrfell and Grímr's grandson Þórarinn is said to have been of Búrfell[11]. The other case in which Þórólfr bægifótr was the challenger is less clear. According to Eyrbyggja he fought and killed Úlfarr, who was old and childless, and who had received his land from Þórólfr's

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[10] Concerning the reliability of Njála, see below p. 41-42

[11] S389/H343, S388/H342, and Jakob Benediktsson, Íslenzk fornrit Vol I, p.388, note 1

uncle. But in Mélabók Ch. 26 he is said to have been an original landnámsmaðr and the father of Vébrandr, father of Þorbrandr of Álptafjǫrðr. (Sturlubók 86 and Hauksbók 74 call Þorbrandr's father Þorfinnr, the son of Úlfarr's shipmate Finngeir). Eyrbyggja Ch. 8 tells us that after the fight Þórólfr took over all of Úlfarr's land and sold some to the freedmen Úlfarr and Ørlygr. Sturlubók and Hauksbók on the other hand say Þórólfr took only some of the land and the father of Þorbrandr, Þorfinnr, took the rest and settled Úlfarr and Ørlygr on it, raising the possibility, if we accept the Mélabók pedigree, that the heirs of the killed person received some of the disputed land.

These last two cases may well suggest that the only justification for these challenges for land was in the might makes right principle, and that in order to appease the heirs of the killed person the challenger took only part of the land (or gave some of it back!) which he had won in the duel. It is noteworthy that all these duels for land took place during the Age of Settlements, before Úlfljótr's legal code, and thus before a good court system is known to have been established.

Another reason why the successful parties in these duels for land did not assert what may have been their full legal rights may have been the public attitude to hólmgang as expressed in another instance in Landnámabók when a new settler, Hreiðarr, proposed to challenge Sæmundr for land. Havarðr, whom he was lodging with, "discouraged him saying that sort of thing always turned out badly", and sent him to see Eiríkr of Goðdalir, "who was against any fighting and said it was absurd for men to quarrel when the land was so thinly populated" (S197/H164). Thus, although perhaps recognised as a legal

right, challenges for land may not have been considered reasonable behaviour. Therefore when a person chose to use the method to get land, in order not to be totally ostracized by his new neighbours and to avoid further conflicts, he may have found it useful to take only so much land as he could reasonably use, leaving the rest to the heirs of the person killed - such "generosity" may have been sufficient to appease public opinion.

There thus seems reason to believe that hólmgang was a legally acceptable method of settling disputes in early Iceland, and must therefore be taken into account in any assessment of individual ability to assert legal rights. Whether it could seriously be argued that it was of any widespread practical value to the ordinary person in enforcing his legal rights is another matter. It could work for a person with little power because of the concept of honour - to refuse a challenge meant a loss of face, and thus too to meet a challenge with a show of force in numbers appears not to have been done. Therefore it should have been a useful procedure against a man with a large following, willing to use his power to block the claims of others. But of course, it did have one flaw, namely that the challenger could as easily be killed as the challenged person, and this not so insignificant deterrent no doubt prevented the procedure from becoming a major weapon for the assertion of rights by the little man. The successful party in addition would have to be prepared to meet other challenges, so that his risk was not necessarily restricted to the one fight. It seems more probable that it was, as Bø argued, "an expression of the heathen

and viking view of power and of the might is right philosophy".[12] The powerful people with experience and skill in battle, and good weapons, might find it useful, as well as professional or habitual fighters, but not the ordinary man who spent most of his time and money on farming or fishing.

In addition, having established a claim in single combat, in order to enforce the claim, if the opposing parties did not submit willingly, the ultimate legal method, aside from further hólmgang, was a court action.

Other Uses of Violence

Outside of hólmgang and the cases in which a killing was permitted in revenge for another wrong-doing, there seem to be no cases in which violence was permitted as a legal method of settling disputes. Clearly, violence did occur, but it was seen as a disruption of the social and legal order which society did not condone, it often involved one particularly unruly character and was frequently associated with local power struggles, as will also be noted in relation to the use of violence in law suits, (below, Chapter 4). Nor did it normally achieve a resolution of the dispute. Instead it generally led to an ever increasing escalation of the dispute, until it had finally to be resolved by some other means, either settlement through conciliation, arbitration or self judgement, or in court.

A consideration of the main disputes and uses of violence in Vápnfirðinga saga will illustrate some of these points. This saga revolves primarily around the personal conflicts of two goðar[12a] in the East Quarter, Brodd-Helgi and Geitir,

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[12] Bø, op cit, p. 136

[12a] For a discussion of this term, and the related term þingmaðr see the Glossary.

which led to a power struggle between them and dragged in all their followers, and their children. Their quarrel began with the arrival of a foreign merchant Hrafn, who refused the trade and hospitality of Helgi, but accepted that of Geitir. The merchant was later secretly killed, no action for this ever being taken because the exact identity of the killer was not known. The saga hints, however, that Helgi and Geitir conspired to kill him in order to get their hands on his wealth. They were foiled in their design by Þorleifr the Christian, who broke into Geitir's storehouse and took all the property onto his ship. This was illegal, as the saga suggests that the property belonged to the merchant's host, but Þorleifr refused to give it up. It was suggested that violence be used to enforce the law, but Geitir counselled against it. When Þorleifr returned to Iceland Helgi considered legal action, but decided against it because Þorleifr no longer had the property. Instead, he tried to get at him through a law suit for non-payment of temple tax, although this failed.(E3) Helgi felt humiliated by the whole thing, but did not use violence against Þorleifr. The saga then turns to the growing enmity between Helgi and Geitir which was fanned by a dispute over the few remaining goods of Hrafn the merchant, and by Helgi's divorce of his wife Halla, sister of Geitir. Geitir felt Halla had been badly treated, and brought an action for the return of her property, although she was happy for it to remain in the custody of Helgi. Helgi was able to use force to defeat the suit at court, although Geitir never resorted to force to attempt to get his way.(E4) A further source of conflict then arose in the dispute between two þingmenn of Helgi and Geitir, Þórðr and Þormóðr, over the use of a wood. Helgi took over Þórðr's property and his side of the dispute,

and proceeded to act in an extremely provocative manner. Geitir's response was to encourage Þórmoðr to commence a court action for the wrong done, which he proceeded to do (E5). However, Helgi attacked the summoning party and killed several of them, including Þórmoðr. He also did not allow the families of the dead to take them for burial, and Geitir had to resort to trickery in order to get the bodies. Until this point in the saga he did not use violence except in defence. Helgi is depicted as the disruptive character willing to flaunt the law to gain his own ends and gain power over Geitir, a rival goði. But Geitir's men finally reacted against this disruption of the power balance in the area, and urged Geitir as their leader to use violence to restore this balance.

> A lot of men are now leaving you, and are all drawn to Brodd-Helgi, and we reckon your timidity the only reason why you fail to tackle him. You are the sharper witted of the two and besides, you have no worse fighters on your side than he on his. Ch. XI.

On their urging, Geitir plotted the killing of Helgi and his son Lýtingr. A settlement for this was agreed at the local assembly and confirmed at the Alþing, and included payment of compensation and outlawry for some members of the expedition. Unfortunately, this settlement did not end the dispute, as Helgi's surviving son Bjarni was not satisfied. He first killed Tjǫrvi while he was preparing to move out of the district in accordance with the terms of the settlement. Geitir took no action, apparently in the hope that the families could now be reconciled and the feud ended. He and Bjarni apparently made friends, but under the influence of his step-mother Bjarni killed Geitir while visiting him, although he instantly regretted it. "This deed was strongly condemned and held most base in its execution". "In the spring the

householders did away with the local Assembly; they were not prepared to hold it,[12b] judging it hopeless to intervene between men who were involved in such great feuds". Clearly the use of violence in this case was seen as disruptive to the society, and not the manner in which proceedings should have been taken to resolve the situation. Geitir's son Þorkell then got involved on his return to Iceland. He made various plots to trap Bjarni, but all fell through until finally they met up, each with a large following, on their journey to the local assembly. A battle ensued which seems finally to have spent the fury of the feud, but still did not provide any permament resolution of the dispute. This was only finally achieved by a settlement. Bjarni became most conciliatory and, on the urging of his wife, Þorkell, too, agreed to talk;

> Once the kinsmen had a good talk together, they went into all their problems well and truly; and then Bjarni offered Þorkell atonement and the right to make his own award, declaring that he was anxious to meet Þorkell's wishes in everything from that day forth, for as long as the two of them lived. Þorkell accepted this offer, and they came together now in whole-hearted reconciliation. Þorkell awarded himself a hundred of silver for the slaying of Geitir his father and each granted the other peace and kept it faithfully ever after. Ch. 19.

The inadequacy of violence in resolving disputes, and the dislike of society for it, is also shown in the feud between the Þorlákssons and the Þorbrandssons in Eyrbyggja saga. Because of the animosities and tensions between them, both parties normally were armed wherever they went, with the result that small incidents could result in fierce fighting:

> Next morning there was a turf-game going on near the Þorbrandsson's tent. The Þorlákssons happened to be passing by, when a great lump of sandy turf came flying through the air and caught Þórðr blígr on the neck, hitting him so hard that he went head over heels. When he got back on his feet again, he could see the Þorbrandssons laughing at him. The Þorlákssons turned round with their swords

12b "Um várit tóku bændr af þingit ok vildu eigi hafa." It was apparently never held again (Íslenzk fornrit Vol. XI p. 53 note 4.)

> drawn and the two sides faced up to each other and started fighting. Several men were wounded, but no-one was killed. Steinþórr wasn't involved, as he was off somewhere else talking with Snorri goði. The fighters were separated, and people tried to arrange a settlement. In the end it was agreed that Snorri and Steinþórr should arbitrate, and their verdict was that the wounds on either side and the unlawful assault should cancel each other out, with compensation to be paid where things needed to be evened up. Ch. 41.

Despite this settlement, tempers continued high between the two parties. Two more major battles resulted, at Álptafjǫrðr and at Vigrafjǫrðr. In the first case peace-makers arranged a truce with a view to arranging a permanent settlement, but before this could be achieved the second battle broke out. As a result of this battle

> people of goodwill thought it a terrible thing if such great and close neighbours were to remain enemies and keep fighting one another; and so good men, friendly to both sides, tried to bring about a settlement between them. Vermundr the Slender acted as spokesman, and had the backing of a number of good-natured people, related to both parties. Eventually a truce was arranged between them and then they were reconciled. (Details of settlement given). Everyone honoured this settlement as long as Steinþórr and Snorri were both alive. Ch. 46.

Clearly, such violent means were not seen by society as acceptable for resolving the disputes between the two parties, and only served to escalate the dispute, not resolve it. Recourse to some other procedure, in this case, arbitration, in order to achieve either a temporary or permanent solution was necessary.

We do, however, have preserved in the Baugatal section of Grágás a procedure of compensation for killings which operated independently of court actions (Finsen Ia p.193-207, Ch.113-115). Under these rules compensation was paid by several degrees of the killer's family to several degrees of the dead man's family. However, it does not appear that where the procedure was used it was to be regarded as the only remedy available. It is provided that the prosecutor of the law suit

was to participate in these payments (baugr) only if he did not receive other compensation (réttr -Finsen Ia p.194 Ch. 113). Also, it is stated that the outcome of any manslaughter suit and the fate of the killer were to have no effect on the operation of this section (Finsen Ia p.194-5 Ch. 113). The Baugatal provision thus did not provide a full dispute resolution procedure in killing cases. The sagasalso provide little evidence that it was much used in any case. Indeed, it has often been suggested that it was an archaic provision never in force in Iceland[13], although this view has recently been challenged by Ingvarsson.[14] Be that as it may, the procedure made no provision for punishment of or revenge against the killer (he did not even participate in the payments), and the person closest to the dead person could expect a better reward from a court action or arbitration. These thus remained as the most important dispute resolution procedures in killing cases, and are so depicted in the sagas.

Secret Killing

Most of these examples of recourse to violence in disputes do not demonstrate a procedure available to the ordinary man. In most cases it was carried out by bands of armed men led by a goði or leading farmer. There was, however, a form of violent "justice" available to the individual, and that was secret killing using, in modern terms, guerilla type tactics, as opposed to an open battle. Gísli achieved revenge for the killing of his wife's brother in this manner, by sneaking

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[13] Ludvik Ingvarsson, Refsingar á Íslandi, Reykjavík, 1970, p.223-4 refers to some of these statements.

[14] Ibid p.223-245

into the killer's bed in the dead of night and killing him. (Gísla saga Ch. 16). However, the saga also demonstrates a major difficulty with the technique, and that is that secret killing was considered murder, rather than manslaughter, was frowned on by society much more than manslaughter, and the penalty was less likely to be mitigated through a settlement. Thus, once Gísli let slip his guilt in a poem, he was outlawed, and most of the rest of the story concerns his years spent as a hunted man, and his eventual killing (see law suit W22).

Although an individual might gain short term satisfaction from such a deed, once discovered he could be sure his enemies would pursue him, and either kill him, in which case his murder would be sure to be seen as a valid defence, or bring him to court, which brings us back to the point that the individual's rights rested ultimately on his ability to get justice in court. It is also not insignificant that to commit such a deed required an individual to act contrary to the ethics of the time in acting secretly. This in itself must raise doubts as to the viability of secret killing as an alternative for individuals.

Settlement

As the figures of Heusler cited above (p.2-3) show, disputes ended in settlement nearly as often as they did in court actions, and even a large number of court actions ended in settlement rather than judgement. Indeed, as we shall see (below p.108-9), parties to court actions were often encouraged to seek a settlement rather than push their suit to the full legal limit. A major difficulty with law suits was that the main, and in most cases only, sanction which a court could impose was outlawry.[15] If the parties felt that some form of compensation

[15] Cf Heusler, Strafrecht, p.123, 191

would be more appropriate than outlawry then they would favour a settlement. In addition, partly because of the harsh results of law suits, but also partly because of the adversary nature of court proceedings, a court action could lead to hardening of attitudes, greater animosity and thus escalation of the dispute rather than a solution. To the extent to which the goal was to reconcile the parties rather than reach a solution fully in accordance with the law, settlement often was more effective. In this sense it was very often the best dispute resolution procedure available. On the other hand it could mean that the party with the greatest legal right in the matter felt cheated, and wish he had insisted on having the matter decided in court on the legal merits. For example, in Egils saga (Ch. 81 and 82 law suit W21) Steinarr, the son of an old friend of Egill, brought a charge against Þorsteinn Egilsson. "To him his charges seemed legal", but he was nevertheless convinced by his father to transfer his suit to him to facilitate settlement. His father then gave Egill sole judgement. Egill, however, pronounced a very one-sided judgement in favour of his son , whereupon Steinnarr's father declared:

> Men will say, Egill, that this arbitration which you have laid down and declared is somewhat unfair. There is this to be said about me, that I have done my utmost to prevent their quarrels, but from now on I shall not hesitate to injure Þosteinn in any way I can. Eigla Ch. 82.

Heusler has even argued that a settlement was considered less honourable than a court action in which full legal rights were insisted upon[16].

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[16] Ibid p.42

A settlement could be reached in several ways. Immediately after an incident the wrongdoer or his representative might approach the injured party offering specific terms. This was the procedure used by Bjarni in the final stages of Vápnfirðinga saga, cited above (p. 16). He managed to induce his enemy to settle their differences, and they agreed terms between themselves. More often, he would offer the injured party self-judgement, or offer to submit to a settlement declared by third parties. Thus in Harðar saga Hǫrðr went to see the father of a man killed by his servant and offered self-judgement. The father refused saying he had already transferred the suit to another to be prosecuted[17]. Similarly in Hœnsa-Þóris saga Blund Ketill offered to allow two local goðar to settle the compensation for his dispute with Þórir over some hay, but again the offer was refused, and a prosecution resulted. We see an offer of self judgement by Bǫrkr whose wife had injured Eyjólfr when he announced he had killed her brother Gisli, being accepted by the injured man and apparently ending the dispute between Bǫrkr and Eyjólfr (Gísla saga Ch. 37, Eyrbyggja Ch. 13).

Settlement might also result from the intervention of outsiders who did not like to see the people quarrelling. We have seen this occurring in Eyrbyggja saga with varying success. Usually such intervention would result in arbitration by a panel of third parties, as in the settlement after the battle of Álptafjǫrðr, but sometimes a matter might be put in the hands of a single person, as was the settlement of the law suit over the killing of Kjartan in Laxdæla saga (Ch.50, law suit W26).[18]

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[17] Harðar saga, edited and translated (in part) by Gudbrand Vigfusson and F York Powell, Origines Islandicae, Vol II (Oxford 1905), p.66 hereafter cited as V & P II). See STH6.

[18] Cf Heusler, Strafrecht p. 74-78

A major difficulty with settlement as a dispute resolution procedure was that no one could be forced to submit to it. In two of the examples cited we have seen parties refusing offers of settlement, and pursuing their complaint in court. In other words, court action remained as a right if the person chose not to settle. Once they had agreed to a settlement, it was legally binding on them, but if they broke the terms the ultimate sanction was again court action. Further, a settlement could bind only those people who agreed to it. Thus in Reykdæla saga we see Skúta taking revenge for the killing of his father Áskell. There had been a settlement, but Skúta was abroad at the time (see law suit N29)[19].

According to Grágás, it was also necessary in killing cases and major woundings to get the consent of the Alþing for a settlement (Ia p.174 Ch. 98). Whether this was law during the Saga Age is not clear, as such consent is not normally mentioned with respect to settlements, nor is any penalty for not seeking such consent. It is, however, occasionally referred to, as in Vapnfirðinga saga Ch. 14 and in Glúma Ch. VII (law suit N1). We also see a settlement being announced at a local assembly, Þórsness, in Laxdæla saga (Ch. 50, 51, law suit W26) With regard to another settlement in Laxdæla it is stated that 1/3 of the compensation was held back, to be paid at the Alþing (Ch. 67), which could perhaps be seen as related to getting consent.

There is also no evidence that individuals had any greater chances of success in arbitration then in court action, as the

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[19] Ibid p. 96 for further examples

more powerful were able to exercise the same influence over settlements as we shall see them doing in law suits (below Chapter 4). It may be that the disputes of lesser folk were more often settled than submitted in court. This could have occurred in part because, if made an offer, they may have felt forced to accept it because they could expect no better in court, perhaps worse, and in part because the more powerful may have at times been willing to negotiate settlements on behalf of others but not been willing to commit themselves to the rigours of court action. Thus settlement may have been the most frequent dispute resolution procedure in which ordinary people were involved, but only because, as we shall see, they were faced with many practical difficulties in attempting to assert the ultimate right of court action.

In summary, no dispute resolution procedure independent of and parallel to court action appears to have been legally recognised in Iceland. One was normally entitled to take any matter to court if the outcome of some other form of resolution was not satisfactory. And if one wished to enforce the terms of any other form of resolution, it was also necessary to do so in court. Of course, people did regularly use other methods, including violence, which in some cases achieved satisfactory results for one party, for example when an adversary was killed. Clearly it was in practice a somewhat violent society, but violence was not generally condoned by society, nor legally recognised as binding. Settlement, on the other hand, was often regarded as more desirable than court action, as being more likely to sooth tempers. However, unlike court action, it was not a procedure one could be forced to accept as legally binding.

Thus one can say that early Icelandic society was based in theory on the Rule of Law, although imperfectly put into force, and that therefore the right and ability to pursue matters in court were important elements of the social structure and worthy of detailed study.

B. Sources

The sources used in this study of parties to court actions in the Saga Age of Iceland fall into two categories, the formal written laws, Grágás, and the accounts of actual law suits contained in the family sagas and historical works. The formal laws tell us how the law was meant to operate and provide convenient descriptions and definitions of various procedures and institutions which may only be briefly alluded to in other sources because knowledge of them is assumed. However, an understanding of the law can not be achieved by a study of the legislation alone, as it tells us little about the extent of application of the laws, the practical situations and problems which affected it in reality. Even in modern societies, with their profusion of laws, it is rarely possible to assess the full legal position from a study of statutes alone. Interpretation by courts, the cost of litigation, the attitude of society to various laws, social and class problems, all must be taken into account in any assessment of law in a society. In the words of Gunnarr Karlsson:

> The law codes are not on their own sufficient as evidence of the actual state of affairs. Law demonstrates first and foremost what the legislator wanted when the law was enacted. But we cannot be sure that any act of law was necessarily observed, and when we are dealing with remote times about which we know little, it is often difficult to discern the intention of a given piece of legislation. In this case the only acceptable way seems to be to find the oldest narrative sources that can be considered fairly reliable and see whether they confirm or reject the evidence of the law.[20]

As pointed out by Karlsson, these points have sometimes been missed by Icelandic historians, particularly those who reject the sagas as too unreliable as historical sources. Their

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[20]Gunnarr Karlsson, "Goðar and Höfðingjar in Medieval Iceland", Saga Book of the Viking Society, vol. XIX (1977), p. 360-61.

resulting overreliance on Grágás can be seen to lead to considerable distortion of Icelandic history, as for example in the work of Jón Jóhannesson:[21]

> In his book on the Icelandic Commonwealth the description of the constitution mainly concerns the period before AD1100 and is almost exclusively based on the laws. This leaves us with the general impression that everything went very smoothly and peacefully, in accordance with law, until the twelfth century. Then Jón meets with the so-called contemporary sagas, the sagas of the Sturlung compiliation, which describe almost the antithesis of a peaceful and democratic society. He therefore comes to the conclusion that the constitution had begun to break down in the twelfth century and that this led gradually to the severe conflicts of the thirteenth and to the collapse of the Commonwealth.[22]

To get a balanced view one must therefore look at the law in action, which for the purposes of this paper involves studying law suits from the Saga Age, as well as the legislation of Grágás.

However, for the historian of the Saga Age, all these sources present major problems, mainly because none of them was written down before 1100AD at earliest, most at least 100 years after that, and all of them are preserved in manuscripts from the 13th century or later.

GRÁGÁS

The written laws of Commonwealth Iceland, Grágás,[23] are contained primarily in two large manuscripts, the Codex Regius, or Konungsbók, and Staðarhólsbók, but there are in addition

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[21] Jón Jóhannesson, A History of the Old Icelandic Commonwealth, translated by Haraldur Bessason, University of Manitoba Icelandic Studies 2, 1974.

[22] Karlsson, "Goðar and Höfðingjar," p. 360.

[23] See the Bibliography under Grágás for full references to editions and translations of the laws. The standard editions of Vilhjálmur Finsen are referred to by volume as Finsen Ia, Finsen Ib, Finsen II and Finsen III. Translations are from the manuscript of the translation by Foote et al unless otherwise noted.

several manuscript versions of Kristinnalagaþáttr (the Christian Law), as well as fragments of other sections. Of the two main manuscripts, Konungsbók is the more comprehensive, containing several important sections not in Staðarhólsbók, namely Þingskapaþáttr (the Assembly Section), Lǫgsǫgumannsþáttr (the Lawspeaker's Section), Lǫgréttuþáttr (the Law Council Section), Baugatal, and Rannsóknaþáttr (Section on Rannsackings). Some of the provisions of these sections are scattered through Staðarhólsbók, and it is fuller in those sections which are common to the two manuscripts. But on the whole the manuscripts present compatible details of the law, and represent a more or less unified body of law stated in slightly different ways.[24]

These manuscripts were not official versions of the law, but rather private compilations. Maurer argued that they were commentaries and collections of customs, but Finsen's view that they were compilations of public legistation seems to have prevailed.[25] During the early, pre-literate period of the Icelandic Commonwealth the formal law was preserved

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[24] "The law which is recounted in the different manuscripts, or particularly in the two chief manuscripts, is in the main the same; a systematic account of a matter after one of the two manuscripts alone will, with a few variations, be the same as after the other manuscript". Finsen II, p. XXVIII.

[25] Finsen II, p. XXIX-XXXV, where he cites also his articles: "Fremstilling af den Islandske Familieret efter Grágás", Annaler for Nordisk Oldkyndighed og Historie, 1849, p. 150-331, at p. 182; and "Om de islandske Love i Fristatstiden", Aarbøger for Nordick Oldkyndighed og Historie, 1873, p. 101-250 at 119-121. For a recent discussion of the issue in English see Ólafur Lárusson, "On Grágás, the oldest Icelandic Code of Law", Third Viking Congress, Reykjavík, 1956, Árbók hins Íslenzka Fornleifafélags, 1958, p. 77, at 84-6.

orally, the Lawspeaker being responsible for remembering it:

> It is further spoken that the Lawspeaker is bound to this - to say over all the sections of the law in the course of his three summers, but the Moot-making section every summer.[26]

Íslendingabók tells us that it was decided officially in 1117AD that the law should be written down:

> The first summer that Bergþórr spoke the law [1117], this novella (nýmæli) was made, that our law should be written in a book by Hafliði Masson the winter after, according to the speech and counsel of Bergþórr and other wise men who were chosen therefore. They were to make all the novellae (nýmæli) in the land, which they should deem better than the old laws, and they were to be declared the next summer after in the Court of Laws, and keep all those which the greater part of men said nought against. And it came to pass that the Manslaughter section was then written by clerks, and many another thing in the laws, and declared in the Court of Laws the summer after, and it pleased all well, and no one spoke against it.[27]

Writing in Icelandic had, however, existed for some decades prior to this time, and thus it is possible that some written records of the law had already been made. Such private efforts could even have been a stimulus to the writing of an official version.[28] Their existence could also help explain why this version, known as Hafliðaskrá, did not become the definitive source for the law, as is made clear by a provision of Konungsbók concerning which of conflicting manuscripts was to prevail:

> It is also (presented in our laws) that what is written in [the] manuscripts shall be the law here in Iceland. But if the manuscripts differ, then that shall be (the law) which is written in the manuscripts which (the two) Bishops possess. But if those manuscripts still differ, then the (manuscript) containing the provisions which are most fully worded on matters which are essential to the determination of the dispute shall be considered to be the law. But if such wording is equally full, and

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[26]Finsen Ia, p. 209 ch. 116, translation from V&PI, p. 347-8.

[27]Íslendingabók, ch. 10, edited by Jakob Benediktsson, Íslenzk Fornrit vol. I, Reykjavík, 1968, p. 23; edited and translated by Vigfusson & Powell, Origines, vol I, p. 303.

[28]Peter Foote, "Some Lines in Lǫgréttuþáttr", Sjötíu Ritgerðir, Reykjavík, 1977, p. 204.

> yet each one different, then that manuscript which is at Skálhólt shall be considered to be the law. All those provisions which are found in the manuscript which Hafliði had prepared shall be law, except what has since been altered. But from (manuscripts) of other law-men that also (shall be considered) valid which is not in contradiction with (Hafliði's manuscript). And all those provisions (from other manuscripts) which are omitted (in Hafliði's manuscript) or stated more clearly (in the others) shall be (considered to be) the law.[29]

This provision suggests also that Hafliðaskrá was never extended to provide a comprehensive official version of all the law, and possibly too was never kept up-to-date. Hermannsson has suggested three possible reasons why the recording of the law was not continued:

> one was doubtless the quarrel between Hafliði and Thorgils which had its beginnings just at that time; another possibly was the bad seasons and various calamities of nature which for some time afflicted the people; and the third, of importance with regard to the writing of any ecclesiastical law, was the death of Bishop Gizur.[30]

New manuscripts could thus have come into being to make up for the shortcomings of the official text. It may also be that even after the law was put into writing little value was placed on the exact wording of the law, the spirit of it being more important, and thus it would not have been necessary to reproduce the exact wording of Hafliðaskrá when stating what the law was, whether orally or in writing. Nor can we assume that after the laws were written Lawspeakers ceased to recite the laws from memory at the Alþing; perhaps they viewed written codes only as aids to memory, not as definitive authorities. It may also have become customary for Lawspeakers, and others learned in the law, to write or dictate

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[29]Logréttu þáttr, Konungsbók ch. 117, Finsen Ia p. 213, translation by Dennis, Grágás.

[30]Halldór Hermannsson, Islandica vol XX, 1930, p. 37.

their own law collections from memory, both for their own benefit in the future and for the benefit of those who came to them to learn law. However, as the number of manuscripts multiplied, it probably became easier to get access to them, and thus copying by scribes rather than writing from memory would have become standard. This would appear to have happened by the mid to late 12th century, or within 50 years more or less of the first written laws. Konungsbók and Staðarhólsbók do date from much later than this and contain later laws, but linguisic studies indicate that they were on the whole composed in the mid to late 12th century,[31] and thus represent copies of earlier munuscripts. Konungsbók especially shows signs of uncritical copying, probably by a scribe unversed in the law, or at least by one little interested in presenting a unified law code. Particularly towards the end of Þingskapaþáttr there are a large number of repetitions of provisions already recorded. There are also church law provisions towards the end of the manuscript which are amendments of certain chapters of Kristinnalagaþáttr recorded at the beginning. It **also** contains the only text of Baugatal, which may possibly never have been much used in Iceland, but in any case had certainly long ceased to be used when the manuscript was written (see above p. 17-18).) The scribe of Konungsbók was, clearly, a compiler, and not a collater. Staðarhólsbók was perhaps more carefully collated, but there seems little reason to doubt, on the basis of coincidence of wording with Konungsbók and on linguistic grounds, that it too was copied from earlier manuscripts, perhaps often from the same one as Konungsbók, and was not an original composition.[32]

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[31] Lárusson, "On Grágás", p. 87. Ólason, The Codex Regius of Grágás, facsimile, p. 6. Finsen II, p. XII-XIII, and note 1 p. XIII.

[32] See the first section of Dennis, Grágás, especially p. 47-84, p. 152, 153, 168, 187, and 210-231.

It will be important to bear in mind that the manuscripts are compilations, not unified codes, when considering inconsistencies and conflicts between provisions, as these could as well reflect changes over time as much as the failure of the law to define the rule exactly.

Both main manuscripts date from the middle of the 13th century, shortly before/or just after the submission of Iceland to the Norwegian king. Konungsbók is considered the elder of the two, dating from between 1230 and 1260, probably closer to 1260, Staðarhólsbók possibly being written between 1262 and 1271[33] although it can be dated no closer than 1260-1290.[34]

RELEVANCE OF GRÁGÁS TO SAGA AGE

As already stated, the manuscripts of Grágás were probably based primarily on written versions of the law from the mid 12th century, and thus they are also thought to reflect on the whole the law of the mid 12th century, which presumably remained (in theory at least) more or less unchanged until the submission to the Norwegian king. But what we know of the history of Icelandic law suggests that there were few major or fundamental changes in the law between the end of the Saga Age and the mid 12th century, and, as Finsen states,[35] that its major period of development was during the Saga period. The first official laws of the Commonwealth were said to have been composed by Úlfljótr, who went to Norway to get inspiration and advice as to what they should be, using the Gulaþing

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[33]Ólason, The Codex Regius of Grágás, facsimile ed., p. 8; Lárusson, Staðarhólsbók, facsimile ed., p. 9; Finsen II, p. VIII-XII.

[34]Private note from Peter Foote.

[35]Finsen II, p. XII-XIII.

Law as his chief model.[36] He established the Alþing and the office of Lawspeaker, and both local courts and a court at the Alþing seem to have existed at this time. We have no certain knowledge as to the details of his laws. The first major constitutional reform came in about 965 when, after Þórðr gellir had experienced extreme difficulties with a law suit, the country was divided into Quarters, with three assemblies in each Quarter, except the North, which had four. Following this the Quarter Assemblies were also set up, although it is doubtful whether they ever played any significant part in the judicial system.[37] The last major constitutional reform came in about 1004 with the institution of the Fifth Court, which was primarily an appeal court, but also dealt with cases involving perversion of justice (bribery etc.).[38]

Christianity was adopted during the Saga Age in about 1000, but the major pieces of legislation which it inspired came a good deal later, the Tithe Law in 1096[39] and the Christian Law in 1122-33.[40] Although they are, like the rest of Grágás, distinctly Icelandic in character, external developments in the church no doubt had a major influence on them, and they therefore on the whole should be considered as

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[36] Íslendingabók ch. 2, Benediktsson p. 7, V & P I, p. 289-90.

[37] Ibid, ch. 5, Benediktsson p. 12, V & P I p. 293-4. See Law Suit W14. Lárusson, "Nokkrar Athugasemdir um Fjórðungaþingin", Lög og Saga p. 100-118.

[38] Islendingabok ch. 8, Benediktsson p. 19, V&PI p. 299. For the jurisdiction of the Fifth Court see Konungsbók ch. 44, Finsen Ia p. 77-8. The account of the Fifth Court in Njálá is now generally accepted to have no independent value.

[39] Finsen Ib p. 205.

[40] Ibid, Eftirskrift, p. 219. Lárusson, "On Grágás", op cit., p. 80.

independent legal developments. The church may also, however, have inspired the development of the hreppr, a local unit composed of at least 20 bœndr and concerned primarily with the administration of the poor law;[41] its early history is completely uncertain and may fall outside the Saga Age. One suggestion is, however, that its origins lie in crews of viking ships and in viking bands,[42] a suggestion which would place its origin even before the Saga Age. In addition, it seems noteworthy to me that the rules concerning the hreppr are not contained within the Christian Law, as one might expect if the church had set the system up, and that of the functions of the hreppr, only those concerning the collection and distribution of the tithe are directly related to the church.

The other major portion of Grágás which has been suggested to have its origins outside the Saga Age is the appendage to Þingskapaþáttr (ch. 78-85) giving detailed rules regarding domicile, assembly affiliation and the relations of goðar, bœndr, assembly men and griðmenn (household men, employees of bœndr), which Dennis has suggested

> seem like a serious attempt to define in detail social and political relationships in Iceland. The formalization of such rules is most likely to have occurred in the latter part of the twelfth or early thirteenth century when traditional social structures were becoming more confused with a decline in the importance of extended family connections and accumulations of power which distorted the traditional goðorð structure.[43]

But if the provisions of Grágás reproduce official laws as approved by the Alþing, then these provisions would have had to be passed by the very goðar who in Dennis' view made them

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[41] Konungsbók, ch. 234 and 235, Finsen Ib p. 171-179, Staðarhólsbók ch. 217-227, Finsen II p. 249-261.

[42] E.Ó. Sveinsson, "Þingvellir - the place and its history", Third Viking Congress, 1956, Árbók hins Íslenzka Fornleifafélags, 1958, p. 76.

[43] Dennis, Grágás, p.48 .

necessary, which does not seem likely. One would also have expected some reference to them in our written sources for the period, as such a major reformation of the social structure would no doubt have been the cause of a good deal of dissension.[44]

To suggest that the major developments in the law took place during the Saga Age is not to suggest that the law remained static - we know that at least minor reforms were made throughout the Commonwealth period. Certain reforms of late date are identifiable in Grágás itself, either by their content or by their citation as nýmæli, some are mentioned in other sources, and part of the job of those recording the laws in 1117-8 was to reform the law, subject to the approval of the Alþing.[45] It is thus not possible to argue uncritically that any particular provision of Grágás applied in the Saga Age, as the law was constantly developing. There is however little reason to believe that there were any very dramatic changes in the nature of the legal system, the types of procedure and charges used, or in the court system. Thus, since we do not have the law codes of the Saga Age, it is to Grágás we turn to get a general understanding of these matters.

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[44]Dennis has himself raised both these objections to his own suggestion that the confiscation court rules also were late (Dennis, Grágás, p. 242a), and they seem to me to carry great weight.

[45]Íslendingabók, ch. 10, Benediktsson p. 23-4, V&PI p. 303. For a history of Icelandic Commonwealth legislation see Maurer, Graagaas, p. 17-30, and Einar Arnórsson, Réttarsaga Alþingis, Reykjavík, 1945, p. 62-69. On nýmæli see Finsen II p. XX, III p. 572-575.

HISTORICAL SOURCES ABOUT THE SAGA AGE

Unlike Grágás, the sources containing law suits do at least purport to be about the Saga Age. However, the purpose for which they were written and their historical accuracey are subject to considerably greater dispute. With the exception of Íslendingabók, written about 1120, none are thought to date from before 1200, and some were not written until after the submission of Iceland to Norway and a new legal system in 1262.

Íslendingabók[46] is the work with the greatest claim to being history. Written by Ari fróði Þorgilsson about 1123,[47] it is a short account of the early history of Iceland made for the two bishops in Iceland. Ari seems to have been a fairly conscientious historian:

> His was not a task like that of the later saga writers of writing down from memory or dictation fully formed sagas. His was the painstaking labor of gathering all kinds of information from various sources about men and matters, individual events, chronological data, local conditions, and many other things of that kind.[48]

Moreover, as he was born in 1067 or 1068, Ari lived close enough to the early period of Icelandic history that he could get stories about it from people who had either experience at first hand, or could relate stories of those who were involved. In chapter 1 when speaking of the date of the settlement of Iceland he says this is

> According to the belief and count of Teitr, my foster-father, the wisest man whom I knew, the son of bishop

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[46] Íslendingabók, edited by Jakob Benediktsson, Íslenzk fornrit, vol. I, Reykjavík, 1968; edited and translated by Gudbrand Vigfusson and F. York Powell, Origines, vol. I, p. 287. (Also edited and translated by Halldór Hermansson, Islandica Vol. XX, 1930).

[47] Hermansson, 1930, p. 39.

[48] Ibid p. 42.

> Gellir's son, who could remember far back, and of Þuríðr, daughter of Snorri goði, who was both wise in many things and a truthful narrator.[49]

His father Gellir was a great grandsson of Þórðr gellir, a leading man of the 10th century and responsible for major constitutional reform in 965 (see law suit W14). The information Ari got from Þorkell, his father's brother, who apparently travelled widely collecting information, may thus have consisted in part of stories handed down within the family. Þuríðr, another of his sources, also came from an important family, as her father Snorri was a leading goði in the west quarter in the late 10th and early 11th century (see Eyrbyggja saga). He lived to quite an old age. Another of Ari's sources was Hallr, with whom he lived from about the age of 6 to age 20. As Hallr was in his eighties when he died in 1089, he could easily have had very reliable stories to tell of the late 9th and early 10th century. Ari also had information from lawspeakers who held office before the laws were committed to writing in 1117 (see above p. 28). They would thus have known all the oral traditions which had been handed down from the earliest Lawspeakers.

Although we may thus assume Íslendingabók to be good history, it is unfortunately very brief, providing only tantalising glimpses of early Iceland. It does, however, include references to two law suits and two pieces of legislation relevant to parties to court actions (law suits W14, STH 10, legislation in ch. 5 and ch. 8, see below Ch. 3 p.151 and p. 153-4, Ch. 4 p. 163).

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[49]Hermansson, at p. 24-5, discusses all these people referred to by Ari. See also Benediktsson, 1968, p. xx-xxvii.

Landnámabók[50] is another more or less historical source, but it must be treated much more critically than Íslendingabók. It is primarily an account of the settlement of Iceland, the narration being based on a geographical progression around the island. According to an epilogue of one surviving manuscript, it was written originally by the Ari of Íslendingabók and Kolskeggr the wise (H354). Unfortunately, this original version has not survived, and all of the five versions which are extant have been considerably added to, often by reference to sagas of later date than the original Landnámabók. As an historical source it is thus often subject to the same criticisms discussed below with respect to the sagas. Although it is primarily intended to record the original settlement of the island, it does include many stories about the settlers and their families, in which are incorporated references to 17 law suits from the saga age, although many of these are also to be found in other sources (law suits STH1-4, STH10, W1, W3, W5, W14, W15-20, W23, N12).[51]

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[50] Landnámabók, edited by Jakob Benediktsson (Sturlubók, Hauksbók and Melabók, with important variants from other texts in the footnotes), Íslenzk fornrit vol I, Reykjavík, 1968. Hauksbók edited and translated by Vigfusson & Powell, Origines vol I, p. 13. Sturlubók translated by Hermann Pálsson and Paul Edwards, The Book of Settlements, Icelandic Studies I, Winnipeg, 1972. The three main versions are cited as S, H and M, followed by the relevant chapter number.

[51] For a discussion in English of the value of Landnámabók as an historical source see Jakob Benediktsson, Saga Book of the Viking Society, XVII (1969), p. 275-292. He has provided a more detailed discussion in Icelandic in the Introduction to his edition of Íslendingabók, Íslenzk fornrit vol I (1968). A detailed analysis of the relationship of the various manuscripts was made by Jón Jóhannesson, Gerðir Landnámabókar, Reykjavík, 1941. This account contains many useful comments on the origins of many stories and their relationships to other sources.

Kristni saga[52] like Landnámabók was written quite late, probably by Sturla Þórðarson towards the end of the 13th century. He probably used similar methods in compiling it as he did in writing his version of Landnámabók (Sturlubók). His sources included Íslendingabók, but also sagas such as Laxdæla and Vatnsdæla, as well as Kristni þáttr in Óláfs saga Tryggvasonar by the monk Gunnlaugr, whose motivation in writing was far more hagiographic than historic.[53] For the material which can be found in these other sources Kristni saga thus has little independent value, but it cannot be discounted that stories for which we have no other source were based on independent tradition. It contains accounts of five law suits (STH10, STH8, STH9, N22, E3), two of which are not referred to in other sources (STH9, N22).

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[52]Kristni saga, edited and translated by Vigfusson & Powell, Origines, vol I, p. 376. (Also edited by B. Kahle, Altnordische Sagabibliothek, vol 11, Halle, 1905; and by Guðni Jónsson, Íslendinga sǫgur, vol I, Reykjavík, 1946.)

[53]Jóhannesson, 1941, p. 69-71. G. Turville-Petre, Origins of Icelandic Literature, Oxford, 1953, p. 66-7, p. 196. Dag Strömbäck, The Conversion of Iceland, Viking Society for Northern Research, 1975, p. 21.

FAMILY SAGAS

The main sources for law suits are the family sagas, which contain tales about the early period of Icelandic history, most about the period 930-1030AD, the Saga Age. But, as historical sources, these sagas present many difficulties. First, as already stated, none are thought to have been written before 1200 AD, some not until 100 or so years later, and thus 200-400 years after the period being written about. Further, we do not know the purpose for which the sagas were written, whether their authors were attempting to record history rather than fiction and, even if they did consider what they wrote to be history, to what extent alterations for literary purposes were justified. Nor do we know the exact nature of the sources for the written sagas; these could have been almost complete oral sagas; a series of oral anecdotes strung together by the writer; a scholarly collation of various sources such as written genealogies and historical notes dating from soon after the introduction of writing, oral stories connected with specific geographical and historical sites, and poetry; or even almost complete fabrications.

These difficulties have caused considerable debate among scholars.[54] For many years the so-called freeprose theory prevailed, according to which the sagas were recordings by scribes of complete oral stories which had been handed down from generation to generation, representing fairly accurate tradition. Other scholars argued that sagas were, on the contrary, the literary creations of specific authors. The author might make use of oral tradition, but his freedom to adapt it for

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[54] An historical account of the changing views on Icelandic sagas is to be found in Theodore M. Andersson, The Problem of Icelandic Saga Origins, Yale University Press, 1964.

his literary purposes was so great as to render the sagas almost useless as historical sources.

The modern view is that every saga must be treated individually, and that no one source, origin or purpose in writing can be postulated which can be said to apply to all the saga material. Some scholars, the so-called book prosaists, emphasize the literary origins for the saga, although recognising that a wide variety of sources was available to the authors:

> The researches of recent years seem to suggest that the family sagas originated under the influence of the kings sagas, just as the kings sagas originated under the influence of hagiography and of other learned writings. This suggests that the family sagas were based on sources of many different kinds, on written records and genealogies, on the Landnámabók, works of Ari and other historical literature, such as that discussed in earlier chapters of this book. It is widely agreed that the authors also used oral records, preserved both in prose and in verse.[55]

Others argue that the saga clearly had its origins in oral stories, both in terms of its form and its content, although the freedom of the author to adapt and augment such stories at will is acknowledged:

> If we are prepared to concede that the art of the family saga was available to the earliest saga writers, we must go a step further. Liestøl insisted that traditional material could not exist apart from some kind of form. Conversely form could not exist without content. A structure such as the one in Heiðarvíga saga could not have been a disembodied phenomenon. To concede a pre-saga narrative style is as good as conceding an oral saga. This does not of course mean that our written sagas are transcriptions of oral sagas....There is no evidence of the memorization of whole sagas and the free-prose doctrine is no longer the doctrine of verbatim retention....The writer undoubtedly could and did use written sources, supplementary oral sources, his own imagination, and above all his own words, but his art and presumably the framework of his story were given him by tradition.[56]

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[55]G. Turville-Petre, Origins of Icelandic Literature, Oxford, 1953, p. 231.

[56]Andersson, 1964, p. 119.

But both these schools of thought acknowledge that the saga authors had a wide range of source material available to them, both written and oral, and that therefore much historical material is contained in the sagas. But again, each saga, and even as far as possible each incident in a saga, must be treated separately, as not every author used the same sources or methods, or even had the same purpose in writing. This has resulted in some sagas being almost totally discredited as historical sources, often those which appear to be highly historical and factual. In the forefront of this development has been the book written by Sigurðr Nordal on Hrafnkels saga[57] in which he established through a study of the characters involved, the power structure etc that this work is virtually all fiction, based to only a very limited extent on historical characters.

Sadly for the Icelandic legal historian, Njáls saga, which waxes eloquent on law and court procedure, also does not stand up well to critical study, although in 1861 it was possible for a translator of Njálá, George Dasent, to state: "Of all the sagas relating to Iceland, this tragic story bears away the palm for truthfulness and beauty".[58] The truthfulness of Njálá was, however, very soon to come under attack by Lehmann and Carolsfeld,[59] and no scholar since their time has been able to use Njálá as a source for the Saga Age without bearing in mind their criticisms. The modern view of Njálá places greater emphasis on the beauty, recognizing that the saga is first and foremost a literary work of art which used historical facts, but was not intended

[57] Sigurðr Nordal, Hrafnkatla, Rekjavík, 1949, translated by R. George Thomas, Cardiff, 1958.

[58] George Webbe Dasent, The Story of Burnt Njal, Edinburgh, 1861, vol. 1, p. vi.

[59] Karl Lehmann and Hans Schnorr von Carolsfeld, Die Njálssage, insbesondere in ihren juristischen Bestandtheilen, Berlin, 1883.

to be history. As stated by Einarr Óláfur Sveinsson:

> The author of Njáls saga had... a keen desire to see and understand human life and to relate and interpret it. His mind was assailed from all sides: love and hate, fascination and horror, grief and gladness - each following and mingling with the other, and his breast could find no peace until he had transformed this chaos into artistic form....It can be shown that although history provided the orientation for the saga, it was not its highest aim. The truth it was concerned with is...truth about human life.[60]

Njála was probably based to a much greater extent on history than was Hrafnkatla, but the author's imaginative reconstructions and additions have made it difficult, if not usually impossible, to sort out the genuine traditions. Lehmann and Carolsfeld's researches have shown this to be a particularly acute problem with legal matters. Thus, after detailed study, I have been led to the conclusion that this great saga must on the whole be disregarded as a factual source. Many of the detailed criticisms which have led to this decision will be found in the outlines of the law suits in Njálá in Appendix I (STH 11 to STH 24).

Several other sagas can be similarly rejected as having little independent historical value, either because they were written long after the end of the Commonwealth, such as Fljótsdæla saga and Víglundar saga, because they can be shown to be commenting to a highly suspect extent on political issues at the date of their writing, such as Ǫlkofra þáttr, or because they can be shown by comparison with other sources to be very probably complete fabrications, such as Brand krossa þáttr, Bollaþáttr or Kroka-Refs saga.[60a]

The reconstruction of history from the sagas, and thus for

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[60]Einar Ol. Sveinsson, Njáls Saga: A Literary Masterpiece, University of Nebraska Press, 1971, p. 181

[60a]See for example the introductions to the Íslenzk fornrit editions of these sagas (volumes XI, XIV and V) for statements of these views. See also below, Appendix III.

the purposes of this study from the law suits contained in the sagas, is thus beset with difficulties. These difficulties have caused many to reject them entirely as sources, as did Jón Jóhannesson in his history of Iceland, as pointed out above (p. 26). It has led others, such as Alan Berger, to treat the law of the sagas purely as a literary device. He discussed the law of Hœnsa-Þóris saga in this light:

> An understanding of Hœnsa-Þóris saga requires an understanding of the author's use of old and new law in his fiction, and of his pose as historian....Hœnsa-Þóris saga is a dramatized history of a great event in Old Icelandic legal history.[61]

More generally, Berger has analysed the role of lawyers in the sagas, and concluded:

> The law could be considered a catalogue of conflicts useful to a conflict-hungry literature. The conflicts outlined in the law could be adapted mechanically or imaginatively, but in either case they would produce the effect of realism. Narrative contrivances could be made convincing with the addition of daubs of legal detail.[62]

Like Jóhannesson, Gunnarr Karlsson concluded that the sagas are too unreliable to be used as historical and legal sources, but he also concluded that as the sources are otherwise very meagre, we cannot really discuss the society of early Iceland. The earliest period he felt we have sufficiently reliable historical material for is the 12th century.[63]

But not all legal historians have felt constrained to reject the sagas as sources. Konrad Maurer's comprehensive

[61] Alan Berger, "Old Law, New law, and Hœnsa-Þóris saga", Scripta Islandica, 27 (1976), p.4.

[62] Alan Berger, "Lawyers in the Old Icelandic Family Sagas: Heroes, Villains and Authors", Saga Book of the Viking Society vol.XX (1978-9), p. 79.

[63] Karlsson, "Goðar and Hofðingjar", p. 359-362.

19th century study of Icelandic law was written before the sagas had come under sustained attack as historical sources, and used both Grágás and the sagas. However, he was primarily interested in defining legal rules, not in considering how they were put into practice or their social significance. He also made little distinction between 10th and 12th or 13 th century law, but rather treated Commonwealth Icelandic law as a uniform entity. He therefore took Grágás as his main source, and used the sagas merely to illustrate and explain the provisions.[64] Maurer did not make any comprehensive study of the law in the sagas, although he did look at four law suits in Eyrbyggja and Eigla in detail.[65]

One of the earliest scholars to use the sagas as legal sources in their own right was Andreas Heusler. He recognised that they illustrated the law in action, and that the law of the Saga Age could well have differed substantially from the law of the later Commonwealth. He therefore based his study of Saga Age Criminal law almost exclusively on the sagas.[66]

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[64] Konrad Maurer, Vorlesungen über Altnordische Rechtsgeschichte, Vol. V, Altisländisches Strafrecht, Leipzig, 1910, reprinted 1966. His account of parties to court actions (Die streitenden Teile selbst) is found on pages 461-497.

[65] Konrad Maurer, "Zwei Rechtsfälle in der Eigla", Sitzungsberichte der philosophisch-philologischen und der historischen Classe der k.b. Akademie der Wissenschaften zu München, 1895, p. 65-124. "Zwei Rechtsfälle aus der Eyrbyggja", Ibid, 1896, p. 3 to 48.

[66] Andreas Heusler, Das Strafrecht der Isländersagas, Leipzig, 1911. He looked at the Criminal Law under the headings Vengeance (Rache), Settlement (Vergleich), Court Action (Gerichtsgang), Outlawry (Acht), and Compensation (Busse). His study of court actions is primarily an argument that they were stylised feuds.

The sagas have also been used extensively as sources in a more recent study of penalties in Commonwealth Iceland by Lúðvík Ingvarsson. Unlike Maurer, he recognised that the law developed and changed over the 350 years or so of the Commonwealth, and he therefore looked to the sagas for evidence of the law in the earlier period, not merely for illustration and clarification of Grágás, and used Grágás and Sturlunga saga for the later periods.[67]

As scholars do not dispute that most sagas are based at least in part on genuine historical tradition, and that many were probably quite serious attempts to record the history of a family or an area, and as we have only meagre sources of a more reliable nature for the early history of Iceland, it seems to me perverse to reject out of hand the saga material. By critically comparing genealogies, parallet accounts, etc., and by collecting together a large part of the evidence for any particular point of law, much of the erroneous material can be rooted out. Most of this critical commentary will be found in the law suit outlines in the Appendices. One is also, I believe, entitled to be suspicious of any features unique to one law suit or saga, and of anything clearly based on procedure in the Sturlunga Age when the sagas were written. On the whole, however, the material presented in this paper provides a coherent, logical account of parties to court actions with most aspects being confirmed time and time again. One would not expect this to occur if the law suits were the inven-

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[67] Lúðvík Ingvarsson, Refsingar á Íslandi a Þjóðveldistímanum, Reykjavík, 1970.

tions of the many different saga authors.

One final major difficulty with the sagas is the question of to what extent they provide a balanced historical picture. It is quite arguable that they do not provide a representative cross section of law suits, but rather are weighted heavily in favour of celebrated law suits and those involving the more important people. This problem will often make it necessary to qualify conclusions, and is dealt with in greater detail in Chapter 4.

C. The Law Suits

The law suits considered in this study are taken from the historical sources and sagas discussed above which deal with Iceland between 930 and 1030. The historical works with lawsuits in them are as already stated Íslendingabók, Landnámabók and Kristni saga. The sagas studied are as follows, listed according to the Quarter with which the events are most closely concerned:

East Quarter: Þorsteins saga hvíta
Vápnfirðinga saga
Droplaugarsona saga
Gunnars þáttr Þiðrandabana
*Brand krossa þáttr
*Hrafnkels saga
*Þorsteins þáttr stangarhǫggs

West Quarter: Gísla saga
Eyrbyggja saga
Hœnsa-Þóris saga
Geirmundr þáttr heljarskinns
Hávarðar saga Ísfirðings
Egils saga
Laxdæla saga
Eiríks saga rauða
Barðar saga Snæfellsáss
*Fóstbrœðra saga
*Þórarinns þáttr

North Quarter: Víga-Glúms saga
Ljósvetninga saga (to death of Guðmundr)
Vǫðu-Brands þáttr
Hromundar þáttr halta
Reykdæla saga
*Vatnsdæla saga
*Grettis saga
*Kormáks saga
*Hallfreðar saga
*Bolla þáttr

South Quarter: Harðar saga
*Flóamanna saga
Njáls saga
*Ǫlkǫfra þáttr

Outlines (including critical commentary) of all the law suits from the works which do not have a * will be found in Appendix I, and a list of the law suits in the works with a * in Appendix III. Most of the law suits in Appendix I

have been summarised in Tables in Appendix II under various headings relevant to parties to court actions, although some, from sagas marked / in the table on p.47, including all the suits in Njála, have been omitted as too unreliable. Details as to why they are suspect are given in the outlines in Appendix I. Interesting features of law suits listed in Table III, including anything which may contradict other evidence, are discussed in the text, although because I have studied them in less detail, I have not included them in the Summary Tables in Appendix II.

Appendices I and III list a total of 118 law suits. This compares with a total of 119 found by Heusler.[68] Unfortunately, he did not provide a full list of suits, so it is not possible to establish in full where we disagree. His figures do not include 8 suits found only in Íslendingabók, Landnámabók or or Kristni saga, but do include 5 suits from Bjarnar saga Hítdælakappa and an unspecified number from Finnboga saga and Valla-Ljóts saga, which sagas I have not studied. He has also included law suits from three sagas concerning events after 1030, Bandamanna saga, Eyjólfs saga and Hrafns þáttr, and two from Fóstbræðra saga which occurred in Greenland. We also disagree on the number of law suits in Eyrbyggja saga (I find 12, he finds 11), Grettla (5 to his 10), Reykdæla (9 to his 8), and Droplaugarsona saga (5 to his 7). It is thus evident that we are not in total agreement on the number of law suits, which is probably due to using different criteria in defining a law suit. I have used only those cases in which mention is made of some element unique to a lawsuit, usually a summons or a judgement. Many arbitrations were made at assemblies, and thus this cannot be a test. I have included all cases in which steps had been taken to serve the summons,

[68] Heusler, 1911, op cit., p. 40.

even if the attempt was unsuccessful and the suit proceeded no further.

All types of law suits have been considered. As will be discussed in Chapters 2 and 3, the prosecution of all matters was left to private individuals, and thus the modern distinction of civil and criminal matters did not apply. However, manslaughter suits were treated with greater severity than other matters, and are the subject of very detailed rules in Grágás. I have therefore listed them separately from all other suits in the Summary Tables in Appendix II, and they are the subject of separate attention in the text as well.

The Law Suit Outlines in Appendix I list the people involved in the law suits (the Parties to Court Actions, or Litigants) under various headings, including Injured Person, Prosecutor, Accused and Defender. The Injured Person was the one killed, injured, cheated etc. In manslaughter suits the closest kin may also be indicated, as in a sense they really were the person considered to be injured. The Prosecutor is the person who actually conducted the law suit. Reference will also be made from time to time to the primary prosecutor. This is the person who had, or one might assume had, the first right to prosecute, although he did not always do so. Normally when he did not there is mention of a transfer (see Chapters 2 and 3, Transfer of Court Actions). Similarly the Defender is the person who actually acted on behalf of the Accused person, although some other person might more properly be considered to have been the primary defender.

The law suits are referred to in the text and notes by their Quarter and number as in Appendices I and III, ie. W1, N1, E1, STH1 etc.

D. References

References to Grágás and to the sagas and other source material are normally incorporated in the text. References to Grágás are to the chapter and page in the Finsen editions, cited as Finsen Ia, Ib, II and III. Full refernces will be found in the Bibliography under Grágás, as will details of translations used. References to other works are by chapter. Again, full references to editions and translations will be found under the names of individual works in the Bibliography. Where there is no standardised chapter division, the divisions of the Íslensk fornrit editions are used. If a work is not available in these editions, the chapter references will be according to the edition first mentioned in the Bibliography. References to the various manuscripts of Landnámabók are abbreviated as follows: S for Sturlubók, H for Hauksbók, M for Mélabók, and Þ for Mélabók (Þórðarbók) (see the Bibliography under Landnámabók for full details). The two volumes of Vigfusson & Powell, Origines Islandicae, are also frequently abbreviated in references to sources as V&PI and V&PII.

Footnotes appear at the bottom of the page, with numbering beginning anew at the start of each chapter.

CHAPTER 2: PROVISIONS CONCERNING PARTIES TO COURT ACTIONS IN GRÁGÁS

RESPONSIBILITY FOR LAW ENFORCEMENT

In Grágás[1] the enforcement of law was left almost entirely to individuals. Only one class of public official was appointed specifically for prosecuting court actions, that being the hreppsóknarmenn for the enforcement of hreppr law (see below p.82) (Finsen Ib p.171, 174, Ch.234; p.178, Ch.235; P.208, Ch.256). Certain public officials were responsible for specific offences, as the court guarders for stepping over the circle drawn around the judges (Finsen Ia p.72, Ch.41), and the Lawspeaker for unlawful entry into the consultations of the Lawspeaker and lawmen (Finsen Ia, p.209 Ch.116), but their primary task was not prosecuting court actions, these offences being ones which in effect prevented them from doing their assigned task properly and therefore in a sense being offences against them personally. The Lawspeaker had in addition the obligation, both at home and at the Alþing, "to tell all those men who ask him what the provisions of the law are, but he is not required to give men any further advice in their suits" (Finsen Ia p.216, Ch.117, Dennis translation); he was thus specifically excluded from any duty to assist in the prosecution, or defence, of law suits. In addition to numerous more minor offences, most of the major offences which are today handled by public prosecutors, such as murder, wounding, and sexual intercourse, were considered to be offences against an individual or his family and were therefore left to be prosecuted by them.

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[1] For full references concerning Grágás see Bibliography under Grágás. References in the text are to the standard edition by Finsen, fully cited in the Bibliography. Translations are taken from the as yet unpublished translation by Peter Foote, Andrew Dennis and Richard Perkins, unless otherwise noted. I am much indebted to Professor Foote for making this available to me in manuscript.

Not that society as a whole was not interested in seeing such offences being prosecuted - the very existence and detail of Grágás shows the concern for the Rule of Law. Also, provisions for who was to handle the more serious offences, especially killing and unlawful sexual intercourse, were very detailed, partly to settle conflicting claims of various kin, but surely also in part because of the wish to emphasise the desirability for someone to prosecute.

There were offences which were considered of sufficient interest to the community as a whole that if the individual concerned did not prosecute, "he who wished" could. These offences included failure of a goði to go to a spring assembly (after those with law suits at that assembly and the other goðar of the same assembly, (Finsen Ia p. 97 ch. 56 and p. 117 ch. 64), settling without Alþing consent of a killing or major wounding (after the nearest kin) (Finsen Ia p.174 Ch.98); failure of the Law Council to do its duty (after men with matters in dispute) (Finsen Ia p.215 Ch.117); failure to hold a confiscation court for an outlaw or holding it improperly (after the person responsible for the outlaw's dependants and after the outlaw's creditors)[2]. In addition many offences were recognised which were not offences against particular individuals, but rather were matters of interest to the community as a whole and again were to be prosecuted by "he who will" (a sǫc þessa er vill, a sa sǫk er vill): - assembly participants staying away overnight, or so as to obstruct proof (Finsen Ia p.107, Ch.59); failing to find a place for a dependant by the moving days[3]; a goði

[2] Finsen Ia p.92, Ch.54 and p.115 Ch.62. For other examples see p.188 Ch.110; p.191 Ch.111; Ib p.26, Ch.143; p.39 Ch.148; p.169 Ch.232, p.184 Ch.238, p.216 Ch.263.

[3] Finsen Ia p.129 Ch.78. The moving days were four days in spring which were the only time moving, and therefore change of legal domicile, was allowed.

lodging with a person not in his assembly group (Finsen Ia p.138, Ch.81); the person who got him condemned assisting an outlaw (Finsen II p.397-8, Ch.380); settling for less than personal compensation in a sexual intercourse suit (Finsen 1b p.51, Ch.156); burying property in the earth (Finsen Ib p.75 Ch.171); building a wall across a road without a gap (Finsen Ib p.91, Ch.181). Many other examples of this type of offence involve breaches of church rules, as failing to take a child for baptism (Finsen Ia p. 3 Ch.1); or burying a warm body (Finsen Ia p.9 Ch.2); or eating meat during a fast (Finsen Ia p.33 Ch.16). The church apparently did not see the necessity of public prosecutors either, although as in the secular sphere certain offences were to be prosecuted by specific church officials, the bishop or his delegate or a priest - the person appointed by the bishop to collect the tithes was to sue for the non-payment (Finsen Ia p.19-20 Ch.5); for the carrying of weapons in church the man delegated by the bishop, the priest of the church, the householder at the church farm, or, failing all three, he who wished, was to sue (Finsen Ib, p.216 Ch.263).

The roles played by the goðar and kin in the prosecution and defence of court actions do not point to any major restriction on the control by individuals of their own matters or to any general right or duty of the goðar or kin to control, supervise or protect their assembly men or kin in their prosecutions and defences. Certain rights were given to them, particularly in killing cases, and, to the kin, in intercourse suits and verse slander against dead men, (since the disrepute of a person, even dead, would reflect on his whole family), but in all these cases the injured party

was either dead or a female who had brought disrepute on the family.

The prosecution of killing cases was usually left to the closest kinsman as the person most wronged, the order of proximity of kin being carefully defined[4]. The killing suit for a foreign visitor with no kin in Iceland normally fell to his partners, ship's captain or the householder where he was staying; but the killing of a foreigner with a household in Iceland, the killing of or by a foreign ship master on board ship, where he was the sole owner of the ship, the killing of a foreigner by the bóndi he was lodging with, or in the household of a female with no assembly participant/(Finsen Ia p.172-3,Ch.97)./ fell to a goði A goði also prosecuted for the killing of a freedman with no son by his freedom giver; if the freedom giver was the goði, the goðar in the same assembly had the suit (Finsen Ia p.172 Ch.96).

There were in addition special situations where the kin or goðar could intervene in the killing prosecutions of others. If the prosecutor was not at the assembly, or the killing took place at the assembly (and therefore presumably the prosecutor wasn't there), and a case was brought by the defence to have the man killed declared a man of forfeit immunity (and therefore one for whose killing there was no sanction), the kin, or the goði if there were no kin there or they were unwilling to prosecute, was to take up the prosecution of the killing suit. Further, if a prosecutor (of a killing case, presumably because of the context) were killed or wounded so he couldn't pursue the case himself and

[4] See primarily Finsen Ia p.167-8 Ch.94 where the order is given as: 1. son 2. father 3. brother by the same father 4. brother by the same mother 5. illegitimate son 6. illegitimate brother by the same father 7. illegitimate brother by the same mother 8. the nearest kinsman.

arranged for no one else to do so, his kin or his goði could assume the prosecution with all the rights of the primary prosecutor (Finsen Ia p.182-3, Ch.107.

The kin had a few additional rights which a goði did not have. They had the prosecution of intercourse suits, perhaps one example of them acting because the injured person, a female, was not thought fit to do so herself, although the woman apparently did not get the compensation herself either[5]. They also had the suit for verse slander against a dead person (Finsen Ib p.183, Ch.238), and for the settlement of a killing suit without the consent of the Alþing (Finsen Ia p.174 Ch.98).

In assessing the social importance of the kin and the goðar in Iceland it is of course significant that these legal duties (or rights) were assigned to them, rather than, for example, to an officer specially created for the purpose. It would certainly serve to enhance, or perhaps reflect, their importance in the functioning of society. On the other hand the limited extent of their participation in prosecutions and defences is far more noteworthy than their actual participation at all, and gives little support to the general opinion of their importance in Icelandic society.

Duty to Prosecute

Clearly, wherever a person or class of persons is designated as prosecutor by Grágás, they were meant to have the right to prosecute, but it is not clear from the language used whether they also had a duty. The verbs used are generally "to have" or "to be" (so and so has the suit , so

[5] Finsen Ib p.48 Ch.156, p.203 Ch.254; II p.177 Ch.145, Ib p.242 Ch.51 (Belgadalsbók).

and so is the Prosecutor), or "skulu", all of which can imply either right or obligation or both[6]. There are also only a very few examples of specific statements of duty. The one public prosecutor, the hreppsoknarmaðr was subject to a three mark fine for failing to prosecute certain offences (Finsen Ib p.174, Ch.234 / p. 179 ch. 235). Those responsible for holding a confiscation court were subject to outlawry for failing to do so (Finsen Ia p.92, Ch.54). It was also unlawful to settle certain suits without Alþing consent (Finsen Ia p.174, Ch.98, Ib p.51 Ch.156, Ia p.194 Ch.113), but there is not a corresponding duty stated to prosecute those suits which were not settled. There is in addition a tendency to encourage the pursuit of matters to the limit of the law[7]. And there is one positive statement of lack of duty - "a man is not bound to prosecute for wrongful landselling unless he wants to" (Finsen Ib p.105, Ch.194). In a situation where almost all law enforcement was done by private individuals, a greater emphasis on the duty to prosecute might have been expected.

QUALIFICATIONS FOR PROSECUTORS AND DEFENDERS

The right of individuals to handle court actions was not completely unrestricted, but rather was affected by social, financial, mental, age and sex qualifications. Certain people had few or no substantive rights, and so of course their right to handle court actions was also severely limited; next, there were people who had rights, were entitled to receive compensation for breach of those rights, but were not entitled to control the action for the

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6 Andrew Dennis, Grágás, unpublished dissertation, University of Cambridge, 1974, p.259-263.

7 Finsen Ia p.50 Ch.25, Ia p.109 Ch.60, Ia p.168 Ch.94, Ia p.194, Ch.113, Ia p.215 Ch.117, II p.335, Ch.297.

enforcement of the right; they could not decide when, how or by whom the action would be prosecuted, and were not designated as the primary prosecutor of the suit. Thirdly, there may have been people who could be primary prosecutors or defenders, could decide if, when, how and by whom an action was to be prosecuted, but were prohibited from appearing in court, and thus had to find someone else to handle the matter for them.

The rules concerning who was to be the primary prosecutor in killing cases state certain requirements which can be taken as the starting point for the inquiry into qualifications. Konungsbók states:

> A man's son is the principal in a killing case, sixteen winters old or older, free born and a lawful heir, of such mental capacity that he can take charge of [his inheritance]. (Finsen Ia p.167 Ch.94).

The requirements are not repeated in the list of who was to prosecute if there was no son, but they are probably intended to be assumed. The requirement of being a lawful heir should probably be interpreted as related to the substantive right to compensation for the killing rather than to general restrictions on who could prosecute a court action. Illegitimate relations could pursue killing cases, but legitimate ones in the same degree had precedence. Certain of the requirements are repeated towards the end of the list of those entitled to pursue a killing case:

> If these men do not exist, then the suit lies with the nearest descendant [?niðr: nearest relative better?] among those who are free-born, lawful heirs and present in the country[8].

Staðarhólsbók adds that the son must be of fixed domicile (heimilis fastr), and that a killing suit was never to fall to a woman. (Finsen II p.334-5 Ch.297, p.340 Ch.300).

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[8] Finsen Ia p.168 Ch.94. Professor Foote has privately indicated agreement that descendant is wrong.

It is probably fair to assume that the restrictions in killing cases were stricter than in any other matters, because of the seriousness of the offence, and that therefore we may look for more lenient general rules.

I Domicile and Financial Qualifications

The rules of Grágás made it difficult, and usually illegal, for a person not to have a fixed domicile. Thus to require a fixed domicile placed only a very limited sort of financial qualification, and few persons would have been excluded from court appearances on this ground alone. The purpose of the requirement probably also had little to do with any concepts of ability or right to be a prosecutor or defender, but was rather intended to ensure that a person's opponent would know where he could be legally served with a summons, who his goði was if he wasn't qualified to choose his own, and thus who could be called as witnesses, panel members etc. All these are fundamental and probably ancient elements of Icelandic legal procedure.

Those domiciled at a particular farm would have included the farmer if he operated the farm and owned the cattle or the land (not necessarily both) (Finsen Ia p.136 Ch.89; his dependants living with him which could include, in order of obligation, his mother, father, children, brothers and sisters, people of whom he was heir, and his freedmen (Finsen Ib p.3 Ch.128); and people in service with him (griðmenn).[8a] It was legally required that everyone (that is everyone who didn't have his or her own farm) enter service with another (Finsen Ia p.128-132 Ch 78 and 79), and it was illegal to beg if you were able to work (Finsen Ia p.139-140 Ch.82). Even slaves presumably were of fixed domicile if their owner was. Fisher-

8a The goði for all these people was the goði chosen by the farmer. Finsen Ia p. 136 ch. 81, see below p. 65.

men were also apparently expected to have a domicile, apart from their fishing huts, where they could be summoned, but for many offences they were to be summoned at their fishing huts[9].

Itinerants

There is one class of people in Grágás who were legally permitted not to have a fixed domicile, and that is those who through ill health or old age were unable to support themselves. (Finsen Ia p.140 Ch.82, II p.99-100 Ch.75, II p.277 Ch.244). They were not subject to any penalty for begging from house to house, but the hreppsóknarmenn (see below p. 82) were responsible for assigning the duty to maintain them to the men of the hreppr, several of them apparently taking turns supporting the person. Such persons thus became itinerants, gǫngumaðr , moving from house to house within the hreppr, but receiving at each house support to which they were entitled, rather than begging. A person who allowed someone they were responsible for to beg was subject to penalty (Finsen Ib p.172-4, Ch.234).

Itinerants were clearly not permitted to prosecute or defend any law suit at the Alþing, as it was illegal for anyone to maintain them there, and any property given them before they arrived to allow them to go could be taken from them with impunity (Finsen Ib p.14 Ch.131). They did have some substantive legal rights, but another had to prosecute:

> When a panel brings a verdict that a man goes begging on account of failing health or old age, then he is entitled to take (compensations for violations of) personal rights in all respects as a man with a fixed home. And the principal is to have one third of the compensation. If the man who is principal neglects to prosecute or make settlement then the vagrant becomes owner of the suit when it is proved that the other was in neglect (Finsen II p.99-100, Ch.75).

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[9] Finsen Ia p.132 Ch.79. A fisherman's goði was the goði of the man who owned the land where his hut was situated. Finsen Ia p.136 Ch.81.

That the section is probably late is suggested by another section which grants the prosecutor 1/3 of the compensation in cases where a woman or a man who could not prosecute his own suit were entitled to the compensation. This section is marked as nýmæli, and would therefore presumably date no earlier than the first written laws/ (Finsen II p. 354 Ch.324). In intercourse suits the rule was less stringent still, although again the provision may be fairly late as it refers to lǫghreppr:

> If a man has intercourse with a vagrant's wife (gǫngukona) then the penalty for that is the same as for intercourse with other married women and the suit lies with the woman's husband if his vagrancy is within his own legal community (lǫghreppr). But even if his vagrancy extends farther afield, then if he is indigent, he is entitled to take compensation for intercourse with his wife even though another prosecutes for it (Finsen Ib P.49 Ch.156). (Concerning lǫghreppr see below p 82-3).

This section presumably, like the previous one, was restricted to those who begged because of failing health or old age. The wording of both perhaps suggests that the earlier rule was stricter, perhaps denying such vagrants substantive as well as prosecution rights. Persons who begged from house to house without good cause were denied the right to both personal compensation and inheritance (Finsen Ia p.225 Ch.118).

Housemen or Hired Men (grið̀menn)

The provisions that a hired man was the prosecutor when a bǿndi or his heir failed to keep a lodging agreement with him (Finsen Ia p.133 and 136 Ch.80) may provide an exception to the rule requiring a fixed domicile, as, if the bǿndi failed to keep the agreement, the hired man could conceivably be left with no home[10]. It could, however, be argued that his legal domicile was governed by the original agreement, even though it had been breached[11].

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[10] This provision falls within a portion of Grágás suggested by Dennis to be of late date, but see above Ch 1, p. 33- 34.

[11] Suggested Privately to me by Professor Peter Foote.

Foreigners

Foreigners, whether domiciled in Iceland or not, are not stated to have had special restrictions on their right to prosecute, but there were special rules concerning their substantive rights, particularly in killing cases and in inheritance. In general, those who spoke the Danish, Swedish or Norwegian tongue had the same rights as Icelanders. If a person of another nationality were killed in Iceland, only his father, son or brother could prosecute, and only if they were known in Iceland as such before the killing (Finsen Ia p.172, Ch.97). Similarly, only a previously known son, father or brother could inherit (Finsen Ia p.229, Ch.120).

Cases involving foreigners, particularly as defendants, could be heard in specially held courts, probably because they were not of fixed domicile and could not be counted on to wait around for an assembly court (see below p.84-85).

The Needy

In addition to supporting those itinerants assigned to them, men of the hreppr were also required to make food gifts and to pay tithes, ¼ of which went to the needy (þurfamenn), with the hreppsóknarmenn telling them who to make the payments to. That itinerants were not part of the needy for these payments is perhaps not wholly explicit in Grágás, but the support of itinerants on one hand and the payment of tithes and food gifts on the other are clearly treated as distinct duties (Finsen Ib p.172, 174, Ch.234); it would seem logical that the food gifts and tithes would not be paid to the itinerants, whose needs were provided for directly by the farmers they were assigned to live with from time to time.

Both the hreppsoknarmaðr and the intended recipient were entitled to prosecute a person who failed to make a food gift or pay his tithe to the needy. In the case of the tithe, it is stated that the needy could be "principal in that suit, both prosecutor and transferor" (Finsen Ib p.174, Ch.234, Ib P.208, Ch.256). We thus have two clear examples of poverty stricken people being permitted to prosecute their own court actions. The tithe law was, however, introduced well after the Saga Age, being the work of Bishop Gizurr in 1096[12], and the food gifts could well be similarly late, especially since they were administered through the hreppr (see above Ch\,p.33). It is also possible that the needy were only entitled to pursue prosecutions at the local hreppr court (see below p.81-2), and that these offences were not expected to be prosecuted at spring assembly courts or at Alþing courts.

Bounden Debtors

Bounden debtors, who unlike vagrants must by definition have had a fixed domicile, were denied the right to control their own legal matters in certain situations, with no say even in who was to control them, although there is no suggestion that they were denied substantive rights to the extent slaves were. They could not as an heir conduct a killing case, and even their share of the compensation was limited to the amount of their debt. When a bounden debtor was killed his kin could have the suit, but only if they paid his debt first; if they didn't, the creditor had the suit (Finsen Ia p.171, Ch.96). In a sexual intercourse suit, if the female was a bounden debtor, her creditor had the suit, and presumably also

[12] Finsen Ib p.205, note a.

the compensation, (Finsen Ib p.48, Ch.156). These last two examples are really cases in which a person's financial circumstances affected the substantive rights of his relations rather than his own rights, but they may suggest a more general rule giving the creditor the right to be prosecutor in any action involving personal compensation. The existence of the rules, especially that denying the bounden debtor rights to conduct a killing case, does however suggest that without this law the debtor would have been entitled to pursue the matter himself, and thus suggests that there was no general property qualification beyond the requirement of fixed domicile.

Dependants

Like bounden debtors, dependants[13] (ómagar) had limitations on their control of their own legal matters, although presumably having a fixed domicile with the person supporting them. The person supporting a dependant had the right to request before witnesses that the dependant transfer to him all money claims he had, in other words to transfer not just the right of prosecution, but the whole claim, including the right to all the money collected. The dependant could refuse, but his supporter nevertheless had the right to take from the claim as much money as he had spent on the dependant and to be the prosecutor of the suit. The dependant nevertheless seems to have been able to override the last right by transferring the suit to someone else, but not to a man who was not "þing fær"[14] or to a woman. The implication seems to be that it was not

[13] See Finsen Ib p.3 Ch.128, for who a person was required to support.

[14] A person who was "þing fær" is defined in Konungsbók Ch.89 as one who could ride a full day, catch his fettered horse at a rest spot, and find his way alone in areas he was familiar with. Finsen Ia p. 160.

expected that a dependant would handle his own law suits, but he had some control over who did (Finsen II p.136, Ch.106).

Financial Qualifications for Prosecutors and Defenders in the Assembly Participant Rules

In order to be both an assembly participant for his own cases and those of others, and to receive assembly attendance dues, a person was required to arrive at the Alþing before the first Sunday. If he arrived on Sunday, he was still an assembly participant, but could not receive assembly attendance dues unless he was called to be a member of a court or a panel. All these people were required to remain until the end of the Alþing. Anyone arriving later was not an assembly participant and was free to leave if he wished. All prosecutors, defenders and witnesses similarly were required to arrive by the first Sunday (Finsen Ia p.44 Ch.23).

To be an assembly participant you were required to be a bóndi, a goði or a person summoned at home to go to the assembly as a witness (Finsen Ia p.45 Ch.23). A witness who was not otherwise qualified as an assembly participant had to be provided with a horse and food by the man who summoned him (Finsen Ia p.59 Ch.33).

We do not have an absolutely clear statement as to what a bóndi was, although we do have one of "a man who is operating a farm" and of neighbours (búar) who could be called to serve on a panel:

> A man who is operating a farm (Maðr sa er bú gørir) in the spring shall declare himself in an assembly wherever he wishes. That is a farm where a man has milking cattle. But he shall declare himself in an assembly even though he has no milking cattle if he owns land. If he is not a land owner and does not have milking cattle he goes in assembly where the bóndi is with whom he is boarding (Finsen Ia p.136, Ch.81, my own translation).

> One shall summon those neighbours (búa) who have sufficient money that they have to pay assembly attendance dues. They must pay assembly attendance dues who for every 'skulda hjón' have a cow not subject to debt or the value of a cow or a net or a boat and all the household goods which a household cannot do without. His 'skulda hjón' are all those people who he must care for and those workers he needs.[15]

The term bóndi was very clearly not intended to be as restrictive as the second definition, as there is at least one reference to bœndr who were not rich enough to pay assembly attendance dues (Finsen Ia p.119, Ch.68). Using the first definition as the definition of bóndi does not seem to lead to any problems.

A consideration of other provisions relating to assembly participants suggests, however, that the definition of assembly participant is too rigid, and that persons other than those referred to were entitled to take part in the business of the assembly.

It was first of all possible for a bóndi who was to attend the Alþing as an assembly participant[16] to send in his stead a member of his household who had a lawful domicile with him,

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[15] Finsen Ia p.159, Ch.89, own translation. Dennis regards the first statement as "relevant only in this context", and as probably intended to include tenants (Grágás P.517 note 81/1), who he elsewhere indicates as being a distinct social class from both bœndr and hired men (gridmenn) (p.500, note 78/1). The second statement he seems to regard as a definition of búi, which he translates as householder, rather than taking it as a definition of a particular set of búa (p.517, note 81/1). But as the term búi is used in the context of panels to apply only to householders living close to a particular person, neighbour is probably a more accurate translation, and has been adopted in the translation by Foote et al. I did not note any comment by Dennis on the meaning of bóndi, but I would imply from the statements already mentioned that he would consider it to apply to a land-owning farmer. This would, however, mean that tenants could not take farm workers, since in the discussion of the hiring of farm workers Grágás refers to the employers as bœndr; this is a restriction I do not believe should be assumed without good evidence.

[16] See Finsen Ia p.107, Ch.59 for how this was decided.

although he had to provide him with a horse and food (Finsen Ia p.52, Ch.27, Ia p.63 Ch.35, Ia p.160-61 Ch.89). For a spring assembly his substitute needed only to be in the same assembly, but again there is no indication the substitute needed to be a bóndi (Finsen Ia p.98 Ch.56, Ia p.106, Ch.59), although he probably couldn't claim a horse and food[17]. These provisions indicate to me that the restrictions on who could be an assembly participant were not based on aristocratic notions that only those with property were capable of governing and judging, but rather were intended to insure that only those with sufficient means could be required to attend, and probably also to keep down the numbers taking part in business to a maximum of one per household.

There is also strong evidence that prosecutors and defenders, who are not included in the definition of assembly participants, were nevertheless permitted to take part in the business at an assembly. There is first of all the separate provision concerning the arrival time of prosecutors and defenders, mentioned above. There is secondly a clear statement in a procedural rule that defenders attending an assembly were not necessarily expected to be bœndr:

> If (a prosecutor) has inquired where (a defendant) has his assembly affiliation and (the defendant) doesn't know then he makes a lawful answer if he replies as follows: "I have my board and lodging with (bóndi) N.N.". And he must name the bóndi (Finsen Ia p.42-3 Ch.22, Dennis translation).

There is also evidence in the following provision that the term assembly participant was applied to prosecutors and defenders:

> They have the right to sue or defend that come here the first Sunday of the assembly and none of them that come later, save this have happened, that a deed was done so late or known so late that they could not get to the assembly before, until

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17 See Dennis, Grágás, p.474, note 68/2.

> after Sunday, and these men shall have the pursual of their suits and be assembly participants (own emphasis) for all the cases that they have to do with there if they come early enough to set forth their panel calling before the courts go forth. They must not challenge the court in their own case.[18]

How then do we account for the rigid definition of assembly participant? It seems most probable that it was a definition of those assembly participants who were entitled to receive assembly attendance dues, and that prosecutors and defenders were not as such so entitled. It is also possible that prosecutors and defenders were in any case only assembly participants for their own matters, and could not otherwise take part in the business of the assembly unless they came within the definition. It is also possible that the various provisions referred to date from different times, and that care was not always taken to ensure that the use of terminology was completely consistent.

One final point about assembly participants is that it is possible that women were not permitted to be such for the affairs of others, as the laws refer to a person being an assembly participant for a woman:

> If he [a foreigner] is lodging with a woman and is killed there - now if someone lodges with her who is a lawful assembly-participant on behalf of her household the case lies with him but she has the compensation. (Finsen Ia p.173, Ch.97).

This may not necessarily mean, however, that the woman could not be an assembly participant, but rather that women normally delegated the responsibility. It must also be remembered that women were specifically prohibited from taking killing suits, and thus a male had to be found to do so. Further, on the arguments given above, even if she couldn't be an assembly participant for the affairs of others, this still wouldn't

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[18] Finsen Ia p.45-6, Ch.24. Translation adapted from Vigfusson & Powell, Origines, Vol I, p.355-6.

affect her right to attend the assembly as prosecutor or defender in other matters. (See also below under Age and Sex p. 71).

II Freeborn

This is a requirement which should not perhaps be interpreted too literally, as this would lead to the rather odd conclusion that a freedman born a slave could not pursue his own lawsuits, but a slave born a freeman could! Perhaps it was considered too obvious to need stating that slaves could not handle law suits. They were chattels, not people, with few substantive rights, as is implied by the oath taken by a man when he was freed, "that he would keep the law as a man who keeps it well, and he will now be in law with other men" (Finsen Ia p.192, Ch.112). A slave was the property of his owner, and could even be killed by him without legal penalty (except in a holy season or Lent)[19]. The concept that a slave was a chattel was not, however, always adhered to, as for example in the provision that a slave who killed his master or mistress could become a full outlaw; this implies that there was a proper legal trial, but does not necessarily mean the slave had any right to take part in it[20]. He also had the right to some compensation if injured, but his owner got more and presumably also was primary prosecutor in the suit. If a slave were killed, compensation was payable, but only to his owner, never to his family, and his owner would appear to have been the primary prosecutor (Finsen Ia p.190-91, Ch.111).

[19] Finsen Ia p.191 Ch.111. Konrad Maurer, Altisländisches Strafrecht und Gerichtswesen, p.133 notes this as an example of the church view triumphing over the secular view of the slave as a chattel.

[20] Finsen Ia p.188 Ch.110. Maurer, Altisländisches Strafrecht, p.462 gives further examples.

> In one thing a slave has more right than a free person; the slave has the right to kill his wife, although she is a slave, but a freemen has no right to kill a slave, even though she is his wife (Finsen Ia p.191 Ch.111).

Although a freed slave swore to go into law with other men, his rights were still limited. As already pointed out, he could not pursue a killing suit, nor could he inherit (Finsen Ia p.218-22 Ch.118), and therefore he could not pursue intercourse suits as one had to be fit to inherit to be prosecutor of these (Finsen Ib p.48-51 Ch.156, Ib p.203-4, Ch.254). He was however entitled to receive personal compensation for his daughter and therefore was entitled to receive compensation in intercourse suits, but someone else would have been the primary prosecutor (Finsen Ib p.36 Ch.146). For having sexual intercourse with a freedman's wife, the penalty was lesser outlawry, but it is not stated who had the suit (Finsen Ib p.48, Ch.156). His freeborn children did, however, have full rights to inherit from him and to pursue a suit for his killing (Finsen Ia p.172 Ch.96, Ia p.227-8 Ch.119). Freedmen were not totally denied the right to prosecute suits, as if the freedman of a freedman were killed and he had no sons, the superior freedman had the suit (Finsen Ia p.172 Ch.96). This follows the normal rule that where there were no freeborn children, it was the freedom giver who both prosecuted any killing suit and inherited from his freedman[21]. The freedom giver thus retained a major interest in the financial affairs of his freedman, and it is thus possible that he was also the prosecutor in any matters for the freedman, although we are nowhere told the freedman could not be prosecutor himself in lesser matters than killings or intercourse suits.

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[21] Finsen Ia p.172 Ch.96, Ia p.227-8 Ch.119. Concerning freedmen see Finsen III p.710-11.

III Age and Sex

As already stated women and boys under 16 could not be the primary prosecutor in a killing suit, although they retained the right to receive the compensation, sometimes and perhaps only in later times, subject to the prosecutor getting 1/3 of it (Finsen Ia p.171 Ch.95, p.173 Ch.97, II p.354 Ch.324). The son of a slain man could take the suit if he were over 12 with the permission of the principal prosecutor, but no other killing suits could be transferred to him (Finsen Ia p.168 Ch.94). 16 was similarly the minimum age for a prosecutor of an intercourse suit, but certain women (although not the woman involved) had the right to prosecute such suits, including the mother (6th in line) and perhaps the sister (7th in line), although one list says her husband was prosecutor and another omits her (Finsen Ib p.48 Ch.156, Ib p.203 Ch.254). For many sexual offences less serious than seduction the woman herself was the prosecutor if she wished and were 20 or over, but presumably only if she were widowed or unmarried. If she was unwilling to prosecute, then the prosecutor was her legal administrator[22]. Such a woman similarly was her own principal prosecutor in cases of assault and lesser injuries (Finsen Ia p.170 Ch.94). The husband of a married woman normally prosecuted all her cases (Finsen II p.199 Ch.167). Where a male under 16 was injured, the person who would have had the suit if he were killed was the prosecutor, but the boy could prosecute with the other's permission without a formal transfer (Finsen Ia p.169 Ch.94).

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[22] Finsen Ib p.47 Ch.155, Ib p.184 Ch.238. There does not seem to be a definition of who was a woman's legal administrator. Perhaps it should be taken as the same person who was entitled to betroth her (Finsen Ib p.29 Ch.144).

Maurer and Dennis have suggested that a woman entitled to be prosecutor was nevertheless prohibited from appearing in court, a conclusion they draw from the following passage:

> A widow or an unmarried girl of twenty or more is to have charge of her own law suits if they are assaulted or wounded with minor wounds, whether they wish to transfer or settle (Finsen Ia p.170 Ch.94).

They suggest that the right conferred was limited to settling or transferring[23]. The passage admittedly does not include the usual statement that the woman "had the suit" or "was primary prosecutor", but nevertheless I believe that the specific inclusion of the right to settle or transfer was intended to indicate that she did have full rights as primary prosecutor and not to be restrictive (see also below p.88-89). The following provision also is more straight forward and leaves little doubt that at least in this situation the woman had full rights:

> All those suits lie with the woman if she wants to get angry about them, and also intercourse has not been achieved, if she wishes to have them prosecuted. But otherwise, if she is unwilling to prosecute, the suits lie with her legal administrator (Finsen Ib p.47 Ch.155).

And in the provisions giving a mother the right to pursue intercourse suits, no distinction is made between her rights and the rights of others on the list (Finsen Ib p. 48 Ch.156).

IV Mental Capacity

The section on killing provides that a son could have the suit only if he was "of such mental capacity that he could take charge of his inheritance" (Finsen Ia p.167 Ch.94). We are probably to assume the same requirement, although it is

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[23] Maurer, Altisländisches Strafrecht, p.473; Maurer, "Zwei Rechtsfälle aus der Eyrbyggja", Sitzungberichte der philosopisch-philologischen und der historischen Classe der k.b. Akademie der Wissenschaften zu Munchen, Munchen, 1896, p.12-14; Dennis, Grágás, p.93.

not stated, for those who follow him on the list. Similarly if a man who was of insufficient capacity to handle his own affairs was injured, the person who controlled his affairs had the suit, as well as all other suits he was involved with (Finsen Ia p.169, Ch.94).

A person was not entitled to inherit if he did not know whether a pummel saddle should be turned front or rear or whether it needed to be turned. If he could understand more than this, but still couldn't understand his financial circumstances, his nearest of kin was the trustee of his inheritance (Finsen Ia p.222 Ch.118). The above provisions are probably meant to apply to this second, lesser, degree of mental incapacity, the first class probably being denied almost all substantive rights as well as the right to appear in court.

V Outlaws

Almost by definition outlaws had no substantive rights and therefore no concern with court matters. This was clearly so for full outlaws. There is a greater problem with lesser outlaws (outlawed for three years) who were given three summers to get a passage out of the country, and during that time were allowed to live in three places, and travel between them (Finsen Ia p.88 Ch.52). If they were merely killed while so rightfully in the country, there is no problem as their kin would then pursue the suit. But if they were unlawfully attacked and wounded, how did they collect compensation? We are not told. As his property was, as for a full outlaw, completely confiscated (Finsen Ia p.87-8 Ch.51), he could have had few financial rights to be worried about, and any he did acquire (as possibly an inheritance, Finsen Ia p.91 Ch53), he could enforce at the end of his outlawry.

It was possible for an outlaw to have the terms of his outlawry mitigated or even lifted completely and have his full legal rights restored. One method was for the full outlaw, or even other people on his behalf, to kill other full outlaws. If one full outlaw were killed by or on behalf of another full outlaw, the latter was to be given time to go abroad as a 3 year outlaw was, if two were killed the outlawry was reduced to three year outlawry, if three were killed the outlawry was lifted completely (Finsen Ia p.187 Ch.110, II p.399, Ch.382). Application could also be made to the Law Council (Lǫgrétta) at the Alþing for mitigation of sentence, but the grounds on which they would consider it are not given, except that it would be approved if no one objected, either in the council or from outside. (Finsen Ia p.95-6, Ch.55; Ia p.212-3, Ch.117). It seems also to have happened that the person who brought the suit for outlawry in the first place accepted money to have the sentence reduced, presumably by private agreement (Finsen Ia p.124, Ch.75; Ia p.194 Ch.113).

VI Illegitimate People

Where rights were based on kinship, the substantive rights of illegitimate people were often less than their legitimate counterpart (see above p.58), but where they had substantive rights, there is no indication that their right to prosecute court actions was subject to any special limitations.

VII Dead People

I am concerned here with who prosecuted suits in which the person who would normally have been primary prosecutor was dead, and whether a dead person could be prosecuted. The

question of who prosecuted for the killing of a person has been discussed above (p.58).

The following provision in Konungsbók concerns what happened if a man who had already taken steps in a law suit died; it is clearly of general application as it occurs in Þingskapaþáttr, the section about procedure at assemblies:

> If a man who has transferred or prepared a case in which he is principal then dies, that suit falls to his heirs, but if he has in no way begun the suit when he dies, it is [as if] he had in no way become the principal in that suit. (Finsen Ia p.125-6).

Staðarhólsbók gives a suggestion of what happened if the primary prosecutor had not begun proceedings, but knew of the case before he died:

> If the man who is principal in a case dies before he has transferred the case or prepared it or settled it, but the case did arise in time for him to hear of it, then the case lies with the man who is next of kin and of age, but only the heir of the principal if no one else is more closely related (Finsen II p.367, Ch.340).

The provision is contained in the section on killing (Vígslóði), which also covers cases of wounding, personal assault and slander. It therefore is not clear whether it was intended to apply in cases concerning money owing, property disputes etc. It is probably fair to assume that in any matter affecting the estate, i.e. property disputes and money matters, the heir became the primary prosecutor as the new owner. Concerning slander of dead men it is specifically provided that "the right of prosecution in such a case follows the same pattern as a killing case" (Finsen Ib p.183 Ch.238).

Konungsbók makes some provision for what was to happen when a transferee prosecutor died:

> If a man conducts a transferred case concerning property and dies on the journey to an assembly or at an assembly, the principal may take up his own case and prosecute the same summer. If he is not at the assembly, he may prosecute the following summer. If the other has presented the case before he died, the principal is

> to take it up where he left off...except that he is to repeat the presentation of the case. If the other has had judgement given on the property before he died, his heir is to summon in case of judgement breaking, but receipt of the property is due to the principal of the case concerning it (Finsen Ia p.123, Ch.75).

Presumably the transferred suit reverted to the primary prosecutor in any case prior to judgement, but without this provision it would have been necessary for him to start over again, thus causing a delay of one year until the next Assembly. The lack of provision for cases not involving property suggests that this was considered a major hardship only in property suits. The above chapter does, however, provide for the situation of the transferee prosecutor dying after judgement in suits involving outlawry: "In outlawry cases the procedure is similarly to be that the man who got an outlaw condemned, or his heir if he has died, is to prosecute for assistance to the outlawed man".

Provisions for what happened when a man was killed in revenge for some deed of his make it clear that charges whose penalty was outlawry could be brought against dead men. Although the actual outlawry was of course meaningless, Grágás makes it clear that in all cases of full or 3 year outlawry the goods of the outlaw were to be confiscated, with the prosecutor gaining much of the benefit (see p. 85), and thus such a charge could be worthwhile. The main purpose may, however, have been to establish the innocence of the killer, to justify the killing. From this point of view the charge may have been an obligation rather than a right[24]. These offences for which a man could kill and then bring a charge included unlawful sexual intercourse (legorð) and plundering:

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[24] Ludvík Ingvarsson, Refsingar a Íslandi, Rekjavík, 1970, p.73-4

> It is prescribed that where a man kills a man on account of a woman for whom he has the right to kill but some other man is the principal in the interccurse case, and the latter will not prosecute the case [then it is lawful for the one] who did the killing [to prepare the case] and to prosecute it and to transfer it to someone else [as if] he were the rightful principal.... If a man has killed a man concerning a woman for whom he has a right to kill, he shall summon the dead man and say thus: "I name witnesses to that that I summon him concerning that (which he decides to say). I declare all his property outlaw property. I declare him to have fallen an outlaw (ohælgan)"... and appoint where he summons to assembly. He can also summons him to full outlawry (til scogar) if he will. Finsen Ia p.165, Ch.90 (last half my own translation).

> If a man kills a man in plundering, then he shall call a panel of 9 neighbours concerning that, whether the other had been plundering since the last Alþing. If they bring the verdict, that he was plundering, then they shall judge him to have fallen an outlaw and all his property outlaw property and shall judge from the outlaw property of the viking compensation for those men whom he had robbed, such part to each as he had lost. Finsen II p.384, Ch.366 (own translation).

Clearly in such cases the suit could proceed very much as if the accused were alive with the same penalties attached[25]. In other cases this is less clear, the charges against the dead man being more a defence against a manslaughter charge:

> If a man uses that word in libel which another man has a right to kill for, and he avenges with killing or wounding, he shall also pursue a law suit concerning the libel to defend himself. Finsen II p.393, Ch.377. See also Ib p.184 Ch.238.(own translation).

> If a primary prosecutor prepares a suit against a man who has done him an injury, who was caught red-handed in a theft, then shall the one against whom the suit is brought in turn summons him who had taken property as fallen an outlaw (til ohelgi), if he is killed... Finsen II, p. 384 Ch. 367 (own translation).

There is little in Grágás about what happened to claims which were pending against a man when he died but were unrelated to his death. The only relevant provision I have found concerns the rights of the creditor of a bounden debtor to a suit for the killing of the debtor:

> If a bounden debtor is killed then the case lies with his kinsmen. They are to offer the man who had money owed him as much cashas he may have been bound by debt for. But if they make no offer, then the case lies with [the man] who had money owed him by the man killed. Finsen Ia p.171-2 Ch. 96.

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25 Heusler, Strafrecht, p.120.

The provision does suggest the general rule that debts did survive a person's death and that therefore the heir would take on the debts and be the appropriate person to prosecute in most cases.

SPECIAL RULES FOR ACCUSED AND DEFENDERS

Even where not specifically stated, most of the restrictions stated are probably equally applicable to defenders: i.e. in order to be able to handle one's own defence one had to be freeborn, mentally competent, of fixed domicile and, in many cases, male. This would not of course prevent people who did not meet these qualifications from being accused, with the exception of age. A person under 12 was not subject to any legal penalty for killing, he could not be outlawed nor made to pay a fine, although his kin still had to pay compensation (nidgiolld) (Finsen Ia p.166 Ch.91).

There were additional restrictions on accused which sometimes prevented them from defending their own suits. A person against whom a wound (sár) or death wound (ben) was published, presumably meaning the accused in most killing and wounding suits, could not go to the assembly (eigo eigi þingreitt), and if he did he was subject to lesser outlawry and all his suits and defences at that asssembly were void (Finsen Ia p.174-5 Ch.99). A person was also required to leave the assembly against whom notice was published at the Law Rock of a suit for an injury (áverk) inflicted on the journey to the assembly (Finsen Ia p.181 Ch.105). There were, however, limitations on the number of people who could be charged in any one suit: notice of a killing when there was no visible wound could not be made against more than three people so

as to prevent them from attending the assembly (Finsen Ia p.156, Ch.88). A wounded man could give notice against one man if he had one wound, two if two wounds, three if three wounds, but not against more than three men so as to prevent them from attending the assembly / (Finsen Ia p. 151 Ch.87). These restrictions possibly did not prevent more people from being charged than these, but they could not have been prevented from attending the assembly[26]. It was also necessary in killing cases where more than one person was accused for the prosecutor to select one person, and it was on the basis of that person's kinship that the court, panels etc. would be challenged, and it was from that person's family that compensation was payable (Finsen Ia p.178 Ch.102, Ia p.194, Ch.113). The provision occurs in Baugatal, which may indicate it was old.

There were provisions designed to allow others to protect the interests of absent accused who had not transferred their defence. At the Alþing anyone could call for clearing verdicts for such a person and challenge panels (but not the court) (Finsen Ia p.47 Ch.25). If a man who was not a member of a particular spring assembly were prosecuted at it,

> If (such a man) does not come to the [spring assembly] then, provided he has not previously heard about (the prosecution), it is lawful for whoever wishes to bring a defence on his behalf as if (the man so doing) is the lawful primary defendant (Finsen Ia p.103 Ch.58, Dennis translation.)

VARIATIONS IN RESTRICTIONS BETWEEN COURTS

Unless otherwise stated, the rules discussed so far can probably be taken to apply to all the courts in Iceland, although a relaxation of them in the more minor courts is probably to be expected, and certain of them had greater relevance to specific courts. The following is an outline

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[26] Maurer, Altisländisches Strafrecht, p.485

of the various courts dealt with by Grágás and of the rule variations between them.

The two main courts were those held at the spring assemblies (of which there were thirteen, three in each quarter except the North, which had four), and the Quarter Courts at the Alþing. The subject matter over which the two types of court had jurisdiction was the same, (Finsen Ia p. 99 Ch.57) and included most legal disputes which would arise. However, the spring assembly courts were intended to be used primarily in cases between people of the same assembly. Cases involving only a fine between members of the same assembly had to be taken to the spring assembly. If a suit was summoned to a spring assembly to which the accused did not belong, he was entitled to use this as a defence to the charge, and even to have the judgement set aside. It seems intended that the latter procedure be taken at the Alþing, although this is not completely clear. (Finsen Ia p. 102-3 ch. 58.) Why a prosecutor would bother taking a suit to a spring assembly court when the accused had such veto power is not made clear, but perhaps accused were often just as happy to have matters decided locally rather than travel to the Alþing. The issue is further confused by the provision discussed above (p.79) that if a man who was not a member of that spring assembly was prosecuted at it and he had not previously heard of the prosecution, anyone who wished could take up his defence. One might have expected others to have been given the right only to prevent the suit from being heard there.

Also held at the Alþing was the Fifth Court, which was primarily an appeal court for the Quarter Courts[27] but also

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[27] For its jurisdiction see Finsen Ia p.77-8 Ch.44.

dealt with cases concerning perversion of justice. Grágás gives us no reason for believing that the rules concerning parties to court actions in it were any different than for the Quarter Courts, although because of the gravity of the suits involved we might expect greater strictness.

The main distinguishing feature of the rest of the Icelandic courts is that they were not held at assemblies, but rather only as necessary, and generally as close to the scene of the offence or the matter of discussion as possible. They were all limited, to a greater or lesser extent, in subject matter and territorial jurisdiction.

The hreppr courts and the district (herað) courts had the broadest jurisdiction of these non-assembly courts. Grágás refers to both these courts, but does not actually distinguish between them very clearly, using the terms almost interchangeably. What appears to be of greater relevance in defining the courts was the nature of the offence being heard, which determined all the procedure to be followed. These offences included breach of the hreppr rules, trading with foreigners prematurely or outside fixed rates, offences committed by foreigners (including bodily injury, seduction, robbery and payment of personal compensation, réttr), incorrect measurement of linen or vaðmal and breach of the special rules applicable when such offences were committed at trading gatherings. There are thus two distinct classes of offences which could logically be assigned to the hreppr courts and to the district courts, but since the courts were only called to hear specific offences and not at regular intervals, the Icelanders may not have seen them as two clearly defined courts, like the Quarter Courts and the spring assembly courts, but rather in terms

of the specific offence to be heard. In any case, there seems no real reason to be concerned about defining the name of the court, particularly since that in itself would give very little information about procedure etc. It seems better to speak in terms of the nature of the offences[28]. The prosecution of these offences locally was probably also only an alternative to taking them to a spring assembly or Quarter Court, and not an exclusive jurisdiction.

For hreppr offences there were official prosecutors, the hreppsóknarmenn, who handled most of the prosecutions. There were five of them for each hreppr (which consisted of twenty bœndr who were required to pay assembly attendance dues) who had to be landowners unless all of the bœndr agreed otherwise (Finsen Ib p.171 Ch.234). They were obligated to prosecute for breaches of any of the hreppr laws and could be prosecuted for failing to do so by the other men of the hreppr, who could then also prosecute the suit the sóknarmenn had overlooked (Finsen Ib p.177 Ch.234). If all the men of the hreppr failed in these prosecution duties, the Bishop was entitled to appoint a prosecutor and any man from outside the hreppr could also prosecute (Finsen Ib p.178-9 Ch.235). In a few cases, the person personally affected could also prosecute (see above p. 63).

The existence of these public prosecutors was no doubt due to an opinion that the persons with the largest personal

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[28] For a detailed discussion of these problems see Dennis, Grágás, p.214-228, who nevertheless chose to keep, and give a specific definition to, the two court names, even though he recognised that Grágás did not. The relevant chapters of Grágás are Finsen Ib p.174-8 Ch.234, p.72-4 Ch.167, II p.252-6 Ch.219-22, p.261-4 Ch.228-31.

stake in the matters were on the whole not fit to prosecute themselves. The hreppr was primarily a welfare organisation, designed to ensure that the less fortunate members of the community were looked after, and that the responsibility for this was fairly distributed. Those most affected by breaches of the hreppr provisions would have been the poor who did not receive welfare payments they were entitled to. But the failure of one person to pay his share also affected the other members of the hreppr, who would then need to pay more, and even people from surrounding areas into which a needy person might wander if not properly maintained in his home district. Thus such prosecutions were of concern to all these people, and thus their rights of prosecution. The Bishop's right to intervene was no doubt based on his moral duty to oversee the welfare of all his flock.

We might argue that the concept of a public prosecutor was alien to the whole Icelandic legal system, and that therefore it must be a late borrowing, possibly via the church. But if it is considered in the context of restrictions on court appearance, its spontaneous development seems quite plausible. Most people subject to prohibition from court appearance had someone who would quite naturally assume the responsibility for them: children had their parents, workers their employer, freedmen their freedom giver etc. But vagrants and those struggling to maintain a living on their own farms might conceivably have had no relations better off than themselves. We can thus hypothesise that, if they discovered they were entitled to a welfare payment they hadn't

received, they would have gone to their nearest neighbour of any means to help them collect it. That neighbour might very probably have said "why bother me?", so that in time the concept of assigning the duty of helping such people assert their rights to specific members of the community could easily have arisen. Officials like the hreppsóknarmenn could very well have existed, therefore, not long after the introduction of the first welfare legislation, the date of which is itself of course quite unclear and could very well be post Saga Age; but this argument should at least suggest that little can be presumed concerning the date of the legislation from its connection with official prosecutors.

That the duty was not assigned to the goðar is of interest in view of the traditional concept of them as upholders of the law. But perhaps it was too petty a task for them. Also, there were only 36 (later 39, later still 48) of them, and, as there were a minimum of 20 bœndr in each hreppr, and five hreppsóknarmenn in each hreppr, and according to Íslendingabók, Ch.10 there were about 4560 bœndr in Iceland in 1100, there would have been considerably more hreppsóknarmenn than goðar to take care of the problems. But on the whole we have here further evidence (above p.54-56) that the goðar were not given a general right or duty of control, supervision, or protection of prosecutors and defenders.

Another official involved in prosecutions was the person responsible for setting the prices of foreign goods, who was also to prosecute for trading before the price was set, or at a higher price, but if he failed to do so the men of the

district (herað) were to do so (Finsen Ib p.73 Ch.167).

Almost any other case involving foreigners could also be brought to a local court, including killing, wounding, sexual intercourse and robbery, but any of these offences involving foreigners, including trading offences, could also be taken to spring assembly courts and to the Alþing (Finsen Ib p.73 Ch.167). The provision for the pursuance of suits involving foreigners locally was likely motivated not so much by the desire to keep them out of assembly courts (although this is possible), but by the fear that if the case was not heard quickly the foreigners might well disappear across the sea. The existence of these special courts is thus to be seen as very closely linked with problems in admitting or getting certain types of people to court, including the poor involved in welfare suits, who could not have afforded to travel far.

The confiscation court (féransdómr) and dead debtors court (skuldadómr) had similar purposes, to divide up a man's estate, and the procedure of one was often defined in terms of the other. The confiscation court only came into operation after a case had been heard at one of the courts already discussed and the defendant had been outlawed. At this court all his property was valued, confiscated and distributed, first to his creditors and wife, then towards any fines, then a cow or four year old ox to the goði of the outlaw (who was responsible for holding the court), then half of the remainder to the person who got the outlawry (or the primary prosecutor - see below p. 90), and the other half of the remainder to the men of the Quarter if he was outlawed at the Alþing, or to the men belonging to the spring assembly

at which the outlawry was judged, this one half to be used to support the dependants of the outlaw, or, if he had none, to support other dependants entitled to itinerant maintainance in the Quarter or Spring assembly area (Finsen Ia p.85-6, Ch.49). There were thus many people interested in the proceedings of this court, which was really more of an arbitration panel. All dependents were required to attend (or be brought), except a child for whose fathering the person was outlawed. If a person failed to bring a dependant, although he knew the court was being held, he then became responsible himself for that dependant (Ia p.87 Ch.50). Presumably creditors also lost all rights if they failed to attend. Persons with property of the outlaw were also required to attend (Finsen Ia p.93 Ch.54). It would thus seem that all people concerned with the affairs of a confiscation court were not only entitled but required to attend. Most of the rules concerning parties discussed above were probably irrelevant to it[29].

The dead debtor's court was to be called by his heir if a man died with insufficient assets to meet his liabilities, and was intended to divide the assets according to stated rules among the claimants. Otherwise it did not differ a great deal from the confiscation court[30].

The meadow possession court (engidómr) and summer pasture court (afréttardómr) were also each designed to arbitrate on one specific issue. The first was intended, as its name implies, to resolve disputes over meadow ownership(Finsen Ib p.84-6, Ch.176). It had a special procedure

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[29] See also Finsen Ia p.112-116 Ch.62 for a parallel version, with slight variations, of the confiscation court rules, and Dennis, Grágás notes to chapters 49 to 54 and 62.

[30] See Dennis, Grágás, p.171, p.214-220; Finsen Ib p.148-52, Ch.223, II p.225-8 Ch.184-5

of its own, but the hearing was not fundamentally different in nature from those of spring assembly courts or Quarter courts. If the meadow possession court was unable to decide the issue, it was then to be heard at the appropriate Quarter court. The summer pasture court was used to settle disputes about the use of common summer paster, and like the meadow possession court had its own procedure (Finsen Ib p.115-7 Ch.202). It seems assumed throughout the provisions for both courts that the persons directly concerned would be the parties to the actions, but we should not assume that they were therefore not subject to the rules discussed above. Involvement was limited first of all by the very nature of the disputes, which determined that at the very least the parties would be farmers, if not landowners. But whether for example females, youths and freedmen would be permitted to pursue disputes concerning farms they owned at these courts cannot be determined.

There is a special rule for defendants in the summer pasture court. All persons with shares in the pasture were to select a nominal defendant, or else the prosecutor would name one. It was then at his home that summonses would be made, he appointed half the judges, etc. But all people with an interest in the pasture were nevertheless required to attend and give evidence or lose their rights, even though not officially parties. Minors not represented and persons absent from Iceland could establish their shares later at an assembly court (Finsen Ib p.117 Ch.202). Presumably the minor had to wait until he was of age to establish his right, or get someone else to do it for him, although this is not made clear.

TRANSFER OF COURT ACTIONS

Staðarhólsbók tells us that the prosecution of any suit could be transferred, and gives the procedure for a transfer:

> a case is to be transferred thus: they are to take each other by the hand, the one who takes the case and the one who transfers it, and name two or more witnesses to witness that the principal transfers that case to the other, to prosecute and to settle (at søkia oc at sættaz á) and to use every formal means of proof as if he were the rightful principal (Finsen II p.344 Ch.307).

There is little indication in Grágás as to the general purpose of the procedure (although we are occasionally told that a formal transfer was not necessary in particular situations eg. Finsen Ia p.182, Ch.107), or of the people to whom it was contemplated transfers would be made. There is one reference in Grágás to suits being transferred to men who couldn't travel to the assembly and to women, which may indicate that transfers to people of high social class or legal expertise were not the rule (Finsen II p.136, Ch.106). To the extent that certain people were entitled to control their own legal matters but not take them to court the right to transfer would of course have been essential, and could be the reason for the existence of the right.

Grágás treats the right as an attribute of a primary prosecutor or defender (e.g. Finsen Ia p.171 Ch.95). Thus a transferee could only transfer a suit to a third party if he fell ill or was wounded while travelling to the assembly (Finsen Ia p.125, Ch.77). Therefore, when it is stated that a person had the right to pursue a suit or transfer we should

not consider this as granting the right to transfer, but rather as indicating that the person had full rights as a primary prosecutor. For example:

> If a principal in a case will not prosecute a suit involving personal compensation, belonging to a young man under sixteen winters, then it shall be lawful for the young man when he is sixteen winters or older to take up the case...It is lawful for him to transfer the case to someone else if he wants to. (Finsen Ia p.168-9 Ch.94).

←This is the interpretation I consider appropriate (above p.72) in the provisions concerning women's rights in court actions as well.

A transferred suit remained the suit of the primary prosecutor or defender and not of the transferee. This is indicated first by the restrictions on transfer of a transferred suit already mentioned. Further, if a transferee died before judgement, the suit reverted to the transferor (Finsen Ia p.123 Ch.75). The transferor could also sue the transferee for not prosecuting a matter (Finsen Ia p.125 Ch.77), and if he got a guilty verdict, he could have the suit back (Finsen II p.345 Ch.307). This provision does, however, imply that a transferor could not normally take back a suit . It is also provided that courts were to be challenged on the basis of kinship with the primary prosecutor or defender, not with the transferee (Finsen Ia p.47 Ch.25). It also seems fairly clear that in those cases involving personal compensation or other financial reward to the prosecutor it was the primary prosecutor, and not the transferee, who got it. In other words, the transfer affected only the procedural, not the substantive rights. Thus, when a transferee died after judgement, his heir was to prosecute in case of judgement breaking (on the principle that in any suits arising out of a transferred suit the transferee was

the prosecutor, Finsen II p.282 Ch.251), but the primary prosecutor of the original suit got the property. Similarly, in outlaw suits the transferee or his heir was to sue for harbouring the outlaw, but the primary prosecutor or his heir got any money collected (Finsen Ia p.123 Ch.75). There is a provision in Staðarhólsbók allowing the actual prosecutor one third of the compensation in killing cases when the person to whom the compensation was due was not permitted to act themselves, but it is marked as nýmæli and may therefore be of late date (Finsen II p.354, Ch.324). It is also of course not a case of transfer, but may give some indication of what might be expected in a transferred case. In outlaw cases the transferee probably did get some compensation, although it is not entirely certain. One provision states that the person who got the man outlawed got one half of the residue at the confiscation court (Finsen Ia p.86, Ch.49), but another states that the primary prosecutor got it (Finsen Ia p.115, Ch.62). Dennis inclines to the former statement[31]. That the primary prosecutor normally got any money proceeds of a suit is implied by the provision that where a person other than a primary prosecutor handled an intercourse suit and accepted less than "if he himself was to have the compensation, then he is liable to lesser outlawry...The suit lies with the one who is entitled to take the compensation" (who would normally be the primary prosecutor)(Finsen Ib p.53, Ch.158).

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[31] Dennis, Grágás p.465 note 62/26

CHAPTER 3: PARTIES TO COURT ACTIONS IN LAW SUITS FROM THE SAGA AGE (930-1030 AD)

THE IDENTITY OF PROSECUTORS

Of the 40 suits[1] involving non-manslaughter charges 16 were prosecuted by the injured party; in 2 more the prosecutor could have been the injured party; and 1 suit was for the abduction of a sister or daughter and can be regarded as a personal matter of the prosecutor. Thus in 19 of the 40 cases, or nearly half, the actual prosecutor could be regarded as the person with the greatest personal interest in the matter and thus as the primary prosecutor. One further suit for blasphemy was prosecuted by 3rd cousins of the accused in accordance with a special law, (STH 8), and another by a brother probably, as legal administrator, as the alternative primary prosecutor because his sister did not wish to prosecute (E4).

In 9 of these 21 suits the prosecutor was a goði (Tables IC, ID[2]). In 10 of the remaining cases the prosecutors were farm owners and householders (W15, W19, W20, W23, W24/N1, N27, E5, E12, STH4), in one a foreign prosecutor was assisted by 2 Icelandic farmers (N13). The 12th was prosecuted by the sons of an influential farmer; there is no evidence they had farms of their own, but they could perhaps be regarded as partners on their father's farm (STH8).

Of the remaining 19 non-manslaughter suits 11 were prosecuted by a person who was not a goði. In 5 of these 11 cases, the prosecutor was acting for close relations, always willingly but

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[1] For a list of the Law Suits see Appendix I and III, where they are listed by Quarter, North (N), East (E), South (STH) and West (W). In the text the suits are referred to by the number assigned in these lists. N1, E1, STH1, W1 etc. For more detailed discussion of the law suits used, see Chapter 1, p 47 .

[2] The Tables summarise the material contained in the Law Suits listed and outlined in Appendix I, and can be found in Appendix II.

usually only when asked. A son assumed the prosecution of a suit for his mother after she placed herself in his protection (W25). According to Laxdæla saga (Ch.32 and 35) he was a skilled lawyer and quite well off, although he lived on his father-in-law's farm. It does seem likely that part of his property would have consisted of land. A son, a farm owner, prosecuted two suits for his blind father at the father's request (N6 and N7). A legal expert of excellent family but apparently without a farm or even a fixed domicile (see below p 113) prosecuted a seduction suit concerning a close female relation at the request of her husband, who transferred the suit to him (E9). In only one of these 5 cases did the person act without being asked by the injured party, that being a wounding case which a farm owner who was uncle and employer of the injured man prosecuted (W4).

Of the remaining 6 of these 11 suits, 1 was a suit for temple tax, undertaken for a priestess. According to the saga account, she transferred the suit to a goði, who then transferred it to a friend, who was quite likely a farm owner. It is, however, probable that the goði had nothing to do with the case and thus we do not know why the prosecutor acted (E3). In 2 further suits the injured party transferred the suit to another with the promise of payment for his troubles (E7, W13). In neither case were the people farm owners; the prosecutor in E7 was the same legal expert as in E9, and in W13 he was the son of a goði who had just returned from abroad and was living with his father. In 3 cases the relationship of the prosecutor and the injured party is not clear (W18, STH2, N22); in W18 and STH2 they were farm owners, in N22 they are not identified.

8 suits were prosecuted by goðar for others, and, in the 4 cases where there is any information on the matter, quite willingly. (Table I C, D). A merchant transferred a suit to a goði with whom he had been staying for the winter (N17). In 2 cases a goði acted for þingmenn. In neither are the þingmenn said to have asked for the help, but in both the terminology suggests a transfer (W12, N19). A goði prosecuted 1 suit for blasphemy against a person he had no blood relationship with. His reason for acting is not stated (STH10).

In 4 of the suits prosecuted by goðar the relationship of the prosecutor and the injured party is not specified, one of them being possibly prosecuted from a sense of public duty (E10), one possibly for a þingmaðr (N23); a third involved miscellaneous law suits against the þingmenn of a rival goði, undertaken because of a personal interest in discrediting that godi, but possibly for þingmenn, or in matters of public interest (N16). (See below p 106 for a discussion of the possibility that there were "Popularklage").

People who were not goðar prosecuted 15 of the 32 manslaughter suits; 3 were fathers of the dead, 5 brothers, 3 others close kin (Table IIA and B). 11 of the 15 prosecutors were thus very close kin, although in one where a cousin acted it was at the request of a father (N8), and in one case where a brother acted a son was alive, although we may perhaps assume he was under age and therefore not competent to be a primary prosecutor (N11, see below p 120). Two of the suits commenced by brothers were later transferred (N10, N11). These cases are thus all consistent with the rule of Grágás

that the closest kin (subject to various restrictions) was primary prosecutor in manslaughter suits. Of the 4 remaining prosecutors, one was the owner of the dead person (although he later transferred the suit to his father to facilitate settlement)[W21], and one the head of the household where the dead person, a foreign merchant, had been lodging (N14). In both of these cases the prosecutor would appear to have been as designated in the provisions of Grágás discussed in Ch 2 (p 69 and p 55). The two remaining cases were prosecuted by in-laws. In one of these (N2), a brother-in-law of the dead person was asked to do so by the father of the dead person, and the suit was transferred to him. The person assuming responsibility as primary prosecutor was thus as designated by Grágás, the closest blood kin. The brother-in-law took the suit over reluctantly, after being reminded by his brother that it would be shameful for him not to support his kinsmen, and that besides, if he didn't it would be admitting inferiority to the accused, a goði, a rival of them as a powerful non-goði family in the area. In the other suit (N12) we are given no detail about the immediate family of the dead person, and the reason for the involvement of the prosecutor is not given. There are also two versions of this lawsuit, in only one of which in-laws prosecuted. In both versions the person prosecuting, although probably not a goði, was a leading member of a very powerful family in the area.

In one of the 15 manslaughter suits by non-goðar, the prosecutors were female, the heirs to the estate of the dead person, who was a well-off goði (W10, see below p 120). In all other cases they were male, and we are given no reason to believe any were not farmers operating their own farms.

Of the 17 goðar who prosecuted manslaughter suits only 1 was the father of the dead person and 1 the brother. 3 others were close relatives, but in one of these the mother of the dead person transferred the suit to her brother (N28), and in another, the father of the dead person was alive (N9; Table IIC and D). Thus in only 3 of the 17 cases was the goði possibly the closest kin alive and therefore the primary prosecutor. There are also two further suits in which the goðar may have been the primary prosecutors pursuant to rules not covered by Grágás. In W9 a goði prosecuted for the killing of one of his employees. Three similar examples suggesting an employer had primary responsibility for the legal affairs of his employees are W4, where a non-goði prosecuted a wounding case for an employee and a goði defended his uncle and employee, N19, where a goði defended an employee with the comment "I cannot remember ever having cast any domiciled man of mine to the winds", and STH6 where an employer was responsible for/assumed/the defence of his employee. In none of these cases is a transfer mentioned.

An expedition leader may also have been considered to have had primary responsibility in any legal matters arising from the expedition. In N15 a goði prosecuted for a killing which occurred on an expedition he was leading. In another manslaughter case an expedition leader did not prosecute himself, but did act as the primary prosecutor in transferring the suit to a goði (W7). We also see goðar defending in two manslaughter suits which arose out of expeditions they were leading, with no mention of transfers, although in neither case were they personally accused (W6, N10). Of course, an expedition leader's personal involvement was large, and these cases can be regarded

as virtually personal matters, rather than cases in which they were acting as primary prosecutors in the affairs of others.

There are thus a total of 5 manslaughter suits in which the goði prosecuting may have been the primary prosecutor. Of the remaining 12 there are 3 in which the reason for the involvement of the goðar is unclear, although the dead people may well have been their þingmenn (E2,E8, STH7.)

This leaves a total of at least 9 suits, or nearly one-third of all the manslaughter suits, which a goði prosecuted although he was not the primary prosecutor. In 5 of these a close relation of the dead person was alive and a transfer from them to the goði is stated or implied by the terminology. In 2 cases it was a wife (W3, W6), in one a father (STH6), in one a mother (N28), and in one a son (W14) who transferred the suit. In 3 of these the goði acted quite willingly, in two for his sister (W3 and N28) and in one for his neighbour and friend (STH6). In W14 the uncle and foster-father of the wife of the son of the dead person took the suit somewhat reluctantly because he felt he had been tricked, but he nevertheless felt he had a duty to act. In W6 the uncle of the wife of the dead person prosecuted most unwillingly, and only after considerable goading by the wife.

In a sixth case (N9) the father of the dead person was alive, but the prosecution was assumed by the nephew and good friend of the father, a goði. The father is not said to have asked for help, nor is a transfer mentioned, but rather the goði assumed responsibility from the start.

A close relation, the father, was also alive in a 7th case (W7), but here it was the expedition leader who approached his wife's brother with the request that he prosecute, which he did quite willingly. The person with the greatest personal interest was also involved in an 8th case, W8, where a slave owner asked a goði to prosecute for the killing of his slaves. The owner argued that the goði had an obligation to help him, but the goði was not impressed by this argument, and only agreed to have the prosecution transferred to him in return for a substantial payment. In the final case (W11), the goði prosecuting was the father-in-law of the dead person; 3 brothers, one of them a goði, were alive, but we are not told how it came about that the father-in-law prosecuted rather than them.

PRIVATE NATURE OF LAW ENFORCEMENT

It is thus evident that, as we found in Grágás, law enforcement through legal prosecution was primarily a private matter. Even if the matter was not prosecuted by the injured party or by the closest kin in manslaughter suits, that person still nevertheless usually took on the responsibility for finding someone else to prosecute and transferred the suit to him. Where it was not readily evident who had the greatest personal interest in a matter, or, in manslaughter suits, where no kin were available, it was still nevertheless a person with a close connection in the matter who was primary prosecutor, rather than any public official. Thus, where a foreign merchant with no kin in the country was killed, it was the head of the household where he was living who prosecuted (N14), in blasphemy suits it was the 3rd or 4th cousins of the accused (STH8), in a suit for temple tax it was the priestess of the temple (E3).

Even in those cases where a person acted as primary prosecutor although he was not the person we might consider as being the most injured party, he was still nevertheless always a person with a close personal interest. This is true of expedition leaders (N15, W7) and in suits involving seduction or abduction of females (E9, W19). It is interesting that these latter suits seem generally to have been treated as offences against the family of the female, not against the female herself, with her willingness in the affair being an irrelevant factor.

The person who would appear to be the most likely to have been designated as primary prosecutor in the legal affairs of other people was the head of a household. As his host he was to prosecute for the killing of a foreign merchant (N14), as an employer he may have been primary prosecutor for the affairs of his employees (W9, W4), as a father for his young children (W1, STH5). Employees and dependent children were more often the accused party than the injured, with their employer or father again taking responsibility as defender (W6, N19, STH6, E12, W4, W7). In all of these cases the head of the household assumed responsibility for the prosecution or defence automatically, as if he were the person with the primary responsibility. It is not, however, clear that a householder was <u>obliged</u> to act on behalf of his employees, guests etc. In N19 when Þorkell Geitisson was asked to defend one of his men, he expressed disapproval of his actions, but agreed to take his case, saying: "I cannot remember ever having cast any domiciled man (<u>heimamaðr</u>) of mine to the winds". This would appear to suggest a moral or social, rather than a legal

obligation, and may indicate that primary rights of prosecution were held jointly by a householder and his men, both having the right to act without a formal transfer. A householder also did not have primary rights of prosecution in the affairs of guests who were still alive, although again he may have had some moral obligation to help. In N17 a host prosecuted a matter for a merchant who had spent the winter with him, but it is explicitly stated that there was a transfer. In N13 the prosecution of a suit for a Norwegian merchant was conducted jointly by the merchant, his Icelandic partner's father and his host, although the formal basis for this is not made clear.

In Grágás there is some hint of the role played by a householder, as we did see him designated as primary prosecutor for the killing of a foreign guest (above Ch. 2 p. 55); also, the members of a household were not entitled to choose their own goði, but rather had to follow whoever the householder chose (above Ch.2 p. 59, 65). We can also probably assume from it that they were to act for their young children. Grágás does not, however, suggest that they had any obligation to prosecute or defend in the legal matters of their employees.

It is interesting to contrast this role played by householders in the Icelandic lawsuits with the role assigned to householders in the Anglo-Saxon laws. In the Icelandic material the householder's responsibility is to the members of his household, to prosecute for or defend them in their best interests. In the Anglo-Saxon laws, however, the head of a household is shown as responsible to society for the good behaviour of the members of his household, and this is true

from the earliest to the latest of these laws. Thus in Hlothere and Eadric Ch.15[3] it is stated:

> If a man entertains a stranger (a trader or anyone else who has come over the border) for three days in his own home, and then supplied him with food from his own store, and [if] he [the stranger] then does harm to anyone, the man shall bring the other to justice, or make amends on his behalf (see also II Æthelstan 8)

and Ch.1

> If a man's servant slays a nobleman, whose wergild is 300 shillings, his owner shall surrender the homicide and pay the value of three men in addition.

There is no hint in the Icelandic lawsuits of any such duty on the part of a householder, or anyone else for that matter, to voluntarily surrender a wrongdoer. On the contrary, it appears to have been quite acceptable to defend, shelter, help to escape etc. any person, no matter how guilty. The Anglo-Saxon laws, however, make quite clear that not only could a householder be made liable for taking the part of a guilty man, but also for failing to prevent the crime in the first place:

> II Æthelstan 3: if a lord refuses justice by taking the part of one of his men who has done wrong, and application is made to the king [about the matter, the lord] shall pay the value of the goods [in dispute] and give 120 shillings to the king.
>
> Ine 50. If a nobleman comes to terms with the king, or with the king's ealdorman, or with his lord, on behalf of his dependants, free or unfree, he, the nobleman, shall not have any portion of of the fines, because he has not previously taken care at home to restrain them [his men] from evil doing.

By the time of Æthelstan (2nd quarter of 10thc AD) the obligation of householders and lords was being more formally stated and carefully outlined:

> III Æthelstan 7. Seventhly, every man shall stand surety for his own men against every [charge of] crime s.1. If, however, there is anyone who has so many men, that he is not able to control them, he shall place each estate in charge of a reeve, whom he can trust, and who will trust the men.

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3 For full references to these laws see the Bibliography under Anglo-Saxon Laws.

The obligations of a surety are made clear in the slightly later laws of Edgar:

> III Edgar 6. And every man shall see that he has a surety and this surety shall bring and keep him to [the performance of] every lawful duty.
> s.1. And if anyone does wrong and escapes, his surety shall incur what the other should have incurred
> s.2. If the case be that of a thief and his surety can lay hold of him within twelve months, he shall delivery him up to justice and what he has paid shall be returned to him[4].

The private responsibility for law enforcement is also evident in the identity of the people to whom prosecutors turned for help when they felt unable to pursue suits themselves. The most important source of help was close kin, both by blood and by marriage. Goðar were also frequently involved, but in manslaughter suits they were often also close kin of the primary prosecutor, or the victim, thus emphasising the predominant responsibility of kin in such suits (Tables IIC, D). In only 2 cases did a goði clearly prosecute for a person because he was his þingmaðr (W12, N19), although this may have been the reason in at least some of the 6 unclear cases. None of these were manslaughter suits, which suggests that killings did not bring dishonour on the goði of a person as they did on the family. In one case a goði acted for a friend (STH6). Occasionally when neither relations nor a goði would help for any other reason, a person could buy help (W8, E6, E7, W13), but goðar do not seem to have made a business of selling their expertise, nor are non-goði legal experts common, with only two being mentioned as taking on the prosecution or defence of court actions for others, Helgi Droplaugarson in E7 and E9, and Þórðr Ingunnarson in W25. But even with these legal experts

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[4] See further Hlothere & Eadric Ch.2, 3, 4; Wihtred Ch. 23, 24; Ine Ch.22; III Edmund 7; I Æthelred 1; II Canute 31; III Edgar 7; IV Edgar 3.

kinship was important, as in E9 Helgi was prosecuting for the husband of a relative, and in W25 Þórðr prosecuted for his mother. It is not even mentioned with respect to the law suit that Þórðr was a legal expert; we must look to the introductory biography about him earlier in the saga to find this information.

ROLE OF PUBLIC OFFICIALS IN PROSECUTIONS

There is no evidence in the law suits for public prosecutors, not even for the hreppsóknarmenn designated in Grágás (see above Ch.2, p 82). However, there is one example of a goði acting for men who were not in the country to protect their own interest. In E10 Helgi Ásbjarnarson prosecuted two people concerning the killing of a man whose sons were abroad. On their return, they were very grateful and gave him good gifts. This may thus be an example of a goði being designated as primary prosecutor in the affairs of others, but it is the only example from the law suits, just as in Grágás we found it a rare occurrence (above Ch. 2 p54-6).

The one other public official, the Lawspeaker, did occasionally become involved in law suits, but there is no evidence that he had any duty to help parties to court actions beyond the giving of advice as prescribed by Grágás (above Ch.2 p 52). The Lawspeaker who we see the most of in the sagas is Skapti Þóroddsson, who held office for the last 26 years of the period being considered (1004-1030 AD). He appears to have been fairly forceful in his office, being responsible for two pieces of legislation, the establishment of the Fifth Court (see above Ch. 2 p 80). "and also this, that no man should legally declare a slaughter as done by any one else than himself" (see below p 151). Also, "In his days were many chiefs and mighty men outlawed or exiled for

slaughter or assault by means of his might and rule of the law (or: by the exercise of his authority and the forceful discharge of his office - af rikis sǫkum hans ok landstjórn)"[5] Although we are given little real evidence in the sagas as to how Skapti achieved this, the information we are given suggests it would have been by giving advice and direction in law suits (whether or not asked for it), and by supporting people he felt were in the right, rather than by pursuing prosecutions himself. In Grettis saga especially he is shown as a person who gave good advice. In one law suit he interceded on Grettir's behalf, and held "that no judgement should be passed for Grettir's banishment without further proceedings", (N40), although he was ignored on this occasion. In a later case his ruling that an outlaw could not be charged did have effect in stopping a manslaughter prosecution against Grettir (N41). He is also shown as aiding Grettir while he was an outlaw, although, because of his position, stopping short of giving him shelter (Grettis saga Ch.54)[6]. In Flóamanna saga we see him advising his brother-in-law not to pursue a suit for conspiracy to kill, because it had been started wrongly (STH27). In Njáls saga we see him twice being approached for support by the prosecutors of killing suits, although he refused both times (Ch.119 and Ch.139); and on one occasion he was asked to confirm a point of obscure law (Ch.142). These examples of Skapti's activities give little evidence for the assertion in Íslendingabók that he brought many murderers to justice, but do show the methods he

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[5] Íslendingabók Ch.VIII, translated in V & P I, p. 299, and Jóhannesson, A History of the Old Icelandic Commonwealth, p.71.

[6] See Grettis saga Ch.27 and 32 for further examples of advice

could have used, which all stop short of actually prosecuting wrongdoers himself.

The other Lawspeaker we see a good deal of is Þorgeirr goði Þorkelsson of Ljósavatn, lawspeaker from 985-1011 AD. He was most famous for having declared the laws which introduced Christianity to Iceland[7]. We also see him in Ljósvetinga saga interceding to have an outlaw's sentence lifted at the request of Earl Hakon, rulerof Norway. This resulted in a major confrontation between Þorgeirr and Guðmundr the Mighty on one hand, and Þorgeirr's sons on the other, which ended in Þorgeirr being accused and having to defend himself in court (N15). This attempt by Þorgeirr to have an outlawry lifted is the closest we come to a Lawspeaker acting on behalf of another, and of course it is not strictly speaking a lawsuit. It is interesting that Skapti is also shown as intending to be involved in such an attempt: "Skapti the Lawman died during the winter, whereby Grettir suffered a great loss, for he had promised to press for a removal of his sentence when he had been twenty years an outlaw, and the events just related were in the nineteenth year" (Grettis saga Ch.76). These examples suggest that interceding on behalf of outlaws was seen by lawspeakers as something they could properly become involved in[8], but clearly it was not common or there would certaibly be more examples in our sagas. The role played by Skapti's successor Steinn in the attempt to lift Grettir's outlawry also shows that the Lawspeaker had no obligation in the matter by virtue of his office, beyond the usual giving of legal advice; Steinn "was

[7] Kristni saga V&P I, p.400-402 Íslendingabók ch. 7

[8] For further discussion of lifting of outlawry see above Ch.2, p. 74 and below p. 128-130.

asked for his opinion. He told them to make a search to find out whether this was the twentieth year of his outlawry". They found it was only the nineteenth: "The Lawman declared that no man could be outlawed for longer than twenty years in all, even though he committed an outlaw's acts during that time. But before that he would allow no man to be freed" (Grettis saga ch. 77).

A third Lawspeaker we meet in the lawsuits is Þorkell Moon, who acted as arbitrator in STH5. However, this suit probably took place about 950-55 AD, many years before his term of office as Lawspeaker, which lasted from 970 to 980 AD (Íslendingabók Ch.5).

There are also few, if any, examples of "he who wished" prosecuting ("die Popularklage") where the primary prosecutor was unwilling or unable to prosecute, or there was no obvious primary prosecutor, as provided for in Grágás (see above p 53)[9]. The second blasphemy suit, which was prosecuted by a goði who was not closely enough related to the accused to feel any strong personal interest in the matter (STH10), may be an example, but of course we cannot discount the possibility that a 3rd or 4th cousin had asked him to prosecute and transferred the suit to him. The suits prosecuted by Guðmundr to discredit a rival goði (N16) could also fall within the category of those to be prosecuted by "he who will", as Guðmundr apparently had little difficulty finding sufficient suitable suits. But, again, they could all have been transferred suits, with Guðmundr merely showing greater enthusiasm than usual for taking on other people's problems. This example does, however,

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[9] Andreas Heusler finds none, see Das Strafrecht der Isländersagas, p.102. Konrad Maurer in Altisländisches Strafrecht und Gerichtswesen also cites none, see especially p.477-479.

show that a traditional saga story line could make good use of the "Popularklage", as such charges would have suited Guðmundr very well in his aim of persecuting the *þingmenn* of Þórir Helgason in order to discredit Þórir himself. It therefore seems reasonable to postulate that its absence from the sagas suggested either that it was not used because people did not in general wish to involve themselves in the affairs of others, or that it was not yet in existence in the Saga Age.

DUTY TO PROSECUTE

There is no evidence in the law suits of any legal penalty for people who failed to prosecute when they were primary prosecutors. Even the penalty for failure to hold a confiscation court mentioned in *Grágás* is never invoked, although it is stated to have been held only in a very few cases. Likewise, there is no mention of penalties for settling law suits without Alþing consent, although the submitting of settlements to the Alþingis occasionally mentioned (e.g. N1, *Vápnfirðinga saga* Ch.14). In W26 a settlement was announced at the Þórsnes Assembly.

Society did like to see law suits pursued vigorously and to the limit of the law. Thus people felt strongly that the penalties for the killing of Arnkell goði were not severe enough (W10), and in W27 after getting a man outlawed for a killing, "Þorkell Eyjólfsson was severely criticised for failing to pursue it to the limit", when the outlaw failed to leave the country. It was sometimes seen as better not to prosecute at all if vigorous action could not be taken, and thus because the weak result for the killing of Arnkell was seen to have occurred because the prosecutors were women, even though it is not apparent that anyone else was available

to prosecute, a law was passed prohibiting women from prosecuting manslaughter suits (W10).

But on the other hand there was also often strong pressure on parties to court actions to reach a settlement in order to avoid the harsh consequences and ill feelings of pursuing a matter to the limit of the law. Thus in W6 "when judgement was about to be passed, peace-makers intervened, and thanks to their plea the whole issue was referred to arbitration". In W8 "Snorri saved his case, and Arnkell's plea for dismissal was invalidated. Then people stepped in to reconcile them, and a settlement was made". In W21 a father persuaded his son to transfer the prosecution of the suit to him to facilitate a settlement. In N10 "Distinguished kinsmen on either side sought terms of conciliation". In N15 Snorri Hlíðarmanna goði argued "Things have taken a bad turn, and now there are two choices before us, to let Hǫskuldr judge his own case, and maybe they will be able to bring that about with their strength, so that Þorgeirr loses his goðorð; - the other is to come to terms, and we are the more eager for this, for the case has been first taken up with violence and maybe the trouble will grow greater, and the best plan is to come to terms'. That was now agreed on, and they did it chiefly at the instance of friends and kinsmen, and the cases were transferred into court, and men named as umpires". In STH5 a close friend of both sides went to see Þorkell Moon, "and bade him seek to make the peace, saying that he would win no small honour if he could get a peace made between the two chiefs. And Þorkell now set about it". Also, in W26 there is no criticism of the prosecutor expressed for letting one of the accused off

lightly in the settlement. Clearly a sensible and honourable settlement was considered as good as a harsh judgement according to the strict terms of the law. It is thus evident that, although it might sometimes be deplored as socially undesirable, failure to pursue an action to the limit of the law was not an offence, and was often even socially desirable. (See further below, Ch.4, p.174-5).

A duty to help relations in the prosecution of their law suits is occasionally stated. In Eyrbyggja saga a second cousin of a dead man stated that he had a duty to help the widow in the manslaughter suit, but he did not feel any duty to take it on alone; his brother did not accept a similar duty (W6). In Hœnsa-Þóris saga the father-in-law and uncle-in-law (a goði) of the son of a dead man acknowledged a duty to help in the case, even though they felt they had been tricked into it (W14). In N8 a man asked his foster son and cousin to prosecute for the killing of his son, arguing "It devolved (skyldr) upon him to prosecute the case for his kinsman and foster-brother". Any such duty should, however, probably be regarded as a personal, family duty, not a legal duty, particularly as appeals to relatives for help are not always stated in terms of duty. Thus in N2 the father of a dead man appealed to the brothers-in-law of the dead man for help "giving as his reasons their own relations by marriage to Vigdís as well as many acts of friendship which both he and his son Sigmundr had done them".

The law suits also seem to make clear that goðar felt under no legal obligation by virtue of their office to help others in the prosecution of their law suits, even though a duty to do so is sometimes suggested by others. Thus in Eyrbyggja saga Ch.31 (W8) Þórólfr Twist-Foot asked Snorri

goði to prosecute a suit for him arguing: "I think you're the leading farmer in the district (heraðshǫfðingja), and it's up to you to put right any wrongs people have suffered around here". Snorri was unimpressed by the argument and only agreed to take on the suit when Þórólfr offered good payment. Of course, Þórólfr was probably not a þingmaðr of Snorri, but rather of his son Arnkell (whom he wished to sue), hence the appeal to Snorri as the leading farmer.

Similarly in Hœnsa-Þóris saga (W13), Þórir argued concerning Tungu-Oddr: "You are the legal head of the district (forráðsmaðr heraðsins), to set right all wrong-doings here", but Oddr refused to take on the suit. Again, Oddr may not have been Þórir's goði, but Arngrímr goði probably was, as well as being foster-father to Þórir's son, and he also refused.

Goðar seldom became involved in the prosecution of law suits merely because the person who asked was their þingmaðr In 7 of the 11 manslaughter suits which a goði prosecuted, although he was not the primary prosecutor, he was related either to the dead person or the primary prosecutor, in one he was a neighbour and friend, and in one he was paid. In only 2 did the goði possibly prosecute for a þingmaðr (above p. 97). Goðar seem to have been more likely to get involved in non-manslaughter charges for þingmenn, with at least 2, and possibly 3 or 4, of the 8 which they prosecuted for others being for þingmenn (above p. 94). A duty to help in such cases is never stated. Usually, it is merely said the goði assumed the prosecution, without comment.

It is thus evident that the role played by both kin and goðar in the prosecution of law suits was considerably greater than could be implied from the provisions of Grágás (above Ch.2 p. 54-6). Both had some obligation, although not perhaps a legal duty, to assist their kin or þingmenn in their prosecutions. In addition, people were sometimes designated as primary prosecutors in matters concerning kin who for one reason or another could not act for themselves. There seems to be little evidence that goðar were similarly designated in the affairs of others, but in relation to their small number (at most 48) they played an extremely disporportionate part in law suits, being prosecutors in 17 of the 40 non-manslaughter suits, and in 17 of the 32 manslaughter suits, although this must of course be due in part to the greater "newsworthiness" of suits involving goðar. Even where friendship is mentioned in appeals for help in legal matters, it is normally the friendship of a relation or goði. Thus in N2 "Þorkell went to see Þorvaldr Barb and the other sons of Þórir and urged them to press this suit, giving as his reason their own relation by marriage to Vigdís (his wife) as well as many acts of friendship which both he and his son Sigmundr had done them"; and in STH6 Auðr transferred the suit for the killing of his son to "my friend Torfi", who was a goði and a close neighbour, although this is one of the cases where the goðorð is scarcely mentioned. The appeal to friendship is thus merely an added inducement to encourage kin and goðar to recognise their social responsibilities in legal matters.

QUALIFICATIONS FOR PROSECUTORS AND DEFENDERS

Domicile

As pointed out in the discussion of the Grágás provisions (above Ch.2 p. 59), the rule requiring a person to have a fixed domicile was made necessary by several aspects of the legal system, most of which were undoubtedly in use in Norway when the settlers left and incorporated in the first laws introduced in 930 AD. For example, it is stated in Eyrbyggja saga Ch.22: "It was law in those days that the summons for manslaughter had to be made within earshot of the killers or whever they lived". 23 of the law suits were commenced by summons at the home of the accused, and probably many more, as in most of the rest we are not given full details of how they were commenced. And it was not just a case of serving the accused personally since the accused was not always there, as for example in W22, W25, STH5, STH6, STH7 and N9. If it was a question of serving the summons at the accused's home, regardless of where he was, it would have been necessary to have rules to determine where that was, rules of domicile. The importance of domicile is reflected in the interest shown in the sagas in identifying the home of every character when introduced, whether his own or the farm where he worked. This is also true of merchants newly arrived in Iceland, and Icelanders returning from abroad, as for example Sigurðr in N13, Ingjaldr (or Helgi Arnsteinsson) in N17 and Vǫðu-Brandr in N19. The latter case is particularly interesting as there is specific reference to his taking up legal domicile (lǫgheimili) in the East Quarter with Þorkell Geitisson, the point on which the defence of the case hinged, as the suit was summoned to a court in

the North Quarter. This suggests that domicile was a relevant factor in determining which spring assembly and thus which quarter a person belonged to, and that rules concerning domicile must therefore have been in force at the latest by 960-965 AD when legislation dividing the land into Quarters and 13 spring assemblies was introduced (Íslendingabók Ch.5).

There is one example in the law suits of a man apparently without a fixed domicile both prosecuting suits for others and defending charges against himself, Helgi Droplaugarson in E7, E8, E9 and E10. He came from a good family, his father had been a farm owner and a goði, and his cousin Þorkell Geitisson was also a goði. Helgi spent time with Þorkell as a teenager, learned law from him, and became a recognised legal expert. His father's goðorð, however, went to Helgi's uncle, Helgi being quite young at his father's death, and it is never said that Helgi himself ever held part or all of it. He and his brother inherited their father's farm, but Helgi took little interest in farming, and on his brother's marriage half of the farm was sold to his wife's father, presumably Helgi's half. This seems to have left Helgi with no home of his own, and he is said to have spent his time variously with his brother, his mother, his cousin Þorkell and other friends, with none of their homes being clearly designated as his legal domicile. Both cases in which he was accused were commenced by summons, but unfortunately we are not told where it was served. All these suits took place between 990 and 995AD, and thus at a time when we would expect the rules to be getting well established. Perhaps we must assume that one of the places Helgi stayed was his legal domicile even though we are not

specifically told so. If not, it is probably better to assume that he shows what a better off person could get away with, rather than that there was no rule requiring prosecutors and defenders to have a fixed domicile.

Assuming there was such a rule, the law suits also confirm that foreigners were probably an exception to it, as well as perhaps Icelanders who traded abroad. There are two cases in which the injured party was a merchant, in one of which he was clearly a Norwegian (N13), in the other he may have been an Icelander (N17). In the first case the Norwegian merchant prosecuted the matter himself with the assistance of his Icelandic partner's father and of the man with whom he had stayed for the winter. In the second case the merchant was on the point of sailing when he discovered he had been cheated, so he transferred the suit to the goði with whom he had stayed for the winter, and the goði gave him gifts to the value of what was owing him.

The cases in which foreigners were accused suggest it may have been more difficult for them to find a person to help with their defence, as in none of the four cases was any defence submitted in court, nor did the accused people attend court (N8, N23, E13, STH9). In three of these cases they were charged with manslaughter, and thus their failure to attend may have been due to a special rule in such cases (see above Ch.2 p.78 and below p.147). In the fourth case, N23, the accused were Vikings with no interest in remaining in the country and likely rather contemptuous of the whole legal process.

There is no hint of the procedure provided for in Grágás of holding special courts for cases involving

foreigners in order to allow them to be heard quickly (see above Ch.2 p. 62 and p.84-5).

No itinerants were involved in the law suits as injured party, prosecutor, accused or defender. In STH6 the son of an itinerant was accused of manslaughter, but he himself was not an itinerant, being employed by the accused person in a closely related case, STH7. There is, however, a suggestion in the sagas that itinerants could attend spring assemblies although, under the rules of Grágás, (above Ch.2 p. 60), they could not attend the Alþing. In Gísla saga Ch.28, we are told of an itinerant "who used to go about the country, never with fewer men than ten or twelve; and he had built himself a booth at the Thing [in Þorskafjǫrðr]...He says he will give booth-room to anyone who will ask him for it. 'I have been here many springs', he said, 'and I know all the nobleman and chiefs'." He gave shelter and advice to two boys who committed a killing at the assembly. We might surmise that incidents such as this, which would have occurred around 970 AD, led to the law referred to in Grágás prohibiting their attendance at the Alþing. On the other hand, spring assemblies were local affairs, with the costs involved in getting there being considerably less, perhaps almost nothing for itinerants who would have been moving about in any case. It may even have been considered desirable that itinerants attend the assembly since so many of the adult males were there themselves and not at their farms to protect them, particularly if itinerants travelled in bands of 10 or 12!

Financial Qualifications

As we saw above (p. 92,95) the vast majority of prosecutors were farm owners. The exceptions are N13, where a foreign

merchant was assisted in his prosecution by two Icelandic farmers; STH8, which was prosecuted by the sons of an influential farmer; W25, E7 and E9 which were prosecuted by well-to-do legal experts; W13 where the prosecutor was the son of a goði, newly returned from abroad; and W10, a manslaughter suit prosecuted by the heirs of the dead person, who all happened to be women, but could have been farm owners.

These exceptions make it evident that ownership of a farm was not a requirement for a prosecutor. However, those who were not farm owners were normally independently well-off in other ways, although in STH8 and W13 we are not given much information on the independent property of the prosecutors; in STH8 it could be argued that the sons had in effect become partners of their father once they began doing their fair share of the work, and they would of course have been his heirs. It is also possible that they all had farms of their own but chose to continue living as one household, as could also have been true of the legal expert in W25.

Farm owners and goðar feature even more predominantly among the defenders about whom we are given any information, with the legal expert in E8 being the only non-farmer. Again, he seems to have had other sources of property.

It thus seems possible that there may have been a rule that all prosecutors and defenders had to be financially independent, if not farm owners. If such a rule did exist, it was probably closely related to the rules in Grágás discussed above Ch.2 p.65 concerning who could be an assembly participant, although Grágás does not seem to have taken into account people whose property consisted of other than land or cattle, for example merchants and others who acquired their wealth abroad.

On the other hand, the limitations on people who were not farm ownersnor independently well off may have been practical rather than legal. The Grágás rules concerning assembly participants seem clearly to suggest that not all persons could afford to attend the assembly. These would have included people without a horse, without sufficient excess food to sustain them on their journey, without employees to look after their farm while they were gone, and employees whose contract obliged them to work for another throughout the summer. There seems little reason to suggest that the situation was any different at this earlier time. In addition, as will be discussed in the next chapter, it was usually necessary to be able to command the support of enough people to counter any physical or legal abuse your opponent might attempt.

As has already been noted (above p. 99), the affairs of those people who had no property but did have a fixed domicile were handled by the householder where they lived, although it is never made clear that there was a direct prohibition against such people appearing on their own behalf in court. The types of such people involved in the law suits include employees and young children, as well as people who voluntarily transferred their property to another in return for lodging and support in their lawsuits (for a discussion of these cases of arfsal see below Ch. 4 p 176-83). There are no needy people or bounden debtors involved in the law suits.

Freedmen and Slaves

The law suits suggest that the requirement that a prosecutor or defender be freeborn did apply in the Saga Age. However, freedmen were nevertheless probably primary prosecutors and defenders in their own affairs, but banned

from appearing in court. It was therefore up to them to find someone to take the suit to court and transfer the suit to them. There are no freedmen involved in law suits as the injured party, but there are two disputes in the sagas considered in which they are. The first is in Eyrbyggja saga Ch.30 where the freedmen was robbed of some hay. The freedman went to the local goði, a neighbour, who also happened to be a son of the man who robbed him, and "told him about his loss and asked for his help, for without that there was nothing he could do". We cannot be sure, but this could mean that he was not entitled to prosecute for the theft himself. The goði personally paid him compensation, but his troubles were not over, and he finally transferred his property to the goði as guardian or partner, and heir (Ch.31 and 32). His freedom givers disputed the legality of this transfer, arguing they were being deprived of their rights as his legal heir, but there is another example of a similar nature in a law suit in which the freedman was accused (STH4). The transferee of the property successfully defended the suit. In the second incident involving a freedman as injured party, he was killed and so we are told nothing of his rights to appear personally in court. It is, however, of interest, that it was his freedom giver who is said to have been the person most concerned in the suit for his slaying (Droplaugarsona saga Ch.4)[10]. There is one other law suit involving a freedman as the accused person (N6). In that case the freedman had also transferred his property, including a

[10] See also a similar situation in Laxdæla saga Ch.25 where no action was taken for the killing of a freedman, although his freedom giver expressed interest in it.

farm, into the care of another, to the son of his freedom giver, but sometime before the law suits occurred and not because of it. There is no suggestion that a proper legal defence was made in the case, presumably because guilt was quite clear. However, the guardian of the freedman's property did take steps to ensure he was acquitted anyway by threatening the godi giving the verdict, who happened to be his father.

These disputes suggest that a freedman with a farm had considerable difficulty maintaining his independence unmolested. A very probable reason for this would have been his lack of a family to give him support and backing. The fact that in all three disputes involving a live freedman he transferred his property to another in return for backing is also indicative of his lower standing in the community. It was not perhaps considered worthwhile helping such a person without considerable reward. (See also below Ch.4 p.181and Ch.5 p. 213).

It is also significant that in two of the four disputes the person the freedman turned to was not his freedom giver.

From the suits involving slaves it is evident that their owners were primary prosecutors and defenders in matters concerning them, and indeed received any compensation payable, or conversely had to pay any compensation consequent on their slaves' wrongdoing. In two cases slaves were accused of offences (N1 and W17). In the first their owner, a female, did not wish to defend herself, but she did try to find someone else to do so, her son. He proved quite ineffective, the slaves were found guilty, and she paid compensation for them. In the second case, we are given no details about the defence, but we are told that the slave was outlawed and the farm he

operated was confiscated as outlaw property, even though he is not said to have owned it himself. It is possible that part of his owner's property was confiscated because his owner was seen as responsible for his actions; it could also be that although he is called a slave, the accused actually had been given his freedom, along with the farm, on the death of his owner which had occurred shortly before.

There is one case, N4, in which slaves were the injured party, a slander suit for a false charge in the suit discussed above, N1. Again, it was their owner who prosecuted, this time the younger son of their female owner, who was joint owner of the farm and therefore probably also of them. The owners also received the benefit of the compensation paid.

Age and Sex

From Eyrbyggja saga we learn the date at which the rule stated in Grágás (above Ch.2 p. 71) that women and boys under 16 could not prosecute in a killing came into effect. It is stated that because the suit for the killing of Arnkell goði, which was prosecuted by women, "had gone so badly, the leading men of Iceland made it law that neither a woman, nor a man under the age of sixteen, should even again be allowed to raise a manslaughter action, and this has been the law ever since". This occurred about 990AD (W10).

There is one example prior to that time, around 950, of a 12 year old boy prosecuting a manslaughter suit (E2). Otherwise the age of 16 seems to have been adhered to in all situations, one possible example pre-dating the law being N11, where a brother both prosecuted and later transferred the prosecution although there was a son alive who received the compensation. We are not given his age, except that he was old enough to take

part in the expedition in which his father was killed (see also below p 137). There are two examples of 17 year olds, both goðar, prosecuting suits for others (N4, W1); in both cases they can be taken as the start of their rise to power. As already pointed out above (p.99), cases involving people who were or might have been under 16 were handled by their fathers (W1, STH5, W7).

Aside from the suit for the killing of Arnkell there are no examples of women prosecuting or defending law suits, even prior to 990AD. The most active part played by a woman was in suit N1, around 947AD, in which the slaves of a woman were accused of theft. She asked her son to defend the case, indicating she was the person with primary responsibility for defending. When her son proved ineffective she personally negotiated the settlement of the case and paid compensation to avoid having the slaves outlawed.

In at least two cases we see a woman clearly acting as the primary prosecutor. In one, a suit for manslaughter around 965-975 AD, the mother of the dead person transferred the suit to her brother, a goði, and later personally received the compensation paid (N28). The second was a suit for temple tax by the priestess, who transferred the suit to a goði according to the saga which is probably inaccurate; it is more likely she transferred it directly to the person who the goði is said to have re-transferred the suit to (E3).

In two further manslaughter suits the widow of the dead person is shown as actively soliciting a prosecutor. In one, W6, she got her own uncle to prosecute, in the other, E8, a goði. In W6 there were also blood relations, 2nd cousins, of the dead person alive, but they refused to conduct the prosecution themselves. These suits suggest that prior to the prohibition

against women prosecuting manslaughter suits, they were, as widowers under the rules of Grágás (see above Ch. 2 p. 71), high on the list as primary prosecutors in manslaughter suits, perhaps preceded only by sons, fathers and brothers. E8 has been dated to 992 AD, and thus two years later than the date given for the manslaughter of Arnkell which occasioned the change in the law. The law in Eyrbyggja saga quite clearly states that a woman could not be primary prosecutor, not just that she could not do the prosecution herself, and thus after the law was passed no woman should have had the authority to transfer a manslaughter suit. Of course, if there were no close kin about to object or to take the case themself, it may have been regarded as perfectly proper that the deceased's goði prosecute. It is not actually specified that there was a transfer from the widow in this case. On the other hand, perhaps this case suggests minor changes are necessary in the chronology of Droplaugarsona saga from which E8 is taken.

In three other manslaughter suits a close relation of the widow of the dead man prosecuted, although it is not stated that the widow herself asked him to do so or transferred the suit to him. In two cases the prosecutor was Snorri goði; In W3, which took place in 981AD, he was the brother of the widow, in W11, dated to 1008AD, he was the father. In the latter case, brothers of the dead man were also involved, and it could as likely have been them who asked Snorri to take the suit. In the third case, N12a, sometime after 986AD, it was the father and uncle of the widow who prosecuted, with no male relations being mentioned who could have transferred the suit to them. (In a second version of the

same suit, N12b, they are not said to be involved, the prosecutor being an unrelated person).

In one case in which a woman was accused of plotting to kill her husband, she left the country before the trial, and no defence appears to have been submitted on her behalf (E10).

In all other cases in which women were involved the prosecution or defence was assumed by close kin. In two cases the suits involved property owned jointly by a woman and her son, and the son prosecuted (N3, N4). In another, W25, a woman who was the victim of theft and sorcery went to her son, who lived some distance away, and asked for protection. No transfer of the suit to him is mentioned, but he proceeded to serve the summons, although his mother went with them. The suit went no further as they were all drowned on the return journey.

One suit (E4), for the return of a woman's property by her ex-husband was prosecuted by her brother even though she did not wish the suit to be brought. This would appear to be contrary to the following provision of Grágás:

> If a woman invites another man to deal with the matter [division of property] then those witnesses are to go who can testify that she has handed over her case to that man (Finsen Ib p.42 ch. 150.)

This may, however, refer to the situation where a woman transferred the matter to a person other than her legal administrator, and may not have precluded him from handling the matter without a transfer if she refused to do so. This would be in accord with the Grágás provision that he was to prosecute for minor sexual offences if the woman was unwilling to (see above Ch.2 p. 71).

Presumably her brother as her closest male relative was legal administrator in this case.

Two law suits agree with Grágás that major sexual offences were to be prosecuted by close kin (see above Ch.2 p. 54 and p 71). In one suit for the seduction of a married woman, E9, her husband acted as primary prosecutor; in another for the abduction of a single woman the prosecutor was according to one version her father, another her brother (W19).

In one further suit, W15, in which a woman was accused, her son, who was not home when the summons was served, pursued and killed the prosecutor and his companions. The matter seems to have ended there.

Outlaws

It is stated in Laxdæla saga that "all those who had taken part in the attack on Kjartan" were charged with his killing "apart from Óspakr Ósvífsson, who was already an outlaw over a woman called Áldís", (W26 and W19). Those charged included the brothers of Óspakr, who, a few years previously, had prosecuted their third cousin for blasphemy (STH8). It is stated that Óspakr "would take no part" in that law suit, but perhaps this was because he could not as an outlaw. The date of his outlawry cannot be determined exactly, but it seems likely it was before the blasphemy suit and six to ten years before the killing of Kjartan, (see Notes re Chronology W18, 19, 20). Ōspakr and his brothers left the country after the killing of Kjartan and never returned.

It is unusual for an outlaw to have remained apparently unmolested for so long as Óspakr evidently was. Normally,

outlaws were either killed within a short time (STH2, N3, N12, W14), or took steps to avoid their enemies. Some went into hiding, usually in the hills, and sometimes in an outlaw band (W12, W22, W27, E2, STH6, STH7), but generally were killed in the end anyway. In only one of these cases (W27) did the outlaw escape, chiefly because he got the better of his attacker who then helped him go abroad. Others went abroad, often even before judgement was passed on them (W3, N22, N23 although they made the mistake of attacking their enemies first and got themselves killed, N 17, STH10, W5, N14, N10, E13, W7, W6, E11). Where the person was sentenced to go abroad for 3 years and failed to do so, he became a full outlaw (N8).

In any case, it is evident that an outlaw could not attend court, and thus could not be a prosecutor or defender, as he was subject to being killed at any time. The case of Óspakr Ósvífsson makes it clear that in addition an outlaw, at least a full outlaw, could not be charged with any offence. This is also stated in Grettis saga Ch.51, where the law-speaker Skapti is quoted as saying: "you have treated as a party to the suit a man who was an outlaw, a man who was stopped from appearing either as plaintiff or defendant". The lawsuit in question is not very clearly presented in the saga, but it would appear that Grettir, an outlaw, was both prosecutor in a suit for one slaying and the accused in a second suit for his slaying of a person in revenge for the first slaying. It is made quite clear that as an outlaw he could be neither. Furthermore "Grettir's kinsmen are not liable to pay for his deeds unless his sentence be removed". The rather garbled manner in which this incident is reported

in the saga suggests that the author was not really very clear about what was going on, and that therefore he was here recording a local tradition rather than making up the facts himself. It therefore seems possible that it preserves some genuine legal commentary from the Saga Age. The incident would have occurred around 1010-1020 AD, shortly after Grettir was outlawed.

There is one example of an outlaw attending the Alþing, but it was a very special case, and a time of constitutional upheaval. In addition, it is made evident that it was not considered wise for him even to have returned to Iceland, let alone attend the Assembly. The outlaw in question was Hjalti Skeggjason, who was sentenced to three year outlawry for blasphemy in 999AD. He went to Norway, but the following spring agreed to return to Iceland to preach Christianity on behalf of the King, although "many would have dissuaded Hjalti from going". When they got to Iceland his companions rode to the Alþing, but "they persuaded Hjalti that he should stay behind with eleven other men, because he was under the lesser outlawry". Nevertheless, Hjalti later followed them to the Alþing. The issue had, however, become a national religious dispute, and his breach of the terms of his outlawry faded into the background. At that Alþing Christianity was made the official religion, at which time his outlawry was presumably regarded as nullified (STH10, V & P Ip.397-402).

In one case the terms of the outlawry were that the person could be killed by the people who had him outlawed anywhere but on his farm and within an arrow shot of the farm. He was killed, but his brother and brother-in-law hired a crack archer to shoot an arrow beyond the spot where he was killed, and on the basis of this evidence had his killers made district

outlaws for manslaughter (STH2, STH3). It is thus evident that an outlaw could have some rights, but it is never made clear how they would be enforced in cases other than manslaughter. We can probably assume that had the person in this case been injured and not killed, this may well have nullified his outlawry and he could therefore sue for it himself. But what he would have done if, for example, someone had owed him money is not clear.

Under the rules of Grágás the issue would not appear terribly important as any outlaw , whether for life (skógarmaðr) or three years (fjǫrbaugsmaðr), had his property confiscated and thus could have only limited rights in Iceland anyway. But the terms of outlawry in the law suits are more varied and, in most cases short of full outlawry, the sentence only involved going abroad for a specified period, usually 3 years, sometimes together with the payment of compensation or a fine (e.g. E10, N18, N28, W6, W7)[11]. There is clear evidence for the holding or attempted holding, of a confiscation court in only 6 cases of full outlawry (W3, W12, W17, N12, N17, E13). Even in one case of full outlawry, the outlaw's wife continued to live openly in their own home with no evidence that any of the property was taken, although he had converted much of his property to cash prior to his outlawry (W22). In another we see a person avoiding

[11] Concerning the sentence of fjǫrbaugsgarðr and when it was introduced see Lúðvik Ingvarsson, Refsingar á Íslandi á Þjóðveldistímanum, Reykjavík, 1970, p.147-155. Ingvarsson argues that fjǫrbaugsgarðr was unknown in Saga Iceland. When a suit went to judgement the sentence was normally full outlawry, although generally the terms are not stated, it being said merely that the person was outlawed (sekr). Lesser terms occur in W16, STH3 and N8. The variations not suggested in Grágás occur when a law suit was settled before judgement. See Heusler, Strafrecht, Ch.8.

outlawry by selling their farm cheaply to the prosecutor. One would have expected that under the rules of Grágás the prosecutor could have acquired the property through the confiscation court, and that buying it cheap was not much of a bargain (N4). Clearly the total loss of property rights in Saga Iceland was not always the consequence even of full outlawry and would appear never to have been the case in the law suits for anything short of full outlawry[12].

Aside from the extraordinary case of Hjalti Skeggjason, the law suits agree with Grágás that there were means by which an outlaw could have his sentence lifted and regain his full legal rights, but the means suggested are different. One method is revealed in the story of Hjalti. A man tried to kill Hjalti, but failed and was captured by Hjalti's men. He told them his name was Narfi and that the person who got Hjalti outlawed, Runólfr Úlfsson, a goði, "had sent him to get the head of Hjalti, and thereby he should free himself from his outlawry" (Kristni saga, V & P I p.392-3). According to the relevant legislation, introduced in 976 AD at the time of a major famine by Eyjólfr Valgerðarson[13] and contained in Grágás (above Ch.2, p. 74), an outlaw could free himself if he killed three other outlaws. In such cases, however, the agreement of the person who got him outlawed was probably not necessary, whereas in the case of Narfi he had likely made a private agreement with the person who had him outlawed.

There is another example of a private agreement to lift an outlawry in the case of Vigfúss Glúmsson. He had been sentenced to go abroad for 3 years, but when he failed to do so

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[12] Heusler, Strafrecht, p.146-7, agrees

[13] Mantissa, Vigfusson and Powell, Origines Vol I, p.269.

he became a full outlaw (N8). His father sheltered him for 6 years, at which time Glúmr became involved in a law suit for the slaying of his 1st cousin once removed, Steinólfr. As part of the settlement for this killing, Glúmr arranged to have the sentence of outlawry on Vigfúss lifted (N9, N10).

Eiríkr the Red may also have had his outlawry lifted by private agreement. In all sources he is said to have been outlawed for the killing of the sons of Þorgestr, with no indication whether this was full or three year outlawry. But in Eyrbyggja saga it is said that Styrr "pleaded with Snorri goði not to join Þorgestr in the attack on Eiríkr after the Assembly". An immediate attack would have been more appropriate in the case of full outlawry. Also, there was no defence submitted in the case, and thus no reason for the usual sentence of full outlawry for manslaughter not to be implemented. Eiríkr left the country shortly after the assembly, but returned to Iceland after three years exploring in Greenland, hoping to persuade others to return with him as settlers. During his visit, according to Landnámabók, "Eiríkr and Þorgestr fought a battle and Eiríkr was the loser. After this they were reconciled". This may suggest that Eiríkr was indeed still an outlaw, and that Þorgestr agreed to lift the sentence. Eiríkr did not, however, stick around to see if he would abide by the agreement, but rather left to settle permanently in Greenland (W5)[14].

Another method of having a sentence of outlawry publicly lifted, aside from killing three other outlaws, is outlined in Ljósvetninga saga Ch.1-3 (see N14 and N15) and Reykdæla

[14] Concerning Eiríkr and the nature of his outlawry, see Ingvarsson, Refsingar á Islandi, p.152-154.

saga Ch.20. The outlaw accompanied by one or more goðar had to attend three autumn meetings, leiðir at which his freedom from outlawry would be announced, and accepted if no one objected. In neither case was the plan successful, with the outlaw being killed on the journey to the leið in Ljósvetninga saga, at the leið in Reykdæla saga. In the former case it was declared in a related law suit (N15) that the person had been lawfully killed as an outlaw, in the latter case no legal action was taken. These two examples probably do not rest on independent traditions, and there is no other evidence for the procedure. Given that the outlaw had to attend the proceedings, it is not difficult to see that it could never have been terribly successful, unless no close relations or friends of his enemies remained alive. Since this condition would rarely have been met, the procedure may well have passed out of the laws through lack of use, assuming these accounts represent a genuine tradition that it ever existed[15].

There is also a statement in one saga that a sentence of full outlawry lasted only for 20 years time, at which time the outlaw would have restored his full legal rights (Grettis saga Ch.77). There is no other support for this statement, but the law could be reflected in the outlawry sentence imposed on the Ósvífssons for the killing of Kjartan: "they were forbidden to return to Iceland for as long as any of the Óláfssons or Ásgeir Kjartansson were alive" (W26). This sentence could be interpreted as extending the sentence of full outlawry beyond the 20 year period if any of the named people remained alive, rather than as reducing it. Konrad Maurer suggests it is an anachronism, borrowed from the Norwegian laws introduced into Iceland at the end of the 13th century[16].

[15] See Ibid p.128-130; Björn Sigfússon, Íslenzk fornrit Vol X, p. 7, note 6, p.LXXVIII, note 3.

[16] Maurer, Altisländisches Strafrecht, p.146

In addition to full outlawry and three year outlawry, the law suits provide several examples of the lesser sentence of district outlawry (STH1, N23, W21, W16 (see also W5), STH3, N27 (see also W23))[17]. In such cases the person was usually prohibited from living within a specific area, an effective means of keeping enemies apart. The sentence seems to have had no effect on rights in law suits as in two cases, STH1 and W23, such a person prosecuted a law suit; in one he was the injured party in a suit prosecuted by another (N23) and in another he was the accused person (W5)[18].

Illegitimate People

The suit for the killing of Kjartan Óláfsson (W26) was prosecuted by his father, the illegitimate son of Hǫskuldr Dala-Kolsson and an enslaved Irish princess. There is no suggestion that his right to prosecute was in anyway suspect.

The illegitimate uncle of Snorri goði, Már, was the accused person in at least one case, W4, and was very involved in a second, W6. In both Snorri, who was also his employer, acted for him.

These examples of the involvement of illegitimate people in the law suits give no reason to suggest that their rights to participate in law suits were any less than those of legitimate people, in agreement with Grágás.

Dead People

The only examples we have of suits being pursued on behalf of an injured party who was dead are the suits for manslaughter

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[17] For a full list of references to district outlawry, including those not explicitly connected with law suits, see Ingvarsson, Refsingar á Íslandi, p.339-341, also p.343-348 for discussion, as well as Heusler, Strafrecht p.163-166.

[18] An interesting possible reference to the Scandinavian custom of district outlawry occurs in the Anglo-Saxon laws, in the Wantage Code of Æthelred II Ch.10, which was to be applied in Danish districts of England: "And everyone who is an outlaw in one district shall be an outlaw everywhere".

and murder. Whether suits could be brought for earlier injuries received, money owing etc. and by whom, cannot be inferred from the sagas.

Dead people were charged with criminal offences, but usually as defences to charges for killing them. The charges brought as defences included seduction, adultery, theft, attempted manslaughter and assault (N9-10, E8 and 9, N2-4, W6, W9: see also N39 and STH20), thus covering a slightly wider range of offences than those specified in Grágás for which a person was entitled to kill (above Ch.2 p.76-7, see also below p. 147). Of course, to a certain extent independent charges against dead men were futile, as the only sentence imposed by a court in criminal matters was outlawry[19], naturally of little effect by itself if the person was dead. It could only be worthwhile if the prosecutor could then hold a confiscation court and thus get possession of the dead person's goods; we have already seen that this was not a common procedure in the law suits, although clearly prescribed by Grágás (above Ch.2 p. 57 and p. 73).

There are no examples of charges against dead men or their heirs for money owing, property claims etc. for which a court might adjudge a monetary settlement and/or penalty.

TRANSFER OF PROSECUTION OF COURT ACTIONS

Identity of Transferors

The suits in which there was a transfer of the prosecution are listed in Appendix II, Table V. They include all suits prosecuted by someone other than the injured party where there is reason to believe the actual prosecutor had no primary rights of prosecution in the matter. This excludes for example,

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[19] cf Heusler, Strafrecht, p.114, 125 and 191

all suits prosecuted by the head of a household for his employees, children etc.

Of the 27 suits which were clearly transferred and in which the injured party is identified*, 6 were transferred by women (W3, W6, W25, N28, E3, E8). Only one of these, E8, was a manslaughter suit which possibly post-dated the law prohibiting female prosecutors in such cases (see W10). In five other cases the primary prosecutor had a physical disability which prevented him from taking the matter himself (N6, N7, N8, N10, W14), and in one the primary prosecutor wished to stay home during the assembly to protect his property against the accused who were Vikings (N23). Other special circumstances were present in W21, where the primary prosecutor was urged to transfer the suit to his father to facilitate settlement, in N17, where the primary prosecutor was a merchant on the point of sailing, and in N11 which was quite a protracted suit which the primary prosecutor got tired of, but was persuaded to transfer to a friend to be continued.

In all the remaining 12 cases the primary prosecutors were farmers, sometimes rich and willing to pay well for the legal help as in W8, W13 and E7.

Identity of Transferees

In 14 cases the transferee was a goði and in two cases a person stated to be a legal expert (E7, E9). Einarr Eyjólfsson, whose father and brother were goðar and who was himself an influential person, may also have been a legal expert, as he was frequently involved in litigation, in four cases as the transfereee prosecutor (N11, N12, N8, N10). In another suit the primary prosecutor was unable to persuade his local goðar

*The injured party is unknown in one transferred suit, STH2.

to take up his cause, but the money he was willing to pay did attract a son of one of the goðar (W13). Two suits were prosecuted for a blind father by non-goðar (N6&7), one for a mother (W25), one for a son to facilitate settlement (W21), and one for a woman by a related person (E3). In another the transferees were specifically interested in prosecuting any suit against the accused because they were unable to prosecute him as they wished for manslaughter (STH2). In the final suit the transferee was from a powerful family, and was the brother-in-law of the dead person. Part of the purpose of the marriage had been to improve the social status, and the father thought he should be able to have the advantage of this in the manslaughter suit (N2).

Rules for Transferring Prosecutions

The law suits do not suggest that the right to transfer a suit to another was in any way restricted in terms of type of law suit, identity of parties, reason a transfer was desired, etc. Nor do they suggest any regulations concerning the qualifications of persons assuming a prosecution, other than the normal rules concerning prosecutors.

In most of the cases which were prosecuted by someone other than the primary prosecutor, there is some discussion of the assumption of the prosecution, and the use of terminology which may suggest the kind of formal transfer procedure referred to in Grágás (see above Ch.2 p.88). The terminology usually used to refer to the assumption of a suit by another is "taka við (eptir)mál" (W3, W8, W6, W12, N2, N8, N11 (revival), N17, N28, E7), with variations on this of "taka mál" (N7, N10, N11, STH2) and "taka mál af" (E3, E9, N19). In describing the transfer by the primary prosecutor the terms "selja sǫk"

(W14, W18) or "selja mál" (STH6, N17, N28, W21) are used. The most explicit account of a transfer is in N17, which Guðmundr the Mighty prosecuted for a foreign merchant. In one version the merchant asked Guðmundr to take over the suit ("taka við mál"). Guðmundr agreed and "called two men to him and took over the case against Þórir Akraskegg (Heimti Guðmundr þá til sín tvá menn ok tók nú sǫk á hǫnd Þóri Akraskegg)". In the other version it is Guðmundr who asked the merchant to transfer the suit to him ("seldu mér málit"), there is no reference to the two men, but he is said to take up the suit ("taka við mál"). The two men were presumably to act as witnesses to the transfer, as provided by the Grágás provision. It could well be that their inclusion in the account was based only on the author's knowledge of that provision, and not on any genuine historical tradition. A direct reference to this law may also occur in W21, where the primary prosecutor transferred the suit ("seldi málit") "to prosecute or to reconcile it (sækja eða sættast á)". It is thus difficult to say what exactly the formal procedure was in the Saga Age, and whether these suits are proof that it conformed with the Grágás provision, but several other suits do make it plain that something normally took place with both parties present, if only a handshake: In N19 "Guðmundr went north to Reykjahverfi [the home of the primary prosecutor] and took over the suit for Þórbjǫrn (tók mál af)"; in W13 the primary prosecutor, as payment for his services, transferred to another "half of his property, and his law suit against Blund-Ketill along with it (handsalar Þórir honum fé sitt hálft ok þar með málit á hendr Blund-Katli)"; in E7 the primary prosecutor "went to see Helgi Droplangarson and asked him to

take up the case (taka við málinu) and I wish you to receive what is gained by it", he said. And on these terms Helgi took over the case (tók Helgi málit)"; in W14 "when Þórðr gellir and his men reached Gunnarstaðir [home of Hersteinn] Hersteinn was sick and unable to go to the Assembly, so he handed over his lawsuits to the other (selr hann nú qðrum í hendr sakirnar)"; in N28 the mother of a dead man "went to meet Glúmr her brother and told him the news, and so she transferred to him the killing suit, and told him to take up the suit (svá selr hon honum vígsmálit ok biðr hann taka við eptirmálinu)"; in STH6 the injured party went "to see my friend Torfi, and handed over to him the case (selt honum málet), and he has promised to follow it up to the utmost of the law"; in W25 a female injured party went to her son, and "said she wanted to place herself under Þórðr's care (Kvaz vilja raðaz undir áraburð Þórðar)". There is no specific reference to a transfer of the court action in this latter case, but it seems implied that it went with the placing under care. The terminology is also somewhat vague in N23, but it seems clear a transfer did take place. Prior to serving the summons, the primary prosecutor consulted Miðfjarðar-Skeggi, who promised to oversee the suit ("ek heita yðr minni forsjá"). After serving the summons he then turned the suit over to Skeggi: "Sendu þeir málin qll til meðferðar Skeggja í Miðfjqrð". (A second version of the suit is less clear, saying only that Skeggi served the summons).

There are several suits which were clearly handled by persons other than the primary prosecutor in which terminology suggesting a transfer is not used, but there is also no reason to believe in any of them that a transfer did not take place.

In three of these there was a specific request from the primary prosecutor that the other person take the suit (N6, W7, E8). Three others are assumed without comment (N9, N12, W11).

In general the law suits agree with Grágás that the primary prosecutor got any proceeds of a transferred suit, not the actual prosecutor, the payment of the transferee being a matter for private agreement. There is specific reference in seven transferred suits to the person who received money paid. In three of these it was handed over to the primary prosecutor (W8, W12, N28). In a fourth it was paid to the son of the dead man, although it was actually the brother who transferred the suit (N11). In two the transferee prosecutor took the proceeds, but in one of these this was agreed as his remuneration at the time of the transfer (E7), and in the other the transferee had given gifts to the primary prosecutor at the time of the transfer to the value of the property being claimed (N17). In only one, E9, does the transferee appear to have kept the proceeds without prior agreement, the statement being that after having been given self judgement he "awarded himself" 100 ounces of silver. Of course, he could well have later turned over the money to the primary prosecutor, or there could have been an unmentioned prior agreement. There is also N16, where the prosecutor of miscellaneous, possibly transferred, suits kept the proceeds. But again, this could have been part of the agreement. These also might not have been transferred suit, but rather ones which anyone could prosecute (see above p. 106).

The payment of transfereee prosecutors for their services is relatively infrequent. In only two cases (E7, W8) is payment agreed. In another the transferee prosecutor was able to

acquire benefit for himself from the settlement of the law suit, but this did not come from the transfer nor affect the compensation paid to him (N11). In another case in which no transfer occurred, the primary prosecutors were not in the country at the time. When they returned, they gave the goði who prosecuted gifts to express their gratitude (E10, see above above p. 94). There are also the cases just discussed where the transferee prosecutor may have kept the proceeds (E9, N16). (See also below Ch.4, "Personal Gain from Law Suits").

There is evidence in STH7 of the Grágás rule that the primary prosecutor in suits arising from a transferred suit was the transferee prosecutor of the original suit. In STH6 the father of a dead man transferred the prosecution of the manslaughter suit to a goði. Very shortly after, the father was killed by the employer of the killer, who had gone to offer the father self-judgement and was displeased to discover that legal proceedings were planned. The transferee of the first suit then proceeded to prosecute for this killing as well.

Grágás stated that a transferred suit could not be transferred again except under special circumstances (above Ch.2 p. 88), but in E3 the transfereee, a goði, transferred the suit to another without a good excuse. However, there is reason to suspect that this goði could not have been involved in this suit and that therefore the second transferee was the prosecutor from the start (see E3 Suspicious Elements). A possible breach of this rule is also evident in N11 where the son of a slain man was alive, old enough to take part in the expedition in which his father was killed, and received the

compensation for the killing. The suit took place around 985AD, and thus before the law was passed prohibiting men under 16 from prosecuting manslaughter suits (see W10). Thus, even if the son were under 16, we would expect him to have been the primary prosecutor. The suit was, however, prosecuted initially by the brother of the dead man, who later transferred it to another.

There are also at least two cases in which the summons was served by someone other than the transferee prosecutor, in both cases by Már, the son of the prosecutor (N9, N28). That this may not have been quite the proper procedure is suggested by N23, in one version of which it is carefully explained how the primary prosecutor sought the promise of support from another, then served the summons himself, and only after that transferred the prosecution to the person who had promised support.

Comments on the Transfer Procedure

The right of an individual to appoint another to speak on his behalf in court and the frequent exercise of this right does not perhaps sound very unusual in 20th century England, where it is normal to appoint lawyers to act in virtually all legal matters. The main difference in medieval Iceland is probably that the state made no regulations as to qualifications, legal knowledge etc. for people who could so act as we do for barristers and solicitors. Such a right cannot, however, be taken for granted, as a glance at some other medieval laws shows. The Lombard Laws provide that a person could speak to the suit of another freeman only in special circumstances, particularly for widows and orphans, and then only with the consent of the judge (The Laws of King

Ratchis, Chapters 3 and 11). The Gulaþing Law of Norway provides:

> Within the realm every man who is free and of legal age shall prosecute his own lawsuits; but, if a man leaves the land, his possessions shall remain for three winters in the keeping of whomever he has authorised before witnesses to hold them, and this man shall have the right of suit and defence on his behalf. But if the man goes to the Greek Empire, his nearest heir shall hold his property. A woman may bring an action at law just as a man may if she is unmarried; but she has the right to assign both suit and defence [to another]. Gulaþing Law, Merchant Law Ch.47.

In Norman England too, the right to be represented by another appears to have been limited:

> The general feeling that a man engaged in litigation should be present in court to conduct his own suit had always meant that litigants were allowed much latitude in making excuses for non-attendance. To appoint an attorney was a privilege which only the court, originally only the king, could grant. To the end of John's reign it was necessary for the principal to be present in court to make the appointment or to be visited by four knights specially ordered by the curt to hear him make it. Only serious illness or absence on important business or crusade were considered to justify the appointment of an attorney who could win or lose on a litigant's behalf[20].

A corollory of the right to appoint another as prosecutor seems to have been the right of the injured party not to attend court himself. This is evident particularly from those suits which were transferred because he could not attend court (e.g. N6, N7, N8, N10, W14, N23 and N17).

It seems clear that one of the reasons for transferring the prosecution of a law suit was to get someone with good legal knowledge, since in more than half the cases the transferees were goðar or legal experts. Also, we see in W6 one person, Steinnþórr, objecting to taking on a lawsuit on the grounds, in part, that he'd "never taken part in a law suit before".

Someone familiar with Icelandic law only from Njáls saga would be excused for believing that highly technical legal

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[20] Doris M Stenton, English Justice between The Norman Conquest and the Great Charter, 1066-1215, p.47-8.

procedure made detailed legal knowledge virtually essential. However, there is little evidence outside this unreliable saga that cases were normally won or lost on procedural, as opposed to substantive, errors. Heusler cites only three examples, including one in Bandamanna saga, which falls outside the period under consideration, one in Flóamanna saga and one in Glúma?[21] The incident in Glúma involved a veto against the court remaining in session beyond the time allowed by the laws (N11). In Flóammana the prosecutor used the wrong procedure to commence the suit and was therefore convinced to drop it (STH27). An additional example is N21, a suit for wrongful procedure based on the fact that N19 had been commenced in a court in the wrong Quarter. These few examples do not, however, suggest a strong reliance on procedural errors in the defence of law suits. In addition, it could be argued that the details relied on in two of them, the time for the holding of court and the territorial jurisdiction, would not have been nit-picking details which only a legal expert would think of using.

Perhaps more important for success in court than detailed knowledge of procedural law was a good knowledge of the substantive law, particularly what could be used as a valid defence in an action. It was, for example, very helpful to know in what circumstances a person could be lawfully killed, and thus what matters could be raised as defences or counter-charges in manslaughter suits (e.g. N2 & 3, N9, W6, E8 & 9), or when it was permissible to resist another with violence (W4, W9). Substantive defences were also raised in W8 and W24.

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[21] Heusler, Strafrecht, p.108-109.

However, as will be shown later (see below Ch.4), litigants were not always content to rely on due legal process. If they had greater power and strength than their opponent, they were frequently prepared to use it to win a law suit, no matter what the legal rights or wrongs. They tended to be particularly aggressive in manslaughter suits. This obviously must have been an important element in those suits transferred to goðar and others with considerable power and influence. It also helps explain why manslaughter suits were more likely to be transferred (17 of the 28 transferred suits were manslaughter suits compared with 32 of the total of 72 suits), and is also related to the difficulties people accused of manslaughter had in attending court (see below p. 147).

The tendency to transfer suits to people with power or legal knowledge does not accord with the one surmise made from Grágás concerning the social significance of the transfer procedure, i.e. that this was not the case (see above Ch.2 p.88). As the surmise was based on only one reference in Grágás, and as the law codes are otherwise quite reticent about the reasons for the existence of the procedure, this may only show the difficulties in drawing conclusions from inadequate evidence.

The transfer procedure was also of considerable importance in giving access to court to those people who, either for legal or practical reasons, could not attend to prosecute themselves. Those with practical difficulties included disabled and injured persons, as well as those who were abroad. The main group under a legal disability were women. As already suggested (above p. 121), they apparently had the right to handle all aspects of the case except the appearance in court, including the right to determine who was to handle the court action. Others

who were legally prohibited from appearing in court, for example, those who were under age, do not seem to have had the right to choose who was to represent them either, and thus no transfer procedure would have been necessary.

IDENTITY AND SPECIAL RULES FOR ACCUSED AND DEFENDERS

In 11 of the 40 non-manslaughter cases the accused person defended himself, and in a twelfth one of the accused did. (Tables IIIA, B and D). In seven of these the accused and defender was a goði (N15, N18, N20, N21, E4, STH10, STH5), in one a legal expert (E10), and in one a wealthy man and a leading chieftain (hǫfðingi)/(W24). We are not given much information about the accused in W2, but he was doubtless a farmer, and came from a powerful family who gave him strong support. In STH8, the accused, a grandson of a leading settler, was a missionary sent by King Óláfr. We know nothing about the accused in the last case, W18.

In 8 of the 40 non-manslaughter cases the accused were defended by goðar; 2 were employees (N19, W4), 2 þingmenn (N16, N17), and 1 who was dead was probably a þingmaðr, with the goði defending at the request of the widow (E9). In another the accused, a rich farmer was the foster father of the son of the goði, E7. In E5 the goði defended only after the farmer transferred his property to him. In W23 the relationship of the accused and the goði is not specified.

3 suits were defended for others by non-goðar. In STH4, a freedman transferred his property to another, who then defended him. In N1 the accused were slaves owned by a woman, who asked her son to defend. In a third, the accused was dead; his father, a farmer, asked thewidow's brothers, members of a powerful family, to prosecute the manslaughter suit, and they presumably defended this related suit as well (N3).

In 4 cases one or all of the accused were not at court and there was no defence submitted on their behalf. In one they were bandits who built a fortress (W12), in another Vikings who prepared their ships for sailing during the assembly (N23). In a third a woman who was jointly charged with her son, a legal expert who defended himself, chose to go abroad before the trial and never return (E10). In the fourth case the accused, Christian missionaries sent by King Óláfr, were blocked from attending court (N22). There was also no defence submitted in N4, although the accused, a farmer, was present as well as men who were prosecuting for the manslaughter of his son. They all appear to have accepted that there was no legal defence, and the prosecutors were strong enough to assert their case.

In 6 cases, the identify of the accused and/or the defender is unclear (N6, STH2, W19, W20, N13, E6). The remaining 7 suits were abandoned or settled after the summons (W15, N27, E12, W25, N7, E3, W13).

In 12 manslaughter suits the accused was clearly not present in court, and in one other case at least one of the three accused was not at court (W14; Table IVG)[22]. In 3 of these the accused went abroad before the court hearing or prepared to do so, and no defence was submitted (W3, W5, E1). In all three the accused was a farmer, and in two (W3 and W5), he was strongly supported by goðar. In a fourth case a ship's captain, probably foreign, did not attend court and probably was not defended either, although again he received help from a goði, and took steps to get both his goods and himself out of the country (E13). In two further suits there again was no defender,

[22] Two suits, E1 and N29, are included on Tables IVG and IX, but not elsewhere, making a total of 34 manslaughter suits.

although the accused made some attempt to find one (STH6, STH7). In N29, the accused did not try to find a defender, and was very annoyed that his father-in-law, a goði, spoke for him at court and paid compensation.

In 5 of the cases where the accused was not at court, he did nevertheless find someone to defend for him. In all cases the accused were farmers or sons of farmers. In one the accused sent word to his wife's uncles asking them to defend (W22). In a second case, a father defended his son, who was still living at home (W7). In a third a former goði defended his cousin (N12). In two the defender was a goði, with the accused being a longstanding friend in one (E11) and the son of the goði and expedition leader in the other (W14).

In 4 further manslaughter suits someone other than the accused defended, although it is not stated whether or not the accused attended court. In two the leader of the expedition on which the killing occurred defended, and in both cases he was a goði (W6, N10). In a third a woman was defended by her son (or perhaps her brother, W1) and in a fourth a father, a great sage, defended his sons (W26). In the latter case another of the accused had no defender. He did not attend the peace meeting, but it is not clear whether he went to court or not. In effect the prosecutor became his defender because he really did not wish to press charges against him very hard, and made the sentence against him as easy as possible.

In 1 case the accused was killed immediately after the summons (N9), and in 9 there is little information about the defence (W10, W16, W27, STH1, STH3, N8, N14, E2, W11).

In none of these cases where the accused did not attend court, or was defended by another and possibly did not attend court, was he a goði.

It is also notable that in no case did a goði defend a person in a manslaughter suit because he was his þingmaðr, just as no goði clearly prosecuted a manslaughter suit for anyone because he was his þingmaðr (above p. 97). This suggests that goðar did not consider their obligations to their þingmenn as strong enough to justify getting involved in manslaughter suits, which aroused quite strong feelings and could be very volatile. Also, the guilt of the accused in manslaughter suits was rarely in doubt, and thus a goði would likely have wanted good reasons for defending rather than, for example, helping the accused to go abroad as in W3 and W5.

By contrast there are at least 7 manslaughter suits in which the accused both attended court and defended himself, and in six of these the accused was a goði (N11, N15, N2, W8, W9, W21); in the seventh he was a legal expert with two goðar as close kin and supporters (E8). In four of these suits a legal defence was submitted and upheld in the judgement or settlement (N2, W9, W21, E8), in a fifth suit for the killing of slaves a legal defence was submitted but not upheld (W8); in a sixth the identity of the killer was disputed, an unusual occurrence (N11), and the seventh suit had more the character of a local power struggle than of a legal dispute (N15). There is also an interesting contrast in the burning suit in Hœnsa-Þóris saga (W14). Three men were charged, including an unpopular but wealthy farmer, the son of a goði and a goði. The farmer did not attend court, the goði did, and we have no information about the son of the goði. The defence tried to rely solely on force in this case, but failed in the end, and all were outlawed, both the farmer and the goði being subject to full outlawry.

There are two cases for wounding, but in neither is it made clear whether the accused attended court. Both were defended by a goði, one for his nephew and employee (W4), one for an employee (heimamaðr) (N19).

It is thus apparent that there was no fixed rule, as occurs in Grágás, that a person charged with manslaughter or wounding could not attend court, or, if there was, it was very often breached. Whether or not the person attended court seems to have been more a question of expediency. If he could command sufficient support to protect himself, as a goði could, and especially if he had a good legal defence, then he went to court. Where the killing and it's illegality was not disputed and the person was of fairly ordinary social class, even if he had the strong support of a goði as in E11 and W5, it was more expedient to stay away, and even leave the country as quickly as possible as in W3, W5, and E1. In Vatnsdæla saga, Ch.XLVII, it is also suggested that an accused might expect a lighter sentence if he stayed away from court and let someone else negotiate terms for him. This was not a manslaughter suit, but the same principle may have applied in getting terms set in lieu of outlawry in manslaughter.

Another possible difficulty in attending court, no matter what the charge, was that the accused was more likely to meet up with the injured party and/or prosecutor, who, it would appear from the sagas, could often kill him with impunity as a guilty although not yet sentenced man. In N2 to 4 and E8 we see accused persons successfully defending themselves on manslaughter charges on the grounds that the person had previously committed an offence against them for which they could justifiably be killed (they had fallen óheilagr).

Similar defences were raised in W6 and N9-10, but these suits were settled, and it is not made clear to what extent the defences were valid[23]. We have seen that Grágás similarly allowed a person to kill with impunity in certain circumstances (above Ch.2 p. 76-7).

Although Grágás and the law suits do not agree that there was a positive prohibition against the accused in manslaughter and wounding cases attending court, it is quite clear from both that there was no requirement that the accused in any type of suit should go to court, nor any method of securing an accused to ensure he did attend court. This is in sharp contrast to modern English procedure where the accused in criminal matters is either kept in jail pending trial, or made to pay bail to ensure he will attend court. The provisions of the Anglo-Saxon laws show a similar concern for ensuring the attendance of persons accused of crimes in court. It has already been noted that they required every man to have a surety who was to "bring and keep him to the performance of every lawful duty". If a person committed a crime, his surety had either to turn him over, or himself accept the consequences of the crime (III Edgar 6, see above p. 102). Before the surety system appears as fully established in the law codes, the

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[23] In three further cases, W9, N39 and STH18, cited by Heusler, Strafrecht, p.115-116, the defence was in effect that the person was killed in self defence, in the heat of the moment. This is quite a different matter from a deliberate attack occurring at a later time than the offence of the dead person. Similarly in W4, in which an assault was successfully used as a defence to a wounding suit, both offences took place during the same encounter. In another example from Droplaugarsons saga Ch.9 it is not clear in what circumstances the killing took place, in the heat of the moment, or in a deliberate later attack.

payment of security by accused persons was allowed, or failing that, they could be jailed until trial (II Edward 3 s.2).

All the cases in which an accused was represented at court by another give little evidence for the formal transfer procedures used when the prosecution of court actions was assumed by others (above p.134f). It seems possible to assume that no transfer was necessary for the defence, and that anyone could speak for an accused person in court. This occurred in N29, a manslaughter suit for a killing on the way to the Alþing. The killer returned home immediately after the deed, making no arrangements concerning the law suit, but his father-in-law, a goði, not only arranged a settlement, but paid the compensation as well. The accused was very annoyed that compensation was paid, and it caused a major rift in their relationship, but there is no suggestion that his father-in-law had acted improperly in taking up the defence. We also see in STH6 and 7 a general invitation by the court for someone to speak for the defence. The rules of Grágás suggested that this could happen only if the accused did not know about the case (above Ch.2 p. 79), but the lawsuits indicate a more casual approach, suggesting a strong desire that whenever possible a defence should be submitted.

Grettis saga Ch.46 contains an interesting comment on the right of an accused to be represented in court. Grettir was involved in the burning of some people in a house in Norway, including the sons of an Icelander, and widely accused of being responsible. The news of it reached Iceland before he did, and the father of the dead men started an action at the Alþing. "Men thought nothing could be done as long as there was no one to answer the charge", and the lawspeaker argued: "It certainly

was an evil deed if all really happened as has been told. But 'One man's tale is but half a tale'. Most people try and manage not to improve a story if there is more than one version of it. I hold that no judgement should be passed for Grettir's banishment without further proceedings". The prosecutors were nevertheless strong enough to impose outlawry on Grettir. It seems clear from the cases already cited that it was not essential that a person be represented in court. However, as he was still abroad, Grettir could not even have known of the law suit nor have had the opportunity to arrange for someone to be at court. The opinions expressed at court are thus probably only the statement of the right of a person to be properly summoned for an offence.

We saw in Grágás a provision requiring that in killing cases, where more than one person was accused, one was to be selected by the prosecution, and then his kinship was the only relevant factor in procedure, and compensation could only be taken from his kin (above Ch.2 p. 79). One would assume that this would make it desirable to select the richest and most powerful member of a party of killers, as this would give the prosecutor a better chance of collecting compensation and/ or ridding the court and panels of the influential kin of that party. The law suits provide some evidence that such an approach was taken, although giving no evidence of the rule itself. This is particularly so in those cases where a person hired another to commit a killing. In two of these the person hired to commit the deed was not charged, but rather the person who hired him, although with conspiracy to kill, not manslaughter (N30, E10). Additional suits N35 and STH27 provide further examples. The Vigfusson and Powell translation in

STH27 is misleading in saying "Now Thorgisl holds Asgrim guilty of an attempt on his life". The Icelandic term used to describe the charge is fjǫrrað , which means "a plotting against one's life"[24]. In only one case do we see such a person charged with the actual killing, although the charge is not very precisely stated, and the saga could be in error here, considering the other four suits (W8). On the other hand, we do have an example in W6 of a rich and influential person, Snorri goði, not being charged although he was personally involved in the killing. All others involved were charged, all of them being members of Snorri's household. Thus, as has already been surmised (above p. 99) Snorri may well have been responsible for defending them, and thus the prosecutors could be sure he would be involved anyway without risking the possible consequences of threatening him with outlawry personally, and in the end he did pay the compensation himself.

These cases all suggest that there was no obligation to charge everyone involved in a case, but there is no suggestion in the sagas of any limitation on the number who could be charged and held liable in any case as there is in Grágás (above Ch.2 p.78-9).

There is an interesting suggestion in a piece of legislation from the Saga Age that in early Iceland a killer could in some way fix the blame for a killing on someone else. It is stated in Íslendingabók Ch.8 that Skapti the Lawspeaker established "that no man should legally declare a slaughter as done by anyone else than himself". The provision would have been passed between 1004 and 1030 AD, the years Skapti

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[24] Richard Cleasby and Gudbrand Vigfusson, An Icelandic-English Dictionary, Oxford 1874, p.159

held office. However, in a case which occurred prior to this law, in about 984 AD, a killer tried to make another member of the expedition responsible for his own misdeed. The saga makes quite plain that he had no right to do so, and in the end he didn't get away with it (N10 and N11). Perhaps the correct interpretation of the law is that a killer should not be able to jeopardise the prosecution in any way by fixing blame on others. In Njáls saga we see Mǫrðr Valgarðsson doing just this. He inflicted one of the mortal blows on Hǫskuldr Hvítaness goði, and then suggested

> I think I should go home first, and then go up to Grjotriver and report what has happened and pretend to be horrified. I am quite certain that Thorgerd will ask me to give notice of the killing and that is what I shall do , for that is the surest way of invalidating their legal action. Njála Ch.111, see STH23 (additional law suit).

Mǫrðr's scheme worked and seriously hampered the prosecution. It may be that the normally unreliable Njáls saga here has preserved an authentic account of a law suit, which according to the saga would have taken place about 1011 AD, and that Skapti's legislation was a direct response to this case.

VARIATIONS IN RESTRICTIONS BETWEEN COURTS

Nearly all the law suits where the court is identified took place at either a spring assembly or the Alþing, with a fairly even split between the two (Table IX). Three suits originating at a spring assembly were later taken to the Alþing after being broken up by violence (E4, W14, N11). In only three cases are there possible references to other courts. Two may have been at a Quarter Assembly (N11, N19)[25], and a

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[25] Concerning Quarter Assemblies, see suit N11 Revival, Suspicious Elements and N19.

third was argued at "assemblies and other lawful meetings (lǫgfundum)" (W24). This latter is the only possible reference to the local non-assembly courts referred to in Grágás (see above Ch.2 p. 81), but is really too vague to be of much value. Of the types of actions Grágás states were to be taken to such courts, only those involving foreigners are mentioned in the law suits. In one, for money owing to a foreign merchant, the court is not specified (N13), nor is it in a suit for the killing of the same merchant (N14). A second suit for money owing a merchant could have been taken either to a spring assembly or the Alþing; the sources disagree (N17). This merchant may also have been an Icelander. Three of the suits in which foreigners were accused were taken to the Alþing (N23, E13, STH9), in a fourth the court is not specified (N8). If, as these law suits suggest, there was a rule that suits against foreigners were to be taken to the Alþing, it could well have been because it would not always have been possible to establish a domicile for them, and therefore to decide which spring assembly to summon them to. Therefore, until the probably post Saga Age establishment of the local courts of Grágás, it may have been necessary to summon all foreigners to the Alþing.

This difficulty with foreigners may well not have existed prior to the suit for the burning of Blund-Ketill (or his son Þorkell (W15). According to Íslendingabók Ch.5 "It was then law that suits for slaughter must be followed up at the assembly that was nearest to the field of the dead". In other words, in manslaughter suits at least, it didn't matter where you lived. The account goes on to relate that, because of the difficulties encountered in this burning suit, changes

were made in the court structure: "the land was divided into Quarters, so that there were three assemblies in each Quarter, and assembly-mates in each should have all their suits together". The whole account would seem to suggest that, prior to this time, where the parties lived was of little importance in the selection of the court to take the suit to.

The only other possible variation between courts with regard to parties to court action which the sagas considered suggest is that itinerants may have been entitled to attend spring assemblies but not the Alþing (see above p. 115), which raises the possibility that they could conduct their own court actions at spring assemblies.

CHAPTER 4: ABUSE OF THE LAW BY LITIGANTS

The author of Njála put into Njáll's mouth the words "With laws shall our land be built up but with lawlessness laid waste" (Ch. 70). Unfortunately, the words were fairly certainly borrowed from the Norwegian law code Járnsíða, introduced to Iceland in 1271, after the country submitted to the Norwegian king.[1] There is, however, evidence that the concept, and even the formula, was an old one, and that the Icelanders of the 10thC knew of it, particularly in the account of Þorgeirr's speech in the year 1000AD when he made Christianity the state religion:

> [Þorgeirr] said that he thought that the condition of the people would be a sorry plight, if men were not all to have one constitution [or law, lǫg] here in the land. And he spake to men in many ways that they should never let this come about, saying that such disturbance must follow that assaults and batteries would be sure to follow between men, so that the land would be laid waste therefore....and let us all have one law and one faith. For this will be a true saying that if we break asunder the constitution [law, lǫg] we shall also break the peace.[2]

A strong legal system was clearly seen by the settlers, too, as an important element in their new country, with atleast two courts being set up quite early, Kjalarnes Assembly and Þórsnes Assembly[3]. And once the land had become fully settled, around 930AD, the settlers saw the need for one law for the whole land, and adopted a code of law composed specifically for Iceland by Úlfljótr[4].

The view that the early Icelanders had a high respect for law and governed their conduct and society according to law is strongly expressed by Magnus Magnusson and Hermann Pálsson:

> what characterised pagan Iceland and early Christian Iceland above anything else, setting it quite apart from any other medieval European country, was a dynamic veneration for law

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1 Brennu-Njáls saga, edited by Einar Ól. Sveinsson, Íslenzk fornrit vol. 12, Reykjavík, 1954, p. 172, note 6.

2 Magnus Olsen, "Með Lǫgum Skal Land Byggja", Maal og Minne, 1946, p. 75-88. Íslendingabók ch. 7.

3 Landnámabók, Sturlubók, ch. 9, ch. 85; Melabók (Íslenzk fornrit vol. 1, p. 46 note 3). Eyrbyggja saga ch. 4.

4 Íslendingabók ch. 2

> and order. The early Icelanders owed no allegiance to king or earl; their allegiance was primarily to the concept of law - and it is worth noting that law-breakers were sentenced not to death or imprisonment but to outlawry. To be a member of society was at once a privilege and an obligation, and anyone who violated the law of society forfeited his right to remain within that law, within that society[5].

But there is another side to these Icelanders. Much of the saga material is concerned with the more violent aspect of their nature, with accounts of how the sword, not the law, was used to settle disputes. A casual reader might be excused for believing that the Icelanders lived their lives very much in the same spirit as the Viking raiders who terrorised Europe - indeed, some of them are even seen taking part in Viking raids.

The Use of Force and Violence by Litigants

The violent aspect of the Icelanders character is evident even in the law suits, when legal means were being used to attempt to settle disputes. In 5 of the 32 manslaughter suits (15%) and 14 of the 40 other suits (35%) considered in the Summary Tables a party used violence to affect or to try to affect the outcome of the law suit. In 9 of these one of the parties to the action was killed, in 5 cases while the summons was being served; in 2 the accused was kept from court by force; in 4 there was a battle at court; in 3 the defence used force to try to void the suit; and in 1 the defence tried to resist the judgement through force (Table VIII A). But in only a minority of cases did the violence mean the end of the matter; in 3 cases the suits proceeded to judgement in spite of the violence (W14, N12b, STH10), in 4 the parties reached a settlement (N7, N28, N27, W2), and in 7 further legal proceedings were taken (E12, N13, N9, W13, N19, N11, E4). In 5 of the

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[5] Magnus Magnusson and Hermann Pálsson, "Introduction", Laxdæla Saga, Penguin Books, 1969, p.31-32.

19 cases the violence was successful in terminating legal proceedings or achieving the desired result (Table VIII A).

In 2 cases prosecutors attempted to avert violence at the summons by asking permission to serve the summons from the head of the household where the accused lived, in both cases a goði: in N34, (not included in the Summary Tables), the prosecutor was given permission and then apparently successfully delivered the summons; in E12 the goði said the summons could be served "with few men", but when the summons party arrived he attacked them. It is understandable that the summons should have been the most dangerous stage in the proceedings. At the assembly there would have been many other people about who hopefully were neutral, but the summons was served at the home of the accused, and thus any prosecutor who came with a small party could be very vulnerable, especially if it was a large household with many men as the households of most goðar would have been.

Goðar were less often involved in suits which had a violent end; in over 36% of these suits there were no goðar involved, compared with 27% of all suits (Tables VIII-A, I-A, II-A, III-A, IV-A). And in 4 of the 5 suits, or 80%, in which the violence was successful no goðar were involved.

In 9 of these suits where violence was used it is also stated that at least one party had a large number of supporters; in 2 of these the violence achieved the desired result (E4, N22), judgement was reached in 2 (W14, STH10) and a settlement in 2 (N28, W2); the suit was renewed in 1 (N11) and charges concerning the violence were brought in 2 cases (N9, N19). In only one of these (N22) were there no goðar involved, and in 3 (E4, STH10 and N19) both parties were goðar.

There are, in addition, 18 other suits in which at least one of the parties was supported by large numbers (Table VIII-B). Again, in only one of these (W22), were there no goðar involved. In all other cases at least one of the parties was a goði, and in 10 cases, over 55%, both parties were goðar compared with just over 22% of all cases. In 6 cases where only one of the parties was a goði the party who was not a goði is stated to have had a large number of supporters (W21, N10, E7, W2, N28, N11); in three of these the non-goði party was strongly supported by a goði (W21, E7, W2), in one he was the son of a goði and could possibly have held the goðord himself (N28), and in the other 2 the non-goði prosecutor was a member of one of the most powerful families in the area and was supported by another such person (N10, N11).

The dangers involved in allowing parties to have large numbers of supporters were recognised in Grágás, which provided that a person could not take more than 10 men to the Alþing court (Finsen Ia p.53 Ch.28). Of course, this would not have prevented more men attending the assembly, and they could probably have been almost as effective waiting menacingly outside the court. It is seldom clear in the law suits how often they actually attended the court itself, and thus how often this rule was breached, if it did exist in the Saga Age. Certainly where the court was broken up (e.g. N19) , we must assume a breach of any such rule, but in such a situation the party was clearly flouting the law in any case.

It would perhaps be wrong to assume that goðar who used force or the threat of force in law suits did so to get their way no matter what. There are few societies in which the legal

machinery can operate without some such threat of force. In the early Icelandic society there was no independent police or army to provide this service and so the goðar, the only people normally able to command the support of large numbers, took this duty on. Unfortunately, because they were also the people in charge of the administration of justice and the people capable of giving greatest help to others in their law suits, they were frequently involved in a conflict of interest in which they may often have lost sight of their duty to administer the law. We do, however, occasionally see expressed the attitude that force was being used not to pervert the law, but to ensure a just solution. In N2 Víga-Glúmr, a goði, "said he expected his kin to support him to obtain justice, but would conduct the suit himself". In W21, it is said that the prosecutor, who was not a goði, but had the support of a strong goði, Tungu-Oddr "behaved arrogantly over his law suits. To him his charges seemed legal (lǫgligar) and his support enough to implement the law (at koma málum fram)".

Court Actions and Power Struggles

However, in many of the cases involving large numbers of people, we see a conflict with another of the roles of the goðar in Icelandic society, that of political leader, with law suits being used to determine and demonstrate the relative strength of two or more goðar[6]. The legal issue appears to have been or become of fairly minor importance, the law suit

6 "Der Grössere kann die dem Kleinen entlehnte Klage als willkommene Waffe wieder den Gegner benützen". Andreas Heusler, Das Strafrecht der Isländersagas, p.102.

being part of a local power struggle which sometimes even verged on civil war. In the suit for the killing of Víga-Styrr (W11), it is said that there were over 1000 men involved from the West Quarter, primarily from the districts of Þvérá assembly and Þórsnes assembly. When it is considered that in the early 12th Century there were just over 1000 bœndr who had to pay assembly attendance dues in the whole of the West Quarter[7], it is evident that this would have been a very large percentage of the adult male population in the area were involved, although there is at least one notable exception in Þorsteinn Egilsson. We must, of course, allow for exaggeration in the numbers, as this readily happens at any time in such stories. But even if only one quarter of the number stated were involved, it was still a major confrontation. The cause of the escalation of the dispute seems to have been the growing power of Snorri goði, who by this time, 1008AD, had influence over most of the district of Þórsnes assembly. According to Heiðarvíga saga, Styrr met his death because of his overbearing attitude and refusal to pay compensation for his own deeds; he was Snorri's father-in-law, a connection which may well have encouraged his unacceptable behaviour. Most of those opposing Snorri came from another assembly district, Þvérá, and were led by Illugi the Black. However, one member of their party was Þorsteinn Þorgilsson, a goði in the Þórsnes assembly. He was married to Illugi's daughter, and could well have been the major instigator of the mass opposition to Snorri, whom he possibly saw as encroaching too heavily on his own power and authority.

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[7] Íslendingabók Ch.10. The total population was probably in the region of 60,000-70,000. Vilhjálmur Finsen "Om de islandske Love i Fristatstiden", P.38, Note 1; Foote & Wilson, The Viking Achievement p.53.

Certainly, one of the ultimate results of the dispute was that:

> Þorsteinn of Hafrsfjǫrðr/sland withdrew the chieftancy of Raudamelr from the Þórsnes Assembly as he didn't like the way Snorri and his supporters seemed to have got the better of him. After that Þorsteinn and his kinsmen set up an assembly at Straumfjǫrðr, which survived for quite a long time. (Eyrbyggja saga Ch.56).

The suit for the burning of Blund-Ketill or his son Þorkell (W14) which took place around 963AD also involved goðar from two different areas and problems of checks and balances on power, although it began as a quite localised matter. One of the main characters involved was Tungu-Oddr, said by Hœnsa-Þórir to be "the legal head of the district to set right all wrongdoing here" (Hœnsa-Þóris saga Ch.VI): he was probably a goði, although the saga does not say so. The saga says he "had no reputation for fair dealing" (Ch.1) and gives an example in his treatment of some Norwegian merchants (Ch.II and III). He was not, however, able to dominate the district, because of the influence of a wealthy and influential farmer Blund-Ketill, who "was the best-loved farmer in the entire countryside" (Ch.1). Nor was Tungu-Oddr prepared to oppose Blund-Ketill, either in the matter of the merchants or over the taking of some hay by Blund-Ketill from a rather mean and unlikeable farmer, Hœnsa-Þórir. But once Blund-Ketill was dead, Tungu-Oddr seems to have felt there was no real challenge to his authority and power in the district, and thus no reason for him to allow his son, who had taken up Hœnsa-Þórir's cause, to be outlawed for the burning of Blund-Ketill. Blund-Ketill's son (or grandson) and his supporters were of the same opinion, for they thought it necessary to go for help to someone from another district, Þórðr-gellir, a goði

from Breiðafjǫrðr. But Þórðr-gellir was in a vulnerable position; he had to prosecute the law suit in an assembly which was outside his own area, but within the home district of all the people involved in the defence, and Tungu-Oddr would not have appreciated this challenge to his authority from an outsider. Although he was able to collect a larger number of supporters (480 men to the 240 of the defence), Þórðr-gellir was unable to make his way across the Hvítá to the spring assembly at Þingnes to prosecute the suit, and several people were killed in the encounter. Þórðr-gellir then took the suit to the Alþing, and again Tungu-Oddr tried to prevent him from getting to the Assembly, this time with 360 men, but others at the assembly came between them and got the matter taken to arbitration.

The law suit had demonstrated to Þórðr-gellir that the legal system was inadequate to deal with people like Tungu-Oddr who were prepared to flaunt the law in order to assert their own power. He felt he would have had a fairer chance if he had been able to take the case to a neutral court from the start, and he therefore proposed some constitutional changes which were accepted; the land was divided into Quarters with three assemblies in each Quarter, except the North which had four, with men from the same assembly having their law suits together, and the Quarter assemblies were established (Íslendingabók Ch. 5). The passage does not explain very well how this would have solved Þórðr-gellir's difficulties, but presumably we are meant to assume he would have been able to take the suit to a Quarter assembly which would have been more neutral ground.

We may see a quarter court being put to use as Þórðr-gellir intended about 20 years later in N11, where the prosecutors are said to have taken their suit to the Hegranes þing "because all chieftains taking part in this assembly (sampingisgoðar) were bound by affinity to himself". There is some problem in believing that the prosecutors had any great advantage in this regard over the defender Víga-Glúmr. It seems more likely that the assembly they were attending at Hegranes was a quarter assembly and that, as Þórðr-gellir had intended, they were hoping to find neutral ground there. In this case, both parties were members of the same spring assembly, but the defender was the more powerful and therefore presumably had greater influence at the Spring assembly. Unfortunately, the neutral ground did not work and, like Þórðr-gellir, the prosecutors found they had to take their suit to the Alþing.

In Heiðarvíga saga we actually find people planning carefully where to commit their crime in order to ensure the friendliest possible court. Þórarinn was advising Barði where to have his battle: "Now shall ye ride away at your swiftest until e are come to the northern fighting-stead upon the Heath; because that thence all verdicts go to the North, and therein is the greatest avail to you that so things should turn out" (Ch.24). Later when he failed to reach the suggested spot, Barði said "better had it been to hold the northernmost fight-stead, nor had any blame been laid upon us if we had so done; and better had it been for the blood-feuds" (Ch.30).

But not all people had the same troubles as Þórðr-gellir in law-suits conducted in "foreign" assemblies. In W23 we see the Hjaltasynir, goðar from Skagafjǫrðr, successfully defending a suit for a friend at the assembly in Þorskafjǫrðr. It is, however, possible that this was considered quite unusual, as a poem was composed about their appearance at the assembly.

Even when exceptional numbers of people were not involved, law suits often appear as elements in power struggles, and were sometimes even deliberately used by a prosecutor or defender to assert his own position. The legal issue is usually still important, but often secondary to considerations of power and influence. This is seen most clearly in Víga-Glúms saga and Eyrbyggja saga in which the careers of Glúmr and Snorri goði can be charted through their law suits. In both, they asserted themselves at a young age, establishing that they deserved the position of goði (Glúmr N2-4, Snorri W3). This early success by Snorri "started the enmity between Arnkell and Snorri goði". We then follow in considerable detail the power struggle between Snorri goði and Arnkell godi (W6, W8, W9), with Arnkell getting the upper hand. The importance of success in law suits is made clear in W8, where the injured party Þórólfr urged Snorri "to press your case so hard that your standing will be greater than ever". Later, when Þórólfr was dissatisfied with the outcome, Snorri refused to proceed further, stating "I'm not staking my good name on your malice and injustice". Snorri's friends became very dissatisfied with his lack of success against Arnkell in law suits (Eyrbyggja Ch.32, Ch.37), feeling that Arnkell was the strongest man in the district. Finally, Snorri was goaded into supporting

the killing of Arnkell. The people involved got off very lightly (W10), and Snorri became undisputed leader of the area; in W11, we see him acting in this capacity with over 480 men following him. Finally, we see him in W12 as the benevolent district leader, helping his *þingmaðr* against some bandits.// In *Víga-Glúms saga*, after showing Glúmr's strong beginning, the author hops over the 25 or 30 years during which Glúmr probably enjoyed fairly unchallenged authority, and moves to the conflicts of his later years. Unlike Snorri, Glúmr did not hold on to his power until his death, and it is the events surrounding the loss of his power which interest the author.

We see the beginning of his downfall in N6, where he refused to back the accused because he was not, he said, "anxious to risk my standing (*virðing*) for such a person". But he was the *goði* in charge of the panel giving the verdict, and under pressure from his son Vigfúss, he delivered a verdict contrary to justice which "caused him to lose much respect in the district". Further troubles arose as a result of the unsatisfactory verdict, until Vigfúss committed a manslaughter. Then Glúmr's old rivals in N2-4, the family from Espihóll , no doubt seeing an opportunity to assert themselves with Glúmr's tarnished reputation, took up the prosecution of the suit and got Vigfúss outlawed (N8). The conflict between them broke out again a few years later (N9 and N10), with Glúmr temporarily regaining ascendancy: "Glúmr was now highly regarded (sat nú Glúmr í virðingu)". But he did so only through lies and subterfuge, and when his tricks were discovered the Esphœlingar, now in league with Einarr Eyjólfsson, an even more powerful relation, were able

to finally defeat Glúmr and take away both his goðorð and his farm (N11). Sometime later Glúmr attempted to re-assert his power by defending a cousin in a manslaughter suit against Einarr Eyjólfsson and the Esphœlingar, but failed (N12). It is very interesting that Glúmr's opponents, although they were from good families and closely related to goðar, do not themselves ever appear to have held a goðorð; it is possible that Einarr Eyjólfsson, whose father and brother Guðmundr were goðar, took over Glúmr's goðorð, along with this land, but there is no direct evidence for this.

We do, however, see a reflection of the growth in Guðmundr's power in the law suits of Ljósvetninga saga. Considerable power had already been concentrated in the hands of his family before he became the leading figure in it, with both the goðorð of Víga-Glúmr as shown in N11 and that of Áskell goði possibly coming into the family[8]. In N16 to 18 we see Guðmundr destroying the power of what may have been his last effective opponent, Þórir Helgason, in a series of suits undertaken over a number of years. They are shown as initially rather petty reactions by Guðmundr against a slanderous statement about him by Þórir and others, but their importance in the growth of Guðmundr's power seems obvious, and must have been to him as well (see also below p.183-4 and N15 comments).

We also see a power struggle in the East Quarter, between two goðar, Brodd-Helgi and Geitir Lýtingsson, in which success in law suits was a vital element. As with Snorri and Glúmr, we are shown Brodd-Helgi establishing his authority through a

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[8] Sigfússon, Íslenzk fornrit Vol X p.LXXVIII note 3 and p.19 note 1. N28 may represent one stage in the power struggle for Áskell's goðorð.

law suit at a young age (E2), although Helgi is said to be so young, only 12, that one suspects in this case that it may be a literary motif and an invention of the author, or else of course that the author exaggerated his youth somewhat. Helgi and Geitir began life as close friends, but once they drifted apart Helgi generally got the upper hand in law suits (E4, E5). It came to the point that Geitir left his farm to move farther away, and his followers began threatening to sell their farms and leave the area (Vápnfirðinga saga Ch.11). As with Snorri, Geitir found the only solution was to kill Helgi.

In Flóamanna saga, we again see a goði deciding to kill an opponent goði who got the better of him in law suits, although the attempt was unsuccessful. Þorgils ørrabeinsstúpr Þórðarson "became a mighty man (ríkr maðr), so that Ásgrímr Elliðagrímsson could not carry it over him at the assembly" (V&P II p.637). Strangely, we are then given an example of a suit (STH26) in which Þorgils chose to ignore the legal proceedings and Ásgrímr got the accused outlawed. But Þorgils ignored the outlawry as well and harboured the outlaw, Kolr: "Þorgils rode all over the countryside just the same, taking Kolr with him, and went to meetings, and thereby rose ill-will between the chief men of the countryside (heraðshǫfðingja)". The people tried to get Þorgils to pay compensation, but he refused, and "so the people of the country gathered together and made up the sum between them to give to Ásgrímr, to pay for Sorli's slaughter, and they also gave money to inlaw Kolr".

Clearly Þorgils had become so powerful that he no longer needed even to assert his authority in court. Ásgrímr could stand it no longer, and paid a workman to kill Þorgils, although Þorgils killed the workman instead. The saga relates two instances in which Ásgrímr tried to have Þorgils killed, this one and one late in Þorgils life, probably around 1030AD. Vigfusson and Powell conclude that the latter account is better and the first one a variant which is out of place (V&P II p.639). However, the chronology would probably fit better if the whole incident were assumed to have taken place at the earlier date of just before 1000 AD, at which time Ásgrímr would have been 40 or 50 years old (see N2 Suspicious Element, STH14). Also, Skapti Þóroddsson, who was Lawspeaker 1004-1030, is involved, but it is not said that he was Lawspeaker, only that he knew the law well. Þorgils commenced a law suit for the attempt on his life, but Skapti convinced him that he had used the wrong legal procedure, arguing in addition: "The dealings between Ásgrímr and thee have sped so for the most part, that thou art thought to have carried it over him, even though you part without more ado". (STH27).

Abuse of Legal Process by Goðar

Goðar were not only the police, the army and the political leaders of Iceland, they were also the people chiefly in charge of the administration of justice. Thus, not only could they use force to achieve their desired result in a law suit, they could also manipulate the legal process.

Goðar were responsible for setting up the court (Finsen Ia p.38, Ch.20; p.45 Ch.24; p.98 Ch.57), and thus could delay or prevent proceedings by failing to do so. A goði who could

not decide which side to support used this tactic in N15. In STH10 a goði defender used his supporters to block the goði prosecutor from setting up court in the proper place. The prosecutor was only able to get on with matters by setting up court elsewhere. Goðar were also sometimes responsible for declaring the verdict (Finsen Ia p.51, Ch.26; p.66-67 Ch.36). In N6 the goði who was to do this was pressured by his son, a supporter and perhaps defender of the accused, and gave a verdict for the accused, even though he believed the verdict should be for the prosecutor. In STH10 whoever was responsible for giving the verdict was apparently a supporter of the accused and refused to do his duty. The prosecutor had therefore to search out someone else to give the verdict.

Goðar were also in charge of the confiscation court, which was held to take inventory of and properly distribute the goods of an outlaw. It was the goði of the outlawed person who was responsible for setting up the court (Finsen Ia P.84 Ch.48). As this goði should in the normal course have been supporting the outlaw in his law suit, and may even have defended him, it was a system obviously open to abuse. The most probable abuse is that often the court just was never held. There are 22 cases in which an accused was sentenced to/outlawry by a court (Tables VI and VII), but in only 5 is the holding, or attempted holding, of a confiscation court mentioned (W3, N12a, E13, W12, N17). In one of these the court was not held because the defender forcefully prevented it (N12a). In this case the defender, Glúmr, was probably not the goði of the accused, as his authority had been stripped from him

some years earlier (N12a). Another method of cheating is suggested in N17 where the goði of the outlaw set up the confiscation court as he was required to do, but before it was held he took and marked some of the livestock as his own. He claimed that they were owing to him as payment for his services in the law suit, but there is a definite suggestion of abuse. He was charged in the matter, and required to pay compensation and go abroad for 3 winters in the settlement which eventually ensued. Similar tactics were probably used in W3, where it is said the prosecutor "confiscated all their property he could lay hands on", suggesting that some of the property had been put beyond his reach. In this case, it is likely that Arnkell goði, who had helped the accused get abroad before the trial, had also helped them take as much of their property as possible, although he may well have claimed whatever moveable property he could that they were unable to take. The outlaw may also have received assistance from his goði to send his goods abroad in E13, where the outlaw was a foreign merchant who had lodged with a goði. The goði was killed, so that it was his son whom the prosecutor met when he went to claim the goods; the son, who could well have inherited the goðorð, advised that all the goods had been sent abroad. As the goods were in his custody, there is a strong suggestion of collusion.

In only 1 of the cases in which a confiscation court is mentioned, W12, is there no suggestion of improper conduct by the outlaw's goði.

In addition to the suits which mention a confiscation court, there are two which refer to the confiscated property of an outlaw, sekðarfé (W17, N25). In the latter case the

outlaw partially frustrated those entitled to his property by burning his house before he disappeared, leaving only the land as sekðarfé. Similarly in STH7, where there is no reference to a confiscation court or confiscated property, the outlaw burnt all his goods before he left home "saying Torfi [the prosecutor] should gain little by it" (V&PII p.68).

Abuse of Trust by Goðar

Goðar could also gain advantage in law suits by abusing the trust people placed in them. Thus in W21 Egill Skalagrímsson, father of the accused, convinced an old friend, the father of the prosecutor, to take over the prosecution and then give him sole judgement in the matter. He then declared a settlement which treated the prosecutor very unfairly. Similarly, in one version of N34, in Hallfreðar saga, a goði, father of the accused, convinced the prosecutor to give him sole judgement, and then declared that the prosecutor was to receive half a hundred of silver, but he had to sell his lands and leave the district. It is interesting that in the other version of the suit, in Vatnsdæla saga, the goði transferred his authority to his son, the accused, who then broke up the court.— A nice contrast of two different forms of abuse of the legal process.

In W14 Tungu-Oddr found a very different way of taking advantage of the trust placed in him. The prosecution turned to him for help first, because he had often promised it. He pretended to be sympathetic, and rode with them to the site of Blund-Ketill's burnt house, but as soon as they got there he showed his true intentions and, taking advantage of a law he knew about abandoned farmsteads he

> reached for a birch rafter and pulled it off the house, and then rode widdershins round the house with the burning brand, crying out: 'I take this land here for my own, for I see no inhabited dwelling here. Let those witnesses who are hereby pay heed to it' (Hœnsa-Þóris saga Ch.9).

Pursuit the Limit of the Law

Another form of "abuse" available to strong prosecutors was to demand the harshest penalty allowed by the law for the particular offence, even when many people urged settlement of the dispute on easier terms. I put abuse in quotation marks because, of course, any prosecutor had a full right to push a suit to the full "limit of the law". Indeed there are suggestions in Grágás that it was fully intended that the law courts be used in this way, with a preference being often stated for a prosecutor who would pursue to the limit of the law (til fullra laga) (see above Ch.2, p.57). This preference is also sometimes shown in the law suits. In W27 a goði associated with the prosecutor was "criticised for failing to pursue it to the limit", which in that case meant pursuing and killing the accused after he had been outlawed. In W10 people were very critical of the weak sentences which had been imposed on the accused for the killing of Arnkell goði. This was attributed to the fact that the prosecutors were female, and so a law was passed prohibiting women, and boys under 16 for good measure, from ever prosecuting manslaughter suits again. The implication would appear to be that it would be better not to start the suit at all than to pursue it weakly to an unsatisfactory conclusion. This same sentiment was shared by the father of Ólafr Hávarðarson in Hávarðar saga. He became a prematurely weak and embittered old man rather than pursue a suit which he knew he could not succeed in. In W21 a goði, Tungu-Oddr, who had pledged his

support to the prosecutor, withdrew that support when he heard the prosecutor had agreed to give the father of the accused sole judgement in the matter, stating:

> I now count myself free, Steinarr, from that help which I promised you, however Egill's settlement turns out for you, for it was agreed between us that I should give you such help that either you were successful in your suits, or the cases ended in a way to satisfy you.

It seems implied that Tungu-Oddr would have been more than willing to pursue the matter legally much further. And in STH6 an injured party transferred the prosecution of the suit to a goði who promised to pursue it "to the utmost of the law" (til enna fremsto laga).

Andreas Heusler seemed to regard the terms "til fullra laga" and "fylgja máli til enna fremstu laga" merely as indications that the matter was to be taken to court, rather than settled by arbitration. However, many disputes taken to court also resulted in settlement rather than judgement. All the examples cited by Heusler in the sagas accord with my view that when a person suggested that they would pursue a matter to the limit of the law, not only were they going to take it to court, but also they intended to get a judgement for the full legal penalty allowed[9].

In the law suits there is, however, perhaps more often pressure from society for prosecutors not to demand their full legal rights. In N8 and N17 there were strong pressures on the prosecutors to settle, but in both cases they were determined to have the accused outlawed, and did achieve this. In most cases such pressures for settlement were more successful (W6, W8, W21, W26, N10, N11, N15). All these suits

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[9] Heusler, Das Strafrecht der Islandersagas, p.98-99. He cites Njala Ch.116, Hranfkatla Ch.11, Hávarðar saga Ch.19 and Harðar saga V&P II p.66 (see STH6).

involved eminent men, usually goðar, and sometimes they were even major power battles between goðar (especially N15).

Clearly, it was felt that it could do no good to have such powerful men battle the matter out to a bitter conclusion in court.

Thus it could be argued that the Icelanders believed firmly in the principle of bringing wrongdoers to justice and imposing the penalties provided by law, but where the application of the principle would encourage the continuation of the dispute and the disruption of society by feuding among the leaders, they were willing to see more lenient treatment. In such cases, people who ignored the pleas for settlement may perhaps be regarded as abusing the legal system to achieve personal reward or satisfaction at the expense of society, and probably also at the expense of respect for the legal system.

Personal Gain from Law Suits

Occasionally people assumed the prosecution or defence of law suits for others in return for substantial personal reward promised at the time of the transfer. In E7, a legal expert took on the prosecution in return for the promise of whatever could be gained from it. In W13 the son of a goði prosecuted in return for half the property of the injured party, a rich farmer. In W8 a goði prosecuted in return for ownership of a wood. And in N17 a þingmaðr gave his goði gifts in return for defending him. In addition, there are two cases in which a transferee prosecutor took the proceeds of the suit, although no agreement that he should do so is referred to. In one case he was a legal expert (E9), and in one a goði (N16). In one further suit, E10, on their return

from abroad the grateful sons of a dead man gave gifts to a goði who prosecuted the manslaughter suit while they were away.

There are, in addition, several cases in which the prosecutor or defender had become the guardian, or owner, of the injured or accused's property at a time when the latter had found himself in difficulty, although the exact nature of the social, economic and legal relationships created, and thus the economic advantage accruing to the transferee is not always precisely clear, nor is it certain that it was the same in all cases. In two cases the transaction was made in response to a particular law suit. In W25 a woman placed herself under the protection of her son, an expert lawyer (hon kvaz vilja ráðaz undir áraburð Þórðar); the son then commenced prosecution of a suit for her. This may perhaps be only an example of a woman selecting her own legal administrator, which, according to Grágás, every woman had to have (above Ch.2 p.71). STH4 is, however, quite different, with a freedman farmer, Bǫðvarr, handing his possessions over to Atli (who was not the person who gave him his freedom), who then defended him in a suit which had been commenced prior to this transaction (handsaladi Bǫðvarr Atla Hásteinssyni fé sitt, en hann ónýtti mál fyrir Erni). The transaction led to a dispute after Bǫðvarr's death concerning a wood which his freedom giver, Qzurr, had given him a share in "on condition that Qzurr should get it back if Bǫðvarr died without issue". After Bǫðvarr's death Atli treated the wood as his own, but unfortunately, it is not made clear whether this was because he had been made Bǫðvarr's heir, or

because he considered himself the owner from the time Bǫðvarr handed his property to him. It is of interest that the dispute did not concern all of Bǫðvarr's property but only the bit of wood, in contrast with the situation described in Eyrbyggja saga as part of the background to the dispute in W8. A freedman, Úlfarr, went for help to Arnkell goði, the son of a man who was persecuting him. Ultimately "Úlfarr formally made over (handsaladi) his property to Arnkell, who then became his legal guardian (varnaðarmaðr)" (Ch.31), although the relationship is also described as a partnership (Ch.32). This suggests a relationship in which Úlfarr was still entitled to the benefits of th property, rather than one in which Arnkell acquired outright ownership of the property in return for an obligation to support Úlfarr. However, Arnkell also thought it gave him the right to inherit the property, as Atli had in STH4, although Úlfarr's freedom givers, the Þorbrandssons, disputed this on the grounds that they were lawful heirs of their freedmen (Ch.32). Grágás supports this argument (Finsen Ia p.227 Ch.119), and also makes clear that heirs should not be so disinherited without their consent[10]. In this case, however, might prevailed over the probable rights of the situation. In a third case a well off freedman, Hallvarðr, gave guardianship of his property to another, in this case to his freedom giver's son and his own foster-son Vigfúss Víga-Glúmsson. (Hann handsaladi Vigfúsi fé sitt). We are, however, given no further details of the exact consequences of the transaction, and in a subsequent lawsuit (N6) in which Hallvarðr was charged Vigfúss did not clearly

[10] Finsen III, Ordregister, p.585, "arfsal".

assume the role of defender, preferring rather the more dubious method of defence of threatening his father, who had to declare the judgement in the case. The economic significance in this case would have been considerably less than in the previous two, as the transaction quite likely had little effect on inheritance rights, given that Vigfúss' father was the freedom giver.

These three examples all involved freedmen, but there is at least one example of a free farmer making similar financial arrangements in E5. Þormóðr, a free farmer, felt he was not getting his fair share from land he owned jointly with another. He therefore asked his goði, Brodd-Helgi, for help, but "Brodd-Helgi declared he had no intention of quarrelling over property of Þórðr's, and would have nothing to do with it unless he transferred (handsaladi) the property to him, Helgi, and moved over to Hof with everything he had. He chose to do so, and surrendered the property to Helgi in return for a berth for life (seldisk Helga arfsali)". The translation here appears to follow the Cleasby-Vigfusson dictionary, which states as a secondary meaning for arfsal :

> a law term, to hand over one's own property to another man on condition of getting succour and support for life. In the time of the Commonwealth, arfsal had a political sense, and was a sort of 'clientela'; the chiefs caused rich persons, freedmen, and monied men of low birth, to bequeath them all their wealth, and in return supported them in law suits during life. Such is the case in Vapn.13, Hænsaþór. S. Ch.7, Eb. Ch.31.....v. also Þórð.S, hann bjó á landi Skeggja ok hafði gǫrzt arfsalsmaðr hans (his client), 50: it was humiliating; engar mátti hann (the bishop) ǫlmusar gefa af likanlegri eign, heldr var hann haldinn sem arfsalsmaðr, Sturl. ii 119. To the chiefs in olden times it was a source of wealth and influence, often in an unfair way.

Cleasby-Vigfusson do not, however, explain why they think the term arfsal in all these situations should be taken as going beyond the primary meaning given of "cession of right of inheritance"[11]. The consequences of this cession are to be seen more as a result of the social and legal difficulties which caused the person to make the transaction in the first place, rather than as a direct consequence of the legal contract. It seems clear too in one of the cases cited, Hœnsa-Þóris saga, that there was no real change in the social and economic position of the transferor, except that he was at least temporarily poorer. It is even doubtful whether it can be seen as an example of arfsal, the statement concerning the transaction being "there and then Þórir made a conveyance (handsalar) to him of half his property, and his lawsuit against Blund-Ketill along with it" (see W13). This seems much more an example of a direct payment (albeit for a rather large sum) for legal services, rather than of the creation of any new personal interrelationship, and has been considered as such above, p. 175 . There is no suggestion that the transferee's obligations extended beyond the specific law suit. A transaction earlier in the saga is also of interest. Hœnsa-Þórir began life as a peddlar, but managed to become rich. His lowly origins probably meant that, like freedmen, he had no kin to rely on. The one relative of his we hear of is "Widefarer, a vagrant, loping from one end of the land to the other (reikanarmaðr)". Þórir therefore took steps to improve his social position:

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[11] Cleasby-Vigfusson, An Icelandic-English Dictionary, p.24, "arfsal".

> One day Þórir set off from home and rode to Norðtunga, where he saw Arngrímr goði and offered to stand foster-father to one of his children. 'I will take your son Helgi and give him the best deal I can; but in return I require your friendship and backing, so that I get my rights from people'.
> 'As I see it' replied Arngrímr, 'I shall hardly hold my head higher for this kind of fosterage'.
> 'Rather than lose the fostering of him', said Þórir, 'I will give (gefa) the boy half my money. But you must make things right for me, and bind yourself to do so, whoever I have to deal with'. Ch.2.

But again, the transaction appears to have been in the form of a direct gift, nor does Hœnsa-Þórir's position seem to have become subservient in any way, except perhaps in-so-far as a foster father was seen as socially inferior to the blood father of a child.

In summary, these people involved in major transfers of property in return for support in a particular law suit, or in their legal dealings in general, include three freedmen, one nouveau riche farmer of lowly origin, one female and one free farmer of unknown origin. The transaction involving the female could be of quite a different character from the others and should probably be excluded from this discussion. In three of the remaining cases the transferees were goðar, in one the son of a goði, and in the fifth a person who was not a goði. It seems possible to explain the pressure the freedmen and the nouveau riche farmer felt to enter such agreements in terms of their lack of any other social group to give them support. They had no strong kin, and, since they owned and operated their own farms, they were not members of anyone else's household. They had therefore either to become rich enough to maintain a large household themselves, or find some other group which gave them the support kin and householders gave others. That goðar were most frequently turned

to suggests their importance as a focus for a third major social group. The terms of their agreement, in many cases possibly a full transfer of all the property of the person in trouble, may also be a further indication that goðar felt under very little legal obligation to support their þingmenn, but preferred rather to see some personal benefit in the matter. If a person in trouble came from good family, the personal benefit could be in terms of the prestige and support the goði gained by associating with them. People without family could only offer money. Cleasby-Vigfusson in the definition of arfsal give above (p.178) concluded that this meant that arfsal was used as "a source of wealth and influence in an unfair way". A similar view of the motivations of goðar has been taken by Jesse Byock, who argued that lawsuits were used by goðar as a fairly systematic source of wealth with which to set themselves apart from and above other farmers in Iceland. He concentrated particularly on those cases where a goði acquired land, which was the main basis of wealth, including these examples of arfsal and similar transactions[12]. However, I see support for the argument as fairly weak. Only three goðar were involved in these major transfers of property. In one of these, involving Hœnsa-Þórir, the goði was certainly not shown as taking an aggressive stance, but rather had to be coaxed by Þórir. Nor does he appear to have gained any control over the property during Þórir's lifetime. It is also perhaps to be seen as much more clearly an example of the social and economic role of fostering than of exploitation of law suits. This leaves

[12] Jesse Byock, Saga Iceland: Wealth, Class and Power, Manuscript, 1979. See especially Ch.V, p.97-130, Ch.VII p.173-174, p.184, Ch.VIII p.221-223, Appendix p.234-250.

only the cases involving Brodd-Helgi and Arnkell. Certainly they were both ready to benefit by helping others in their legal disputes, but I do have difficulty in seeing in their actions a systematic attempt to collect wealth on their part, let alone by goðar in general. The example of Atli and Bǫðvarr also shows that such transaction were not the exclusive preserve of goðar.

There is also the practical point that a goði would often have found it very difficult to guarantee to protect a farmer living with perhaps only his family on a farmstead which, in Iceland, was almost always some distance from its neighbour. Also, it was to be expected that an enemy would be less likely to encroach on property owned or held in trust by a goði. Thus it could be argued that when a goði who had been asked for support asked the person to move in with him and took over guardianship of his property, he was primarily concerned to provide the best possible situation in which to give the assistance requested, any benefit to him being a, no doubt welcome, bonus.

The rules concerning arfsal in Grágás also suggest the notion that it was to be regarded as a contract for mutual benefit, not as a one-sided transaction by which powerful people got richer. These are summarised by Finsen:

> Arfsal - An agreement whereby a person during his lifetime transfers to another, the supporter, (his inheritance, that is that which will eventually become the inheritance after him) his whole existing property or a part of it, in return for being entertained for life by the supporter and after his death by his heir. From the supporters viewpoint the agreement is called arftak, at taka arftaki, the person being supported is called ómagi, arfsalsómagi. He should give up his household and take residence with the supporter. The nearest eventual heir of the person being supported could, when he had not given consent to the agreement, annul it, if a law suit brought by him proved that the conditions were not fair, jafnmæli, for instance

> that he was given 5 øre too much. It was further under penalty forbidden by arfsal to shirk maintenance of certain close kinsemen and so on. The supporters nearest eventual heir was, when he had not given his consent to the agreement, and when it was not jafnmæli, not bound by it after the supporters death, and when it was til þrots or til þrota, that is would lead to the supporter's complete destitution, he could annul it. Ia 247-249, Ib 17, II85-87, 99, 100, 107, 128.
> (Finsen III p.585-6, own translation).

Nor do I see in the catalogue of other suits in which goðar gained financial benefit by taking on the prosecution or defence for other people (above p. 175) much support for Byock's argument. In only four cases was there a prior agreement for payment, and in only two of these was the person a goði. In one of these no mention of land or even of significant amounts of property is made; it is merely stated that the injured party gave the goði gifts. It is also clear that non-goðar could benefit as much.

Nor did goðar seem to benefit in any unusual way from suits of their own which they prosecuted. In only one case did a goði acquire any rights to land as a result of a suit, and he had to buy it (N4). This is matched by a case in which a non-goði acquired the right to buy the accused's land at half-price (N11).

Clearly, people could benefit substantially from a law suit, and sometimes took excessive sums from others in return for their aid. However, the benefits were not at all restricted to goðar, nor is there evidence of any widespread systematic amassing of wealth in this manner. It appears merely as another example of occasional selfish use of the legal system which sometimes bordered on abuse.

Revenge Through Law Suits

Law suits were also used in a petty and selfish manner to get revenge for specific acts. Guðmundr the Mighty was

slandered by Þórkell hákr and Þórir Helgason, a goði.
foster- Konálsson
Guðmundr's/brother Einarr/suggested that a good way to get revenge was to take up law suits against the þingmenn of Þórir Helgason; the money collected could then later be used to pay compensation for the killing of Þórkell hákr:

> Guðmundr went home and began prying about for cases against Þórir's þingmenn, for loose doings (legords sakir) and for riding of other men's horses, and whatever trumpery case he could pick up; and he took fines for every one ... And now it became known to all that Þórir was losing his reknown, because he could not maintain his þingmenn, and he got dishonour thereby. N16. See also N17 and N18.

Certainly we can assume that Guðmundr would not have been averse to casting a shadow on the power of a fellow goði to his own advantage, and as we have seen (above p.167) this was probably a major effect of these suits, but a major motivation was also to get revenge for a specific action.

Helgi Droplaugarson in Droplaugarsona saga also used law suits to get revenge. When he was a teenager he killed a man, a freedman of Helgi Ásbjarnarson, a goði, who had slandered his mother. Helgi Ásbjarnarson took up the matter, and compensation was paid, much to the resentment of Helgi Droplaugarson: "it seemed to him that the slander was still unavenged". He went to live with Þorkell Geitisson who was a goði and highly skilled in law. "Helgi learned about law dealing from Þorkell. Helgi took up law suits, especially those against Helgi Ásbjarnarson's followers (þingmenn)". (Droplaugarsona saga Ch.4). Helgi Droplaugarson seems to have been quite successful against Helgi Ásbjarnarson, with two examples of their legal dealings being given in detail (E7-E9), but when Helgi Droplaugarson finally committed a crime himself, Helgi Ásbjarnarson was quick to take advantage,

have him outlawed and ultimately killed (E10).

In STH2 the sons of a man who was killed wished to bring a charge of manslaughter against his killer, but they were advised that he had been legally killed as an outlaw and therefore they had no case. The sons therefore assumed the prosecution of another suit, for wrongful grazing, against the killer and had him outlawed.

In none of these three cases were the prosecutors doing anything illegal in pursuing their suits, but, as with the men involved in power struggles, the immediate legal issue of the case was of minor importance to them. Primarily, they wished to hurt the Defender as much as and however they could.

Reputation and Law Suits

Both personal and family reputations were at stake in law suits. We have already seen this in the use of law suits in power struggles. Godar especially could considerably increase their power if they were successful in their law suits. This was in part because it was important for them to be able to support their followers in court, but also because it enhanced their own personal prestige and honour.

People would also become involved in law suits to protect family honour. Thus in N1 a woman sought the help of her son, arguing "I think you ought to be my shield and protection and thus prove yourself a member of a good family". In N2 a man encouraged his brother to take on a suit on behalf of an in-law arguing: "it would be regarded as downright shameful if he and his kin did not lend their support to the suit brought by their kinsman". And in many cases where godar

prosecuted for another, it is their family relationship with the injured party which is stressed, with little if any mention being made of their power and position in society (W3, W6, W28 N9, N28, E13).

We see too that people could lose considerable social position and respect if they failed to get justice when they were wronged. Thus in Hávarðar saga Hávarðr became a broken old man because he no longer had the strength to get justice for the killing of his son. In N11, when new evidence was discovered concerning the killing of a man, his brother expressed an unwillingness to re-open the case. But the person urging him on said: "peace might prevail if matters had not been probed into. But now I shall make the truth known, and then this is likely to result in a greater disgrace for you Espihol people than ever before". It is thus evident that the important point was to get justice, not to win. Thus we are not shown people gaining great power and respect by unjustly winning suits, and we do see goðar turning down suits on justice grounds: in W8 Snorri refused to pursue the suit any further although Þórólfr was dissatisfied with the outcome, stating "I'm not staking my good name on your malice and injustice"; in W13 two goðar refused to pursue the suit for Þórir because they did not believe the facts as he stated them and felt there was little justice in his cause.

Litigants Submit to the Law

The large number of law suits which actually terminated in a judgement by the court suggests that parties were frequently content to allow legal procedure to take its natural course. 14 of the 40 non-manslaughter suits went

to judgement, and 19 of the manslaughter (Tables VI and VII). This situation seems to have changed by the 12th centry: "Judging by the sagas it was extremely rare in the twelfth century for a dispute to be finally settled by the judgement of a court".[13]

In cases where the guilt of the accused was clear, in particular in manslaughter suits, we also often see no attempt to exonerate him, even by goðar who supported him. Thus, in W3, a manslaughter suit prosecuted by Snorri goði, Arnkell goði helped the accused, his nephew, to go abroad before the court hearing and no defence was submitted in court. As Arnkell in other suits demonstrated himself quite able to deal with Snorri, his action here suggests a respect for the law which in ordinary circumstances meant he would not try to exonerate a killer. Similarly, in W5 the supporters of a killer, one of them the son of a goði and perhaps a goði himself, helped him go abroad. The only action taken at the assembly was to persuade people not to attack the accused after the assembly when he would be an outlaw. And in E13 one goði gave shelter and assistance to a killer, and another sent his goods abroad to secure them against confiscation, but no one appeared in court for him. In other cases supporters of an accused, although accepting his guilt, would try to mitigate the penalty of outlawry by offering compensation. Thus in E11 a goði offered to pay compensation for a killer, but the prosecution refused to accept it and insisted on outlawry. The defending goði made no attempt to resist this sentence, but rather sheltered the outlaw for a

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[13] Gunnar Karlsson, "Goðar and Hofðingjar in Medieval Iceland", Saga Book of the Viking Society, Vol XIX (1977), p.363.

time, and then helped him go abroad. In N17 the goði defender offered a settlement, although there is some suggestion that this was because he felt he had insufficient support, but the prosecutor refused and the accused was outlawed. Again, no attempt was made to resist the judgement and the goði helped the outlaw go abroad. In N29 the goði father-in-law of a person who killed at the Alþing arranged a settlement for the killing. In this case the killer himself showed some disrespect for the law, as he was quite displeased that anything had been paid. There are also examples of accused persons not supported by goðar or other powerful people accepting their guilt. In E1 the accused went abroad before the trial and no defence was submitted at court. In E10 one of the accused people, a woman, went abroad before the trial and again there was no defence. In W22 the accused stayed away from court, but sent his wife's uncle's to attempt to arrange a settlement, although they failed to do so. Heusler appears to overlook these suits which went to judgement because guilt was accepted when he concludes: "Bis zur Verurteilung kommt ein altisländischer Prozess in der Regel da, wo auf dem Dinge niemand zur Verteidigung vorhanden ist oder wo die Klagerpartei die Verteidigung zu überwältigen vermag". (An old Icelandic law suit normally came to judgement when no-one was at the assembly for the defence or when the prosecutor prevailed over the defence by force).[14]

A respect for the law, and a willingness to have disputes decided in court, is also suggested in those suits in which a defender defeated the prosecution with a legal defence. This

[14] Heusler, Strafrecht, p.104 (own translation).

occurred in E8, an action for manslaughter, where a counter-charge of adultery was brought against the dead person, which meant he had been legally killed as an outlaw (E9). A Manslaughter charge in N2 was similarly defeated by a charge of theft (N3). In W4 Snorri successfully defended a charge of wounding with a counter-charge for assault. In W9 Arnkell had a manslaughter charge dismissed on the grounds that the dead person had assaulted the accused first. In W1 the charge was dismissed on the basis of an oath that the accused was not guilty.

Similarly, prosecutors were sometimes induced to abandon or not even start a prosecution because the evidence or the law was against them. Thus in STH27 the prosecutor was convinced by a legal expert (possibly the Lawspeaker) to abandon his suit because it had been incorrectly commenced. In Gísla saga Ch.29 the brother-in-law of a dead man was induced not to commence an action because the identity of the killers was not very certain. In Laxdœla saga Ch.25 the former owner of a dead man was convinced by legal experts that he did not have a good case and no prosecution was commenced: "Hrútr was ill-contented with the result, but there the matter rested". In Reykdæla saga Ch.28 Víga-Skúta failed to pursue a charge of plotting to kill against the former employer of the person who attempted to kill him because he claimed the offender had parted company with him on bad terms, citing as proof some property of his the offender had in his possession which the former employer claimed he stole. Víga-Skúta felt he could not disprove this defence.

Perhaps the most interesting example of a party to a law suit accepting the weight of evidence is in N24 and N25. In N24 a person was falsely accused of a theft, but the prosecutor had planted evidence cleverly and the charge could not be disproved, although everyone believed the accused to be innocent. An uncle of the accused, a goði, refused to defend him, despite his innocence, in part because of the good evidence against him. The accused went abroad, where he came across the man who had planted the evidence. When he took him back to Iceland and presented him to his uncle, the goði was then prepared to support his cause in court, and he successfully prosecuted a charge for slander (N25). These suits demonstrate an exceptionally high degree of respect for evidence and due legal process. One would not normally expect a goði to stand by and see such an unjust decision; if any case were to justify the use of violence, surely this was it! Unfortunately, there are very strong reasons for suspecting that these law suits are quite unhistorical (see the Note following N26), and that therefore no conclusions can be drawn from them concerning attitudes to the law in the 10th century.

Summary and Conclusions

The law suits give considerable cause to doubt whether 10th century Icelanders did have "a dynamic veneration for law and order" (above p.156). They were willing to resort to violence to get their way in a suit. People who could command the support of large numbers of men, especially goðar, were quite willing to use these men in their law suits to suggest that if they did not get their way in law, they would use force instead. Goðar especially were also willing to use their position to gain advantage by manipulating the legal

procedure. Nor did they always take part in law suits because they were interested in the particular legal issue at stake. Their motives often involved a desire to establish or strengthen their own power and authority, to gain revenge on an opponent for some unrelated action, or to maintain family or personal honour.

But in much of this there is also an implication of considerable respect for law. Family or personal reputation could be harmed if legal wrongs went unremedied. This could hardly be the case if society did not consider it important to uphold the law. Power could be achieved through success in law suits, but again if people did not value the law they would attach little importance to this. Similarly, law suits could hardly have been a satisfying way of seeking revenge if your adversary considered the law of little importance.

It is also necessary to consider that in most societies matters are taken to court because relations between the parties have broken down and other remedies have failed or are considered too weak. Families, friends and neighbours will generally resort to much more informal methods of resolving disputes if at all possible. Thus it is generally the case that tempers are high and that considerable self-restraint on the part of a litigant is required to permit the law to proceed as prescribed. In modern society we do not trust to such self restraint. We have a vast army of judicial officials to ensure that everything is done properly, and that at least the form of justice is preserved. Where this fails, we have a large police force who can put more direct pressure on litigants to behave. Of course, one of

the virtues of a police force is that its mere existence intimidates people into submission, and it needs to be used in only a minority of cases.

10th century Iceland as portrayed in the law suits was no exception to the rule that litigants were usually bitter enemies by the time a dispute had reached the stage of court action. But as pointed out above (p.160), the administration of justice and policing were not done by independent and neutral bodies since the goðar fulfilled almost all these functions. As they were also involved in a large proportion of the law suits as injured party, prosecutor, accused or defender, or as supporter of one of these, conflicts of interest were frequent. It could be argued that in the circumstances the law was upheld remarkably well.

Of course, many of the examples of violence involve no goðar, and so we cannot excuse them as examples of a conflict of interest. But they too can be argued to result in large part from the lack of officials. A prosecutor had to carry out most stages of a law suit himself, and could not rely on any neutral officials even to serve the summons. A Summons Server is not a popular person at the best of times, and if he is also the prosecutor, enemy of the accused, the possibility of serious conflict is obvious.

The evidence for a lack of respect for the law is thus in part evidence instead for the imperfections of the Icelandic ommonwealth constitution. They chose to do away with Kings and Earls and other such autocratic rulers, and to rely instead on a large number of local officials, the goðar. These

aberrations in legal matters are part of the price they paid for this freedom from central government.

We must remember too that the Icelanders had a very highly developed arbitration system, which was used to settle law suits before judgement, but which was also frequently put into operation before legal proceedings were commenced. Heusler counted 104 cases which went to arbitration, compared with 111 law suits[15]. Thus, if the parties to a dispute were reasonable people and the facts fairly straightforward, there was little reason for a dispute to go to court. The overbearing, unjust person, willing to resort to any means in his power to get his own way, would thus be over-represented in law suits. A law suit was, and is really in any society, only another way of forcing an opponent to do as you wish using a coercion other than your own violent action. Heusler indeed regarded Icelandic law suits as stylised feuds[16], and another writer called them "only a thinly disguised trial of strength between plaintiff and defendant"[17]. And in modern times the great exponent of non-violence and a lawyer himself, Mahatma Gandhi, considered going to law "another form of the exhibition of brute force"[18]. It should not therefore perhaps seem surprising that many people willing to use the coercive force of the courts were also willing to use force of arms, or other abuses, when there was no authority to restrain them from doing so.

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15 Heusler, Strafrecht, p.40

16 Ibid, p.103

17 Jacqueline Simpson, Everyday Life in the Viking Age, Carousel 1971, p.193

18 Mahatma Gandhi, All Men are Brothers, Unesco, 1958, p.139

We must also of course take into account possible exaggerations and distortions in the sources for literary effect and dramatic purpose. It has already been pointed out that this can readily happen with the numbers said to be involved in a dispute. It is also for example argued in W1 that the Eyrbyggja account may incorrectly suggest that Snorri was involved, to provide a dramatically convenient starting point to the conflict between Snorri and Arnkell. The Landnámabók account does not mention him at all. And we can probably fairly safely assume that the law suits which generated considerable conflict and involved much violence and disrespect for the law are over-represented in the sagas as they are the ones which people wanted to hear about. Law suits involving ordinary, unambitious people which proceeded in an orderly fashion, without incident, were not memorable, and had little in them to inspire a good story. We probably have no way of knowing how many such cases there were in relation to those recorded in the Sagas, but it is probably more likely that those cases discussed above under the heading Litigants Submit to the Law represent the "normal" law suit than those in which violence was resorted to or large forces were gathered. The latter were the famous cases, involving the famous men of Icelandic history, to be discussed and shaped into stories on long winters' evenings around the fire.

C H A P T E R 5

INDIVIDUAL EQUALITY AND INDEPENDENCE IN PROSECUTING LAW SUITS

The law suits give little reason to believe that all adult free male farm owners / did not have equal legal rights to prosecute or defend their own law suits. The rules of Grágás tend to support this view, although there is some ambiguity in the assembly participant rules which may suggest a certain level of wealth was necessary.

It is, however, possible that non-farmers were not permitted to appear in court on their own behalf, and in most cases may not even have been primary prosecutors in their own affairs, entitled to choose who was to represent them in court (see Chapters 2 and 3 , Financial Qualifications). The major class of society this would have excluded would have been employees. Whether tenant farmers were independent in legal matters cannot be deduced from the sagas. The Grágás rules concerning assembly participants suggest that land-owning was not an essential element in determining legal position, the number of live stock owned being just as important. This may not, however, have been an important consideration, as it is possible, even probable, that tenant farming was not widespread during the Saga Age, since it followed on from the Age of Settlements when land was plentiful. Occasional references to tenants in the 10th century, as for example in Hœnsa Þóris saga, where Blund-Ketill is shown as having many tenants, could be anachronistic.

Other people who may have been excluded by a rule that only farmers could appear in court were dependent relatives, vagrants without livelihood, peddlars and full time fishermen. In addition, slaves had few legal rights, and freedmen, even if they had their own farm, may have been excluded from court

although entitled to choose their own representative.

We have no firm figures for the population of Iceland during the Saga Age. "A plausible estimate is that some 20,000 people came to Iceland in the age of settlement, and that the population thereafter rose to c 60,000".[1] We do know that around about 1200 AD there were 4560 bœndr in Iceland who had to pay assembly attendance dues (Íslendingabók Ch 10), which if the population was 60,000, represented approximately 15% of the male population, perhaps 30% of the male population over 16. We do not know how many free farmers there were who did not have to pay assembly participant dues, i.e. those who owned less than a cow, the value of a cow, a net or a boat for each member of their household, plus all the necessary household goods (above p. 66).

Non-farmers who were nevertheless financially independent, and foreigners, did appear in court on their own behalf (above p.113-4) and thus must be regarded as exceptions to any rule that a litigant had to be a farm owner.

Women were more restricted in their legal rights than men. We learn from the law suits that prior to 990 AD women could prosecute manslaughter suits, and thus, although the sagas are not explicit on this point, they could probably prosecute any suit. This right may, however, have been restricted to widows and unmarried women, as this would appear to be the situation in Grágás. If so, it is obvious that a considerably smaller percentage of women had independent control over their legal actions than men, although married women would have had, through their husbands, equal access to court.

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[1] P.G. Foote and D M Wilson, The Viking Achievement, p 53.

Thus at least 30% of the adult male population, perhaps considerably more if all farmers are included regardless of wealth, plus a considerably smaller percentage of women, were legally entitled to appear in court on their own behalf. In addition, the availability of a simple procedure to transfer the prosecution or defence of court actions to others, a procedure which both the law suit and Grágás agree existed, ensured that those small number of people who were entitled to determine the progress of their own law suit but not to appear in court stood on close to equal footing with the farmers, although lacking independence. The right to transfer both prosecution and defence, and the corollary right not to attend court himself, also gave free farmers greater freedom of action in their law suits. If they were not inclined to go to court, did not have the time the money, or wished to go abroad, they were nevertheless still entitled to have their case presented in court, by a person of their own choosing (see above p.88f, p.132f). In this respect they would in many suits have had greater freedom of action than a member of a modern Western society.

We are, however, left with quite a large proportion of the population, including most notably all employees, but also most women, children, the elderly and other dependents, who were possibly without independent control over their own court actions. They were not denied access to court by any means; they had equal rights in the same courts as the free farmers, but they may have been dependent on others both to pursue their actions for them, and to take the initiative in pursuing them. Nor is there much evidence that any group or individuals in society

had any legal duty to act for such people, although there is evidence for strong social obligations, particularly on the part of the householder as employer, parent or guardian.

However, as already pointed out (above p. 117) the restrictions on non-farmers appearing in court may have been practical rather than legal. They had the problems suggested on p. 117 of paying for a trip to the assembly, and would also have had to face up to the legal abuses outlined in Chapter 4 . These are difficulties which had to be faced both by non-farmers and by weaker farmers, particularly those with no employees to look after the farm while they were away and to provide support. The practical difficulties appear to have been particularly severe for women as there is only one suit in which they either prosecuted or defended, W10, as a result of which women were banned from ever prosecuting a manslaughter suit again. For all these people the legal right to appear on their own behalf in any court against any person would in many cases have been illusory unless they had support.

The support they needed was not provided by the state. There are no public prosecutors evident in the sagas, and only the meagre advise of the Lawspeakers for private litigants to rely on (above p. 52 and p.103-6); nor was a public police force present to help a litigant against a more powerful opponent. In short, the Icelanders completely lacked any public system to ensure that wrongdoers were brought to justice. A contrast to this can be found in the Surety System of the Anglo-Saxon laws, discussed with regard to householders (above p.100-2). In the later Anglo-Saxon period the laws required every person

to have a surety who was obliged to bring him to justice. If the surety failed in his duty he could be held liable himself. (III Edgar 6).

Also, in Canute's laws every freeman was given the obligation to join a tithing (II Canute 20), whose obligations included the pursuit and bringing to justice of criminals, especially thieves (VI Æthelstan 4,8; I Edgar 2).

These laws resulted from the notion that one of the King's primary obligations was to keep peace among his subjects:

> in their awareness of their responsibility for the peace of their realm, [the Anglo-Saxon Kings] went to remarkable lengths to organise the fight against crime and the resolution of local disputes.[2]

This peace for which the Anglo-Saxon King was responsible was "the public peace" (see e.g. V Æthelston, Preamble, I Æthelred, Preamble)[3], the breach of which became in effect a crime against the King, a notion reflected in the fines for insubordination to the King (I Edward 1 s 1, 2 s.1; II Edward 1 s.3, 2,7; I Æthelstan 5; II Æthelstan 20, 22s.1, 25; IV Æthelston 7; V Æthelstan 1 s.2, s.3; VI Æthelstan 7, 8s.4; IV Æthelred 6, II Canute 29, s.1). A similar concept existed in the earlier Lombard Kingdom:

> The theoretical justification for royal control of the judicial system may well have developed from the combination of two concepts: the idea that every man's person and property constituted a special domain protected by a peace which it was an offence to violate, and the attitude that the Kingdom was in effect the personal domain of the King and as such it was protected by a peace the violation of which was an offence against the royal power.[4]

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2 Patrick Wormald, "Ethelred the Lawmaker", B.A.R. British Series 59, 1978, p.69.

3 For further examples see the entries under "friđ" in the index of F L Attenborough,, The Laws of the Earliest English Kings p.229 and of A J Robertson, The Laws of the Kings of England from Edmund to Henry I, p.392.

4 K F Drew, The Lombard Laws, Introduction p.25.

In Iceland, on the other hand, the notion of public peace, or crime against society does not seem to have existed. Breaches of the law were against the individual (or sometimes his family as in the case of manslaughter or seduction), and thus it was largely the concern of the individual whether or not legal proceedings were taken. This emphasis on the role of the individual can be seen in part as a result of the lack of strong state authority, but of course conversely the lack of a strong state can be seen as a result of the Icelanders emphasis on the individual ("the law regulating social conditions is not merely an external superstructure, but as to social facts is both an influence and a consequence"[5]).

A consideration of some aspects of the settlement and early history of Iceland shows how this concern for the individual could have arisen.

The Landnámabók accounts suggest that most of the Icelandic settlers were Norwegian, although some came via the Northern or Western Isles, bringing from there and Ireland some Celtic slaves, the occasional Celtic spouse, and some Celtic blood in their veins.[6] We are also sometimes given a reason why the people left Norway, the most common one being conflict with King Haraldr Fine-Hair due to his allegedly excessive claims to power and authority.[7] Many of these are said to be of very

5 Sir Paul Vinogradoff, Villainage in England, p.127

6 see Johannesson, History, opcit p.15-21

7 For example Skalla-Grímr Kveld-Úlfsson, Sturlubók Ch.29; Ketil Trout, Sturlubók Ch.344, Hallvarðr Sigandi, Sturlubók Ch.144; Qnundr Treefoot, Sturlubók Ch.161; Balki, Sturlubók Ch.166; Hella-Bjqrn, Sturlubók Ch.156; Herrqdssons, Sturlubók Ch.159; Eyvindr Þorsteinsson, Sturlubók Ch.267 and his nephew Ch.268; Hásteinn Atlason, Sturlubók Ch.371; Asgerðr and her brother Þórólfr, Sturlubók Ch.341; Þrandr the Fast-Sailing, Sturlubók Ch.229 and 378; Þorsteinn Asgrimsson, Sturlubók Ch.356; Flosi, Sturlubók Ch.359; Ann Red-Cloak, Sturlubók Ch.135; Ketill Flat Nose's family: Helgi Bjóla , Sturlubók Ch.14, Bjqrn the Easterner, Sturlubók Ch.13 and 84, Auðr the Deepminded, Sturlubók Ch.95; Þórólfr Mostur Beard, Sturlubók Ch.85; Qrn, Sturlubok Ch.134; Dyri, Sturlubók Ch.139; Qrlygr Bqðvarsson, Sturlubok Ch.155; Álfr of Agðir, Sturlubók Ch.392; Geirmundr heljarskinn, Sturlubok Ch.112, 113, 115.

high birth, some earls or sons of earls, hersir and landed men of the king, and even the occasional local king. These claims to exalted ancestry are not generally credited too highly by scholars, but they do in fact make a great deal of sense. If King Haraldr Fine-Hair did impose a greater unity on Norway than had ever existed before, and this seems a generally accepted fact, it is precisely the highest born who would suffer most, losing power and prestige in their territory, often through force imposed by the king or his agents. And for many, who saw the futility of fighting, or had already fought and lost (for example at Hafrsfjǫrðr), would not the story of a new, still very empty, . . . land lead them to consider trying a new life, out of reach of the king?

Of several other settlers we are told that they were outlawed in Norway, or otherwise made unwelcome for their misbehaviour.[8] For them too the new land would have been a welcome retreat from their problems.

These factors certainly account for only some of the settlers - perhaps 10% - and are not sufficient to explain the great popularity of emigration to Iceland. Overpopulation in Norway must also be taken into account. It is not necessarily meant by overpopulation that Norway could no longer support its population, but rather that all the land had been claimed and settled. There was no new land for younger sons to claim, no empty corners for outlaws and

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[8] Sons of Valli the Strong, Sturlubók Ch.72; Þorvaldr and his son Eiríkr the Red, Sturlubók Ch.89; Þorbjǫrn Bitra, Sturlubók Ch.165; Þormóðr the Strong, Sturlubók Ch.215; Gunnólfr the Old, Sturlubók Ch.216; Skagi Skoptason, Sturlubók Ch.236; Molda-Gnúpr, Sturlubók Ch.329; Ǫzurr the White, Sturlubók Ch.376.

political refugees to escape to. Their alternatives were thus to go viking or find a new land to settle in - some, perhaps many, did both, like Fur-Bjǫrn who

> used to go trading in Novgorod. When Bjǫrn got tired of trading voyages, he went to Iceland and took possession of Midfjǫrðr and Línakradalr. (Sturlubók Ch.174).

or Ann Red-Cloak who

> fell out with King Haraldr Fine-Hair. That's why he left Norway and set out on a viking expedition to the British Isles. He raided in Ireland and there he married Grélǫð Earl Bjartmarr's daughter. They went to Iceland (Sturlubók Ch.135).

A prologue to one of the manuscripts of Landnámabók tends to support the conclusion that the settlers of Iceland were not those considered of the best character by Norwegians and other foreigners, even though it is protesting for the opposite conclusion!

> People often say that writing about the settlements is irrelevant learning, but we think we can better meet the criticism of foreigners when they accuse us of being descended from slaves or scoundrels, if we know for certain the truth about our ancestry.[9]

No doubt people who opposed King Haraldr would have been considered by many of his loyal subjects, and subjects of later Norwegian kings, as much scoundrels as persons outlawed for manslaughter, especially since their conflict often got them involved with killings. Since our sources were written by Icelanders, it is rarely suggested that Icelanders were anything but heartily welcomed and treated with great respect in Norway, with the exception of specific individuals like Egill Skalagrímsson, who had difficult ancestry to live down and was himself a very troublesome individual. But there is at least one suggestion that there was a more general ill-feeling

[9] Hermann Palsson & Paul Edwards, translators, Landnámabók, introduction p.6.

against Icelanders as a group. This is in Víga-Glúms saga, when Glúmr's father Eyjólfr visited Norway, having been taken there by a merchant who stayed with his family in Iceland. Eyjólfr was most anxious to go to his friend's house, but the merchant objected on the grounds that his brother, Ívarr, disliked Icelanders. Ívarr's comments when Eyjólfr did show up at the house include "there will be some mishap on this estate if an Icelander is to stay here" and "it was an evil day that you went to Iceland if on that account we are to wait on Icelanders or else forego our kinsmen and friends. And I can't understand why you like to consort with the worst of people".[10]

I believe we are thus safe in assuming that a significant portion of the settlers of Iceland were strong individualists, people who were not willing to submit to a king they saw as too powerful or infringing too many ancient rights, or who were not afraid to stick up for themselves and thus committed acts which made them subject to outlawry, people with a "love of independence".[11] Those who left because of conflict with Haraldr would also no doubt have had a high degree of political awareness, and definite ideas as to how a society should be organised. They would also likely not have been afraid to voice their views and would thus have stimulated political thought and discussion.

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[10] Víga-Glúms saga, edited by G. Turville-Petre, 2nd edition, Oxford 1960 p.3-4; translated by Lee M Hollander, Twayne Publishers, 1972, p.21 and 23.

[11] Foote and Wilson, The Viking Achievement, p.58.

> Intolerant of a monarchical system, fiercely independent, well-born families came to Iceland and settled as an intransigent, highly self-conscious group.[12]

Our sources also seem to suggest that the Icelandic settlers at no time considered that they were setting up a colony of Norway, to be subject to the Norwegian King. The concept of a politically united Norway was of course, quite new, Haraldr Fine-Hair being the first king to attempt unification, and thus there was no real reason why the early settlers, even those who had no quarrel with Haraldr, should have thought of Iceland as part of a Norwegian state. Haraldr, however, soon made it clear that his aspirations for power were not limited to mainland Norway, but rather extended to all lands inhabited by Norwegians. This interest was inspired in part by the need to defend Norway, as the inhabitants of the Shetlands, Orkneys, Hebrides and Isle of Man allegedly conducted viking raids in Norway during the summer. Haraldr therefore undertook an expedition to the Islands, subduing them, and appointing an earl over the Orkneys and Shetlands. The Hebrides did not, however, remain subdued, and Haraldr sent another expedition headed by Ketill Flat Nose to put them in order in his name. Once in control, however, Ketill apparently decided he preferred not to be subject to Haraldr, and did not send the agreed tribute. As a result his family were no longer welcome in Norway.[13] His children, Bjorn the

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12 John E Van der Westhuizen, "Some Contradictions in the Principles of Icelandic Social Organisation", Second International Saga Conference, 1973, unpublished proceedings, p.2.

13 Heimskringla, Haralds Saga Harfagra, chapter 22, translated by Lee M Hollander, The American-Scandinavian Foundation 1964, p.77. Landnámabók, Sturlubók Ch.13; Palsson and Edwards, p.22-23, Benedikkssen p. 50. Eyrbyggja Saga Ch.1, Palsson and Edwards p.35-6.

Easterner, Helgi Bjólan, Auðr the Deepminded and Þórunn, who married Helgi the Lean, were among the early settlers of Iceland, although Ketill himself seems to have stayed in the British Isles.

Haraldr is also reputed to have attempted to subject Iceland, although perhaps in a rather half-hearted way:

> Uni, son of Garðarr who discovered Iceland, went to Iceland at the suggestion of King Haraldr Fine-Hair with the intention of conquering the land. The King had promised to make him his earl . . . When people realised what he wanted, they grew hostile and would not sell him livestock and other necessities. (Landnámabók, Sturlubók Ch.284).

Curiously, Uni is in other versions of this passage called a Dane, and in Hauksbók his father is said to have been a Swede, with an estate in Seeland.[14] The attempt was, at any rate unsuccessful, and there is no record of any other attempt by Haraldr to subject Iceland, although he did institute a tax on all people travelling to Iceland. (Íslendingabók Ch.1) There is also one account of him settling a dispute among settlers and thereby making a law for Iceland:

> The men that came out later (to the east fjords) thought that they that had first come out had taken in settlement too much land. But King Haraldr Fine-Hair made peace between them on these terms, that no man should take in settlement more land than he and his shipmates could carry fire around in one day. (Landnámabók, Hauksbók Ch.294).

The east fjords are, however, said by Landnámabók to have been "The first to be fully settled", (Sturlubók Ch.263), so that this incident could have taken place early in the settlement period, before people had really recognised the full extent of Haraldr's aspirations. It is also significant that it was in the east fjords that Uni attempted to settle and assert Haraldr's claims, but was forced to move on when his intentions became known.

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[14] Benediktsson, Landnámabók, p.299, note 6

If not as an appendage of Norway, how then did the early Icelanders define their political status? As already pointed out, those who left Norway for political reasons must surely have had some ideas on the subject, and many must have been well enough travelled to realise that enduring peaceful settlement without law and government was difficult to achieve. There seems to be no evidence that anyone ever claimed a title as king or earl. There were some among the settlers with a sufficiently royal ancestry to be king, but it is evident from Heimskringla that more than just blood was necessary to make a king. He had either to be elected, or to command a sufficient army to assert his claim forcefully - usually both in fact. That no one apparently asserted a claim to the title would tend to suggest that there was little enthusiasm among the settlers for the idea. As an earl required a king to create this title, the existence of one would have suggested an assertion of authority by a foreign king. That none existed is thus confirmation that early Iceland remained independent of all kings, Norwegian or otherwise.

Some settlers certainly assumed very positive roles in their areas. At least two set up local assemblies where courts were held, Þórólfr Mostur Beard at Þórsnes , and Þorsteinn Ingólfsson at Kjalarnes (Landnámabók, Sturlubók Ch.9). Þórólfr was said to have been a great hǫfðingi (chieftain) in Norway, with a large estate and a temple. He seems to have attempted to set himself up in a similar manner in Iceland. The court, however, is said to have been set up "with the approval of all the people in the neighbourhood", so that any power he did wield

beyond the bounds of his estate could be said to have been fairly limited (Landnámabók, Sturlubók Ch.85). Þorsteinn was the son of the first settler in Iceland, Ingólfr, who laid claim to a large tract of land, the settlement of which he was then able to control. The setting up of an assembly by Þorsteinn suggests that the family continued to assume some sort of authority in the area claimed by Ingólfr.

There were several other settlers who like Ingólfr claimed large tracts of land and then gave it away in small pieces to later settlers, but there is no evidence that any others personally established assemblies. However, descendants of most of such settlers were later to exercise political power as goðar, which would suggest that these settlers were regarded as leaders in their area from the beginning. These include Skalla-Grímr in the west, whose son Egill and grandson Þorsteinn held a goðorð (Egils saga Ch.81); Auðr the Deep Minded, also in the west, whose great-grandson Þorðr gellir was involved in major constitutional reforms in the 960's (Íslendingabók Ch.5) and whose great-great-grandson, the son of Þorðr gellir, Eyjólfr the Grey, was a goði (Ölkofra þáttr Ch.1); Helgi the Lean in the North, whose son Ingjaldr and his descendants held a goðorð, (Víga-Glúms saga Ch.1,5) as did other descendants of Helgi, including Þórir Helgason (Ljósvetninga saga Ch.5(13)), a great-great-grandson, and another great-great-grandson, Guðmundr the Mighty, who was descended through a daughter of Helgi, who married Auðun rotinn, who was given land by Helgi (Ófeigs þáttr); Ketill Trout, whose son Hrafn was the first lawspeaker in the 930's (Íslendingabók Ch.3) and father of Sæbjǫrn goði (Landnámabók, Sturlubók Ch.344).

All these people were included in the lists in Landnámabók of the most important settlers (Hauksbók Ch. 354). Another of the leading settlers was Geirmundr Hell-Skin who had a very distinguished royal ancestry and had been a Sea-King himself, settling in Iceland in his old age. He decided that his first land claim was too small "because he ran a splendid farm and had a large number of men with him, including eighty freedmen". So he claimed more land in the north-west, and set up four farms run by slaves (Landnámabók, Sturlubók Ch.112 and 113). It is not, however, suggested that he attempted to extend his authority beyond the lands he claimed as his personal property.

That local organisation was often weak or non-existent during the settlement period is suggested by the several examples of people being forcefully evicted from their land by newcomers. One of these incidents even took place in what might be considered the territory of Þórólfr Mostur-Beard. A woman named Geirriðr settled a piece of land, but when her son Þórólfr Twist-Foot joined her a few years later he thought her lands too small, so he challenged Úlfarr the Champion to a duel for his lands and won, Úlfarr being killed. "Úlfarr chose to die rather than let himself be bullied by Þórólfr" (Eyrbyggja saga Ch.8). There is no suggestion of any local authority Úlfarr could appeal to for help. Two other examples from this part of the country include Grimkell who "lived at Saxahváll and drove Saxi, son of Álfarinn Válason away from there. After that, Saxi farmed at Hraun near Saxahváll" (Landnámabók, Sturlubók Ch.76), and Ormr the Slender who "drove away Óláfr Belgr, took possession of the Old Creek between Enni and Hǫfði and lived at Fróðá (Landnámabók, Sturlubók Ch.79). Óláfr moved further

north, not too far from the home of Auðr the Deep Minded, and tried again, but again was driven out by Þjóðrekr and his men (Landnámabók, Sturlubók Ch.118). His third settlement seems to have been more permanent! Similar incidents took place in the North and the South (Landnámabók, Sturlubók Ch.247, 251, 326, 389). There is only one example of any initiative being taken to dissuade a person from such an action: Crow-Hreiðarr

> said he would ask for Þór's guidance on where to settle, and that if it was settled there already, he was ready to fight for the land.... [He spends the winter with Hávarðr the Heron]. In the spring Hávarðr asked him what he planned to do. Hreiðarr said he was going to fight Sæmundr for land, but Hávarðr discouraged him saying that sort of thing always turned out badly, and recommended him to ask the advice of Eiríkr of Guðdalir. "He's the wisest man in the district", he said. Hreiðarr did as Hávarðr suggested, and saw Eiríkr, who was against any fighting and said it was absurd for men to quarrel when the land was so thinly populated. (Landnámabók, Sturlubók Ch.197).

← Instead he persuaded Hreiðarr to take another piece of land.

Thus, for the first sixty years of Iceland's history, the political and legal organisation was very weak, whatever did exist being very localised. Perhaps the most significant point for our purpose is that no one (except King Haraldr) seems to have attempted to acquire control. The free settlers seem to have been content on the whole to leave one another each to their own devices - in other words there was little restriction on the theoretical equality and independence of individual farmers. Perhaps this can be attributed to the time and energy necessary to establish oneself on virgin land in a not over-rich country. Or it could be argued that there was a sufficient suspicion of a concentration of power, aroused by the example of King Haraldr Fine-Hair, that the high born and powerful settlers refrained from asserting strong authority, considering that a high degree of individual equality and

independence was the best protection of their own freedom.

By 930 they did, however, feel the need for a single set of laws for Iceland. The historical accounts do not say why. Partly of course it was simply because they were used to regional codes of law in Norway, but this does not explain the single code for Iceland. In part this may have been a protection against the assertion by strong individuals of local power based on their own law codes, or worse still, no code at all:

> No Worse foe than a despot hath a state
> Under whom, first, can be no written laws,
> But one rules keeping in his private hands
> The Law: so is equality no more.
> But when the laws are written then the weak
> And wealthy have alike but equal right.[15]

It can thus be seen that there were major historical reasons for the high degree of legal equality and independence among free farmers, and perhaps all free men, which is evident in the laws concerning litigants. However, the same factors which motivated the provision of equality also led to weak central authority, a strong individualism which was bound to lead to trouble when interests clashed, and few legal obligations on individuals to help others in legal matters, obligations which could perhaps have been seen as encroaching on individual liberty:

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15 Euripedes, Supplices, Robert J Bonner, Lawyers and Litigants in Ancient Athens, Chicago 1969, reprint of 1927 edn, p.31

> The absence of a state meant that the law had behind it no p itive sanctions, so that in spite of the seeming democracy the individual's rights were not guaranteed, although they were recognised. . . the individual is invested with an exaggerated sense of self-importance, which often leads to behaviour which shows an aggressively expressive self-awareness . . . it is usually stated with pride that there was no king to oppress his subjects, but, paradoxically, because of the system there were powerful men who played the tyrant in their own districts.[16]

Thus it could be argued that the very provision of independence for the individual frustrated many in the assertion of their independence because of the abuse of it by a few.

Of course, it would be wrong to picture the individual as totally isolated in society, nor do the law suits show him as such:

> In no degree of society do men stand isolated, and a description of individual status alone would be thoroughly incomplete. Men stand arranged in groups for economical and political co-operation.[17]

We see individuals relying on three different social/political/economic groups for aid in their law suits, kin , goðorð[18] and household, arfsal being a fourth affiliation of minor importance. The legal obligation of these groups, or even of the leaders of the group, to support and assist the members of their group in legal matters do not, however, seem to have been strong. The role of kin can, for example, be contrasted with the position in early Irish Celtic society as depicted by Nora Chadwick:

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16 Westhuizen, op. cit, p.3-4

17 Vinogradoff, Villainage, p.223

18 The term goðorð is usually used to refer to the power and authority of a goði, but Richard Cleasby and Gudbrand Vigfusson in An Icelandic-English Dictionary, p.208 imply it can also be used to refer to the community or group of which the goði was head. The term is used in this sense both here and below.

> the individual counted for little in law. It was the kinship group which was ultimately responsible for the actions of its individual members. This was the basis of the stability of ancient Irish society . . . [the freeman] was obliged to take his share of responsibility for any fines payable by any member of the 'kindred'. There was no personal payment. The 'kindred' stood or fell together. In this way they were responsible for one another and would obviously keep a close eye on one another's doings.[19]

We see in Baugatal the remnants of such a system of strong kinship groupings. According to this section of Grágás (Finsen Ia p.193-207, Ch.113) compensation in legal disputes was payable both to and by several degrees of kinship. Obviously such a system would lead to great interest by all members of the kin in the affairs of all others because of the financial implication. The law suits do not show kin being eager to this extent to get involved, nor is this ever cited as the reason for their involvement, but relatives were one of the most important sources of help and backing. It helped even if your goði was kin, and many of the responsibilities of householders were based on kinship. The importance of a large and strong kin is also evident in the difficulties encountered by those who did not have one, particularly freedmen and the noveau riche. These we have seen as sometimes pressed to pay a very high price for the kind of support which might normally be expected from a family (above p.176-83). That the family was not always sufficient to guarantee the rights of individuals may be due again to the paradox that the Icelandic settlers fiercely protected their rights as individuals. The situation of Celtic Ireland as depicted by Chadwick obviously would not have fitted their independent notions, and they would thus not have encouraged this sort of strong family grouping.

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[19] Nora Chadwick, The Celts, p.113-114

The other difficulty was that Iceland was a young, newly settled country, made up of isolated farms. Many settlers arrived with only their immediate family, and brothers sometimes settled hundreds of miles apart. As sons reached adulthood they moved away to their own farms. All these features of the settlement meant that few people had a large kinship group near them, certainly nothing like a clan to turn out in force when necessary to support them.

Possibly it was partially in recognition of this fact, perhaps even unconsciously, that the goðorð were set up, the goði and his þingmenn representing a sort of clan, there being 36 in all for the whole country. Gunnarr Karlsson has concluded from a study of sagas about the twelfth centry:

> that every ordinary farmer was closely dependent upon his goði. The main duties of the goðar in their home districts were to keep law and order, to protect their district against robbers and to protect their individual þingmenn if they got into trouble. If a farmer claimed that he had been wronged in some way the usual thing for him to do was to go to the goði and ask him to take over his case. The goðar were not legally obliged to do this, as far as we can see, but it was obviously a point of honour for them to be able to help their þingmenn in this way.[20]

The law suits from the 10th century do provide evidence for all these features of the activities of goðar. Eyrbyggja saga in particular provides examples of Snorri goði acting in all these capacities. However, the lack of a legal duty to help þingmenn appears to have been a rather more serious limitation on their usefulness to þingmenn in the 10th century than Karlsson suggests it was in the 12th. Ljósvetninga saga (see N16) and Vápnfirðinga saga (Ch.11) both suggest the general principle that goðar could retain their power only so long as they retained the support of their þingmenn by giving

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20 Gunnarr Karlsson, "Goðar and Hofðingjar in Medieval Iceland", Saga-Book of the Viking Society, XIX, 1977, p.362

them help in their disputes, but individual examples suggest goðar did not on the whole feel a strong duty to help their þingmenn (above p.110) and quite often we see that kinship or material gain were necessary inducements to gain the support of a goði (above p. 111).

The lack of obligation to þingmenn is also shown in cases involving disputes between people in the same goðorð. Karlsson found "hardly any examples of quarrels between two þingmenn of the same godord"[21] but the involvement of goðar against their own þingmenn is not infrequent in the law suits from the 10th century. In N19 Guðmundr was probably the goði of both parties, in W21 the accused and defender was probably the goði of the prosecutor, the suits in the latter part of Glúma, N9-N11, could well have involved Glúmr against his own þingmenn, as the Esphœlingar to whom his opponents turned for help did not hold a goðorð; in W8 Snorri goði acted for the injured party who was suing his father, a goði, and very likely goði of his father; in N15 the joint holders of a goðorð were involved in a suit against one another, sons vs father.

Karlsson considered briefly the question of whether his conclusions, that "ordinary farmers were quite dependent on their goði for protection" and that "goðar seem to have had their own areas of influence, within which everyone had to respect their will", were applicable to the early centuries as well as the twelfth. He stated:

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[21] Karlsson, "Goðar and Hǫfðingjar", p.362

> It is perhaps quite as likely that the petty struggles described in the earliest sagas of Sturlunga saga had been going on constantly for centuries, and in fact they are very similar to the disputes most Íslendingasögur describe and attribute to the Saga Age. I see therefore no reason why this general picture of the relationship between goðar and farmers could not apply to the preceding centuries as well. In any case, if we disregard Íslendingasögur, we have no earlier evidence about these matters.[22]

If, however, we do consider the Íslendingasögur from which my law suits come, and which Karlsson rejects, the situation does appear to be somewhat different. Goðar did play a disproportionate part in law suits (above p. 111) and ordinary farmers did frequently require the support of others in their law suits, largely because of the abusive practices outlined in Chapter 4 above. But goðar seldom acted for people because they were their þingmenn and frequently it wasn't even pointed out that they were goðar (above p.102, 185-6). Ordinary farmers often sought help from influential kin or friends who were not goðar, rather than from their goði (above p.93, p.95, p. 133-4). Nor does it seem unreasonable that these differences from the 12th century situation should have existed. The goðorð system was only established in the 10th century, the exact date being unclear, and thus it might seem unreasonable to expect that it would have achieved even by the end of the 10th century the full influence it had acquired in the social system by the 12th century. The conclusions I have drawn from the 10th century law suits, plus those drawn by Karlsson from the 12th, thus suggest a very logical historical progression in the social significance of the goðar, with the difficulties encountered by individuals in asserting their legal rights in court appearing as one possible stimulus to the growth in the power of goðar.

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22 Karlsson, "Goðar and Höfðingjar", p.365.

With neither kin nor goðar being a totally reliable source of assistance, it is evident that in many situations individuals could have been left on their own in legal disputes. Clearly, many would have been prepared to forget their grievance or at least try to, and of these we would hear little in the sagas. Such situations do, however, occasionally form the background for sagas, such as Hávarðar saga Ísfirðings. Havardr's son Óláfr was killed by his goði Þorbjǫrn Þjóðreksson, who "was a man of great kin and a great chief (hǫfðingi) and the most overbearing of men, so that no man there in Icefrith was strong enough to speak against him" (Hávarðar saga Ch.1). Hávarðr was of good kin and had been a great champion but, in his words, "I am getting old, and those days of mine are gone when I thought it unlikely that I should ever have to put up with such foul wrong" (Hávarðar saga Ch.7). "Men did not think it likely that compensation or bote would be given to his kinsfolk, for Hávarðr was believed to be helpless and those he had to do with men of great power and not much used to act fairly or do justice" (Hávarðar saga Ch.5). The saga is mainly the story of how Hávarðr did eventually get revenge, but he did not achieve this through court proceedings.

For some such people who were reasonably well off the answer was to buy the support of an influential person, often a goði, sometimes transferring all their possessions in return for support (arfsal - see above p.176-83). This type of social relationship might be seen as somewhat similar to the early Irish clientship, although under that system it was the lord who gave the client property in return for a set portion of the produce each year. There were two kinds of client, base and free, but for both one of the major advantages to the client

was protection in legal matters. The lord gained status from having clients, which may also have been true of the Icelandic parallel, but it could not be said of Iceland as of Ireland that "Clientship was the basic economic underpinning of the upper classes, aristocracy or king".[23] Such relationships seem to have occurred, at least in 10th century Iceland, only occasionally, and are not likely from the evidence of the law suit to have been often considered as a practical way out of legal difficulties, if only because the cost of the assistance would normally have been greater than the cost of submitting to one's persecutor.

For the independent farmer, then, these were the social relationships which were of importance in considering where to get aid in legal matters - kin, goðorð and the arfsal arrangement. For those who did not have an independent source of income but rather were dependent on the financial support of another or were employed by another, the law suits suggest that the important social group was the household. For many, such as the young and the elderly, this was in effect the family, but there were many members of a household who were not close kin and it seems to have functioned as a separate social unit. As argued above (p. 99) the head of a household may have been primary prosecutor and defender in the affairs of the members in varying capacities, as father, husband, employer, owner, but even if in many of these situations the householder was acting as transferee prosecutor or defender, not primary, it is evident that the members of his household were dependent on the strength of the head or of his kin or goði.

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[23] Gearóid Mac Niocaill, Ireland Before the Vikings, p.60-65.

A large household could of course provide the head with the strength necessary to assert the rights of those he was responsible for. According to Grágás every employee had the right to change his employer every year. I have found no direct statement of this rule in the sagas, but they also give no reason to doubt that employees did have this mobility. Thus it was perfectly possible for an employee to leave a household where his rights were not adequately protected and find another employer. It is difficult to tell from the sagas to what extent this right provided employees with adequate protection of their legal rights.

One further social group appears in Grágás as relevant to the prosecution of law suits and that is the hreppr which had its own prosecutors (see above p. 82). It would have provided assistance primarily to those entitled to welfare payments. The law suits provide no evidence that it existed during the Saga Age.

The practical factors which made equality of access to court difficult for the weaker members of society also meant that the stronger members could at times escape prosecution, and thus as wrongdoers had a considerable advantage in society. This was particularly true of goðar, such as Þorbjǫrn Þjóðreksson who said of himself in Hávarðar saga (Ch.5) "I have slain many a man whom men have thought sackless (innocent), and have never paid any weregild", and Víga-Stýrr who "though he slew many men, he booted none". (Heiðarvíga saga, summary of lost portion). The advantage goðar had as wrongdoers against non-goðar is evident from an examination of the accused and defenders in the law suits.

In no non-manslaughter suit was a goði prosecuted by a non-goði and in only one such case was he prosecuted by a goði for a non-goði injured party. And even in this case the goði prosecuting was personally involved to a major extent, he sued his sister's husband for return of her property, but primarily because he felt agrieved, the woman being opposed to the law suit (E4). Goðar were more often sued in manslaughter suits by lesser men, but still always by men of high standing. In N2 in-laws of a goði sued another goði, but got a leading family in the district who were constantly challenging the power of the goði to prosecute. This same family, together with another powerful man in the area, also prosecuted the same goði in N11. In W21 a goði was prosecuted by a neighbour who was the son of an old friend of his father's and probably a substantial farmer. The manslaughter suits which were prosecuted by goðar for non-goði injured parties include W8 where the father of a goði got another goði to sue his own son; W9 where a goði sued another goði for killing his fylgðarmaðr, which as suggested above (p. 96) might have been considered a personal matter of the prosecutor; and N15 where the goðar prosecuting the manslaughter suit also brought a suit for an assault on them personally and thus they were very much involved in the matter.

That goðar were so seldom prosecuted by non-goðar was of course in part because there were so few of them, although this small number of suits in which goðar were prosecuted by or for non-goðar should be compared with suits in which goðar were prosecuted by goðar in personal matters in non-manslaughter suits (Tables ID).

Goðar do not seem to have had any legal right not to be prosecuted and there seems to be no evidence for the theory

of inequality which Ullman states existed in Medieval Europe which might have led to such a right:

> no inferior could legitimately bring any accusation against a superior. In other words, subjects were not entitled to invoke the help of a law court against a superior. From the mid-ninth century this point of view became universally accepted and had specific reference within the ecclesiastical sphere and also general reference within the royal field.[24]

It seems to have been more a question of honour and prestige: "Für den stolzen wohlgeborenen Mann kann es etwas Beleidigendes haben, sich vor das Gerricht zerren zu lassen".[25] I do not, however, agree with the first example of this given by Heusler, which does not involve a goði. He cites the case from Njálá where Hallgerðr was charged with theft. Gunnarr, her husband, was eventually given self- judgement at court, and then set the damages for the theft off against the malice of the prosecutor in bringing the suit. This may sound rather like Gunnarr was taking extreme advantage of the situation, but it seems to me quite justified in this case as Gunnarr had offered double compensation as soon as he heard of the crime, and the prosecutor was being malicious and unreasonable in taking the suit to court. Thus, it can be argued that Gunnarr was punishing him not for the personal slight but for misuse of the legal system (STH12). Heusler's second example from Hallfreðar saga and Vatnsdæla saga (N34) is more to the point. Þorsteinn goði gave permission to Otkell to summon his son Ingólfr at his home. Þorsteinn's brother Jǫkull considered this quite wrong:

> when Jǫkull heard of this he flew into a rage, declaring it a thing unheard of that kinsmen of theirs should be made outlaws in their own territory. (Vatnsdæla Ch.XXXVII).

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[24] Walter Ullmann, The Individual and Society in the Middle Ages, p.15

[25] Andreas Heusler, Das Strafrecht der Isländersagas, p.99

Similarly, in E12 Ketill of Njarðvík, a goði, gave permission for a summons to be served on one of his employees, but when the party actually arrived, he did not find himself able to tolerate the proceedings and attacked them. Such attitudes on the part of goðar may also explain why Snorri goði was not prosecuted along with his men in W6, even when the prosecutor was a goði. The prosecution perhaps felt they would get a better result in the end if they did not rouse Snorri's anger too much by a personal prosecution.

Summary

It is evident from both Grágás and the law suits that the legal equality and independence of male litigants was quite high, although it is possible that independent control of court actions was limited to those who were financially independent, i.e. primarily farmers. However, insufficient assistance was available to help an individual who found himself faced with a person willing to abuse the legal system by the methods outlined above in Chapter 4 . Virtually no state help existed, and although every person was a member of one or more social groups to whom he could turn for help, no legal obligation to help an individual seems to have been imposed on any of these groups. Individuals could thus at times be denied not only independence in their law suits, but also even the possibility of obtaining a legal remedy. Equality of access to court was thus denied to them, while at the same time certain individuals, especially goðar, could expect never to have to answer for their wrongdoings in court.

Women had less independence than men in their law suits, and probably greater practical difficulty in acting on their own behalf when they were entitled to do so.

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Ib contains a postscript with comments about Konungsbók, II a more extensive introduction on Staðarhólsbók and more general comments, and III another such introduction and a description of the various small manuscripts. III also contains, among other things, a useful table of contents of all the manuscripts (p. 511-532), a list of where the provisions in Staðarhólsbók can be found in the other manuscripts, and a detailed glossary.

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Unless another manuscript makes some significant addition or differs, I have throughout cited only the Konungsbók provisions. A manuscript of the entire translation being prepared by Foote et al was kindly made available to me by Professor Foote. The English translations in this paper are taken from this manuscript, unless otherwise noted.

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