Beyond the Fringe

Outlawry & Punishment in Grágás & the Gulaþingsþög, c.1150-1264

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Summary

Outlawry in Medieval Scandinavia as a subject of academic interest has been growing more popular in recent years. But now, as in the 1930s when the topic first took off among Dutch and German scholars, the focus seems set on a predominantly literary study through the lens of the Icelandic sagas, with the collections and codes of law taking a back seat. While comparative studies between sagas and laws have been tackled in the past few decades, with scholars like William Ian Miller and Agneta Breisch attempting to further develop our collective understanding of the society of Commonwealth Iceland, few, if any, have adopted such a comparative approach to two different law codes. This thesis seeks to remedy this situation. By comparing the different forms of outlawry and punishment in Grágás and the Gulapingslög, an improved picture shall be created of how outlawry developed and was utilized in the two different political systems that characterized twelfth and thirteenth century Iceland and Norway.
Acknowledgements

“Without knowing where he was going, and with no particular place in mind,
he stepped into the trees and walked away.”

The making of this thesis over the past number of months has been at varying intervals
enjoyable, fulfilling, terrible, and maddening; oftentimes a blurred and exhausting mix of two
or more of these emotions. Still, now that the process has finally reached its conclusion, some
sense of satisfaction and nostalgia begin to stir for what has proven a very formative two
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1. Introduction

‘A people not governed by a king but only by its laws.’¹ The famous observation made by Adam of Bremen in 1074 is the oldest known account of the Icelanders as a distinct entity; and certainly, from the period of settlement from 870 on to 1262/64 when the land finally fell under the formal sway of the Norwegian king, Icelandic society existed in a state of political independence from the rest of the Norse world. With a comprehensive system of laws, and numerous chieftaincies to serve as mediators and arbitrators, the island seems to have administered itself rather effectively for the first few centuries after its political inception; all the more interestingly as its legislative structures made private enforcement a necessity. This was in contrast to Norway, whose legal system, despite having provided inspiration for the Icelandic system, would more and more come to be influenced by the institution of kingship in that realm; to the point where lawbreakers would have to settle dually with both their peers and the king in order to return into the peace. From the mid-twelfth century to the mid-thirteenth, both Norway and Iceland would see their societies break down into conflict and civil war. The violence of which weakened both societies to the extent that on its conclusion, Norway’s king would emerge more powerful than ever, and the celebrated exception to western Medieval Europe that was the Iceland of the Commonwealth brought to an end. In the wake of these conflicts as well, the laws of each land would come to be put to page, in what are now the oldest and most complete surviving collections remaining for Iceland and Norway. Utilizing these collections, those of the Konungsþóbók manuscript (one of the larger components for the collection that has come to be known as Grágás), and the Gulapingslóg, a comparison shall be conducted on outlawry and the punishment of law-breaking, demonstrating in the process that outlawry was a tool: shaped and utilized differently as per the requirements of the society or state in which it found itself; and a study of which can prove a remarkable tool in itself in identifying the different priorities of the two distinct political systems that existed in Iceland and Norway in the twelfth and thirteenth centuries.

1.1 Outlawry in Grágás & the Gulapingslóg

¹ “Apud illos non est rex, nisi tantum lex” (‘There is no king among them, only law.’) See “Magistri Adam Bremensis Gesta Hammaburgensis ecclesiae pontificum,” in Monumenta Germaniae Historica 2/3, ed. Bernhard Schmeidler (Hanover: MGH, 1917.), IV, a. 35. Translation belongs to Viðar Pálsson, Language of Power: Feasting and Gift Giving in Medieval Iceland and its Sagas, forthcoming, 35.
Outlawry in both Iceland and Norway, as can be seen in Grágás and the Gulathingssög, took two formal forms; there were variations to these, however, that shall be discussed somewhat later. In Grágás, these forms fell under the designations of fjörbaugsgarðr and skóggangr. Fjörbaugsgarðr, or lesser outlawry, was generally characterized by a three-year period of exile. A fjörbaugsmáðr, or man sentenced to this lesser outlawry, was given three summers to leave the country, and if he failed in this task he would fall under skóggangr and suffer from the much more severe terms of that sentence. Skóggangr, or full outlawry, was in essence a death sentence. If the judgement was established through a private settlement, there was the possibility of acquiring right to sustenance or right to passage, but short of such a saving grace, the full outlaw was condemned to an exile on the very island they had previously called home. Any could kill them at will, free of penalty, their property was forfeit, and they became fated to a life on the fringes of society. Escape from this sentence was only provided if they were successful in killing other outlaws, and so, in all likelihood, they would meet their end either by exposure to the elements or at the hands of their enemies. The life expectancy for a skóggangsmáðr could not have been very long.

In Norway, the case was slightly different. There was, as in Iceland, a common form of outlawry and a permanent one, although the terminology for these differed from Grágás, taking the form of útlagr and úbótamál instead. In addition to a difference in nomenclature, so too was there a divergence in the rules. Common outlawry entailed exile until a fine was paid. The phrasing differed, with skógarkaup, friðkaup and landkaup all being used, but the concept behind each was the same, and the amount a hefty forty marks. But common outlawry, barring a few specific instances, does not seem to differ altogether too greatly from permanent outlawry, apart from the fact that these útlegðarmenn could atone for themselves with money. So, for Norwegian outlaws, unless they received a sentence of common outlawry and could afford to pay the fine, the reality would not have differed in theory all that much.

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2 For societies already on the fringe of the known and ‘civilized’ world, such a punishment was in essence a condemnation to a life beyond the fringe. Hence the title of this thesis.
3 Útlagr was also a general term referring broadly to outlawry. For more information on the development of Norse and Anglo-Saxon terminology of outlawry and punishment, see Anne Irene Riisøy, “Outlawry: From Western Norway to England” in Stefan Brink et al. (eds), New Approaches to Early Law in Scandinavia (Turnhout: Brepols, 2014).
5 Men sentenced to útlagr.
from the Icelandic skóggangsmaðr; and just as the skóggangsmaðr could only escape his sentence by killing other outlaws, so too could an úbótamaðr only be reprieved by warning the king, or the king’s men, of an impending attack by his enemies.

1.2 Historiography

Scholarship on outlawry has varied. In the nineteenth century, the legal history of the medieval Scandinavian kingdoms was a prominent field. Vilhjálmur Finsen and Konrad Maurer were some of the most accredited scholars to write on the issue at this time. Addressing the challenges in using the manuscripts comprising Grágás, Vilhjálmur Finsen was the first to classify these as private collections. Indeed, the views and theories of both Vilhjálmur and Maurer would have a far-reaching impact on the treatment of Nordic medieval law, with a presence still to be felt in scholarship today. But these two were not alone, Maurer himself being a part of the critical German school, the controlling school of thought regarding the field of medieval Germanic law through the nineteenth and early twentieth centuries.

While predominant in its own time, later scholars would grow to become very critical of the Germanic school; the Danish scholar Poul Gædeken, writing in the 1930s, was one of those leading the charge. Although it was to be the Swedish historian, Elsa Sjöholm, writing

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6 At best it can be said that the laws contained within the two main extant manuscripts, mentioned in the previous paragraph, were the products of private collectors, likely drawing from a combination of earlier written records and the dubious oral tradition. See Vilhjálmur Finsen, Om de Islandske Love i Fristatstiden (Kjøbenhavn: Gyldendalske Boghandel, 1873), 5ff; Konrad Maurer, Udsigt over de nordgermaniske Retskilders Historie (Kristiania: Trykt hos A.W. Brøgger, 1878), 72ff.

7 Two of the main objectives of which were: one, to uncover evidence that these law codes (those of the Nordic region primarily, as Maurer and others deemed them as less corrupted versions of an original germanic law) all derived from a common source, a Volksgeist, and two, that except within certain categories like town law, continental jurisprudence did not seriously come to influence Nordic laws until the late middle ages. See Maurer, Retskilders, 1-12; Per Norseng, “Law Codes as a Source for Nordic History in the Early Middle Ages,” Scandinavian Journal of History 16/3 (1991), 151-52.

8 The German School seems to have operated under the assumption that Germanic law in the early Christian period was based strongly in the customary tradition and featured, as Per Norseng phrases, “an underdeveloped legislative positivism.” The famous German legal historian Fritz Kern, argued extensively on this subject, and perhaps best expressed those views first established by earlier scholars, such as Maurer. Kern argued that in the middle ages, the view was that “Das Recht ist alt” and “Das Recht ist gut”. The law, or Recht, was regarded as being extremely old, and therefore was seen as custom. It was therefore as much an inheritance of the people as their language or anything else. Considering their ancient quality, the Recht was, in a sense, set in stone. It could not be changed, but merely reinterpreted; old forgotten laws could be recalled and used as required, but new laws could not be created. This last was the domain of “der ältesten und glaubwürdigsten Leute”, who were, in a sense, responsible for remembering these laws. The position of remembering and interpreting these laws differed depending upon the political system, as Aristotle and his school argued. But in Norway, as in most of Northern Europe, this role fell to the king. See Norseng, “Law Codes,” 148; Fritz Kern, Recht und Verfassung im Mittelalter (Darmstadt: Tübingen Wissenschaftliche Buchgemeinschaft, 1958), 11ff; J.H. Burns, The Cambridge History of Medieval Political Thought: c.350-c.1450 (Cambridge: Cambridge University Press, 1988), 21.

9 He maintained that the oldest surviving laws from the Nordic region are younger than what was previously thought, their induction to the written page coinciding with a period of conflict between the old provincial laws and scholarly law making its way up from the continent via the church and temporal authorities. See Poul Gædeken, Retskrude ut reaktionen derimod i gammeldansk og germansk ret (København: Gad, 1934), 17-25.
later in the century, who would prove to be the true antithesis. While some, such as Gerhard Hafström, still clung to the idea of a common Volksgeist, with Sjöholm’s ascension the idea that the influence of continental law did not really arrive in strength in the North until the late middle ages became widely discredited. Still, Sjöholm pushed this perhaps a little too far, attributing too much influence to royal power at too early a period, and with insufficient evidence to support her ideas, as the Dane Ole Fenger pointed out. Most scholars dealing with medieval Scandinavian law in the past half century seem to agree on the point that the oldest surviving provincial codes were created in a period of conflict and waxing royal power. Some, like Hafström, while still maintaining that it was quite possible some laws written down later may have represented an older stage of development, concede that these collections are best studied in the context of their own time. This last is the approach that shall be adopted by this thesis.

Even still, while the progression of legal scholarship is very significant to this thesis, relying as it does on the comparison of two of the oldest surviving law manuscripts surviving from the Medieval North, the subject of outlawry does not seem to have factored too greatly into these arguments. Indeed, from the 1930s on, when German and Dutch scholars first grew interested in Icelandic outlawry as a subject, it was approached mainly through the lenses of literary science, folkloristics and mythology. Even Frederic Amory, who more recently tackled outlawry from a socio-historical perspective, brushed over the issue of the laws, preferring instead to use the sagas as his sole source; defending his approach on the grounds that the manner in which the laws are formulated “fall short of the social issues of outlawry raised in the sagas.” Still today then, there remains heavy emphasis by scholars on the use of the sagas in any study of outlawry. Some scholars, such as Agneta Breisch and William Ian

10 An individual Per Norseng describes as “the last great germanist”. See Norseng, “Law Codes,” 155.
11 Ole Fenger, review of Elsa Sjöholm, Gesetze als Quellen mittelalterlicher Geschichte des Nordens in Historisk Tidsskrift (Denmark), vol. 79 (1979), 112-24; see also: Elsa Sjöholm, Gesetze als Quellen mittelalterlicher Geschichte des Nordens (Stockholm: Almqvist & Wiksell International, 1976).
Miller, have adopted a more collaborative approach. Both have sought to analyze societal norms through a comparative study of laws and sagas, Breisch, in particular of the two focussing on outlawry. Such a method is laudable, and is likely that which shall in the end prove to yield the best results, although even in these approaches the greater emphasis seems as well to fall on the sagas.

Very few, if any, scholars, however, have sought to conduct a similar study in the context of Norway; although this is no doubt in large part due to the disparity in sources. Still, while the sagas may be lacking, the laws still exist, and few seem to have adopted such a collaborative approach between the various Scandinavian law-collections. This thesis then, seems to be the first to do so. While Anne Irene Riisøy took just such an approach in a study of loan-words in the context of outlawry, no notable scholarship appears to have sought to use a legal comparison to explore the differences in outlawry in any other meaningful way. Indeed, it seems there are but few scholars today intent on expanding upon the work of the earlier legal-historians. But as this thesis shall attempt to demonstrate, there are far more possibilities yet to be explored in this field. While it would be ideal to perform a study encompassing both the laws and sagas, the shortfall in any indigenous Norwegian sagas would make this difficult from a methodological standpoint. Focussing solely on the laws, as this thesis does, to analyze the ways in which outlawry was impacted by the presence, or lack thereof, of centralized power, it would be beneficial to include a study of those codes given to Iceland after it fell subject to the Norwegian king, namely Járnsíða and Jónsbók. But again, length and time lie at the heart of the issue, and so in order to conduct this analysis and treat the sources in the detail they deserve, this paper shall restrict its scope to the Gulaþingslög and the Konungsbók manuscript of Grágás. Such a method and scope should serve to fill a gap that has been neglected by scholars studying outlawry. For while Icelandic outlawry has frequently been compared with its Anglo-Saxon equivalent, most often in a literary sense, little has been done to conduct such a comparison between Iceland and Norway; and

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18 There is a relative lack of outlaws to be found in the sagas with a focus on Norway, and the use of such sources presents its own unique problems.

19 Although it should be noted that even a comparison of only these two laws is a substantial undertaking, and would have benefited greatly by a greater page limit. The following comparison will therefore be unable to go into as much detail as might have been wished, but it is hoped that this approach shall inspire more attempts in the future, free from the same restrictions.
considering the widely-held belief that Iceland obtained its early laws from the contemporary law of Gulaþing, this is a great shame, as such a study can reveal much about the evolution of outlawry within different geographies and political systems. Now, as the focus of this thesis is the law collections of medieval Iceland and Norway, it is to these laws that we shall now turn.

1.3 The Laws

Norway had four original and distinct provincial laws: Gulaþing, Frostaþing, Eidsivaþing, and Borgarþing; these supplemented as well by the bjarkeyjaréttr, which was specified for urban areas and commercial matters. The oldest of these were, respectively, Gulaþing and Frostaþing, and the history of the law can be said to be inherently tied to the history of the assembly area. It is likely that the Gulapingslög was written down several times and in different forms throughout the eleventh and twelfth centuries, and indeed, five manuscripts have survived to the present. Only one, however, remains in relatively complete form, with just three sheets missing; the other four exist only in fragments. This codex has since fallen into the possession of the library of the University of Copenhagen. Consisting of 146 pages of parchment contained within a small quarto, philologists have dated it to ca. 1250 AD. In 1835, the two Norwegian scholars Rudolf Keyser and Peter Andreas Munch travelled to Copenhagen with the aim of producing a copy of these laws in print. Volume I became published just over ten years later: containing the laws of Gulaþing and Frostaþing, with all articles accepted prior to 1387. It is based on this 1846 edition of Norges Gamle Love indtil 1387, that my own exploration has been conducted.

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20 In his Altnordische Rechtswörter, Klaus von See points out that a law, or lög, in Norway, had the dual meaning of both law as a ‘set of rules or customs’ and rights (Gesetz), as well as taking the form of a community under which these rules and rights were enforced and enjoyed, in that sense manifesting as a sort of ‘geographical-judicial’ area (Gesetzesbezirk or Rechtsbezirk). See Klaus von See, Altnordische Rechtswörter: Philologische Studien zur Rechtsauffassung und Rechtsgesinnung der Germanen (Tübingen: Max Niemeyer Verlag, 1964), 187-191.


22 While the history of these areas is not totally clear, Knut Helle argues, and Anne Irene Riisøy agrees, that there were people assembling on the shores of the Gulen fjord as early as the reign of Háraldr hárfagri (c.872-933AD). See Riisøy, “Outlawry”, 104; Knut Helle, Gulatinget og Gulatingslova, (Leikanger: Skald, 2001).

23 Taranger, De norske folkelovbøker, 4.

24 By the late 17th century, the fifth manuscript had fallen into the hands of a Count Otto Rantzau. Rantzau passed it on to that great antiquarian and collector, Årni Magnússon, who christened it the Codex Ranzowianus. Ibid, 4ff.


It is largely believed by scholars today that the laws and juridical structure attributed to the Iceland of the Commonwealth period was predominantly inherited from the Gulaþingslög. Most of the original settlers to Iceland are thought to have come from the west coast of Norway, from those same areas incorporated within Gulaþing. Ari fróði, in the Íslendingabók, or Book of Icelanders, reports that around the year 920 AD a man named Úlfljótr was sent back to Norway to study the laws of the Gulaþing. He returned with what Ari entitled Úlfljótslög.28 Fragments of what is alleged to be this law have survived within the Íslendingabók, written c.1122-33AD, and in manuscripts of the Landnámabók, or Book of Settlements; and the existence of these fragments has given rise to the tradition, widely-accepted amongst Norwegian and Icelandic scholarship,29 that laws of a relatively comprehensive span existed in both Iceland and Norway at this time.30 Such tradition also posits that the oldest surviving Icelandic laws found in any comprehensive form descend from this original code brought over by Úlfljótr, extant in the manuscripts Konungsbók and Staðarhólsbók,31 dated respectively to ca. 1260 and 1280AD.32 The laws found in these two manuscripts are not identical. As Andrew Dennis et al. describe, they are both ‘alike and unlike’, and inconsistent in their variation. The reason for this is often attributed to a common derivation from an archetype, in the form of Haflíðaskrá,33 with any variation or inconsistency the result of both editorial choices and scribal error. While the Staðarhólsbók is better organized and more detailed in its accounts than Konungsbók, it also has many

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28 “En þá er Ísland var víþa bygt orþít, þá hafþe maþr austrenn fyrst lög út hingat or Norvege sæ er Úfljótr hét — svá sæþe Teitr oss — oc þovo þá Úfljóts lög cöþloþe hann var þafþer Gunnars es Djúpdeoer ero comner frá i Eyjaþfirþ; en þau þovo flesst sett at þvi sem þá þovo Gulaþingslög.” (‘But then when Iceland had widely been settled, then had a man from the East called Úlfljótr brought the first law out from Norway — so Teitr said to us — and they were then called Úlfljótr’s laws; he was the father of Gunarr, from whom the people of Djúpadalr descend in Eyjafjörð; and they were mostly modelled as those were in the Gulaþingslög’) Translation is my own. See Are’s Isländerbuch im isländischen Text mit deutscher Übersetzung, Namen und Wörterverzeichniss und einer Karte, ed. Theodor Möbius (Leipzig: Druck und Verlag von B.G. Teubner, 1869), 4.
30 Although this view has become more criticized in recent times.
31 The Konungsbók, also known as Codex Regius, is now held in the Old Royal Collection in Copenhagen (manuscript no. 1157 in folio). Staðarhólsbók (manuscript no. 334 in folio) can be found in the Arnamagnæan Collection of the University of Copenhagen. See Dennis, et al., Grágás, 13.
33 Norseng states that the Haflíðaskrá was produced within the years 1117-18 AD. See Norseng, “Law Codes”, 142.
significant passages missing, which Konungsbók includes. The collective laws found within these manuscripts has since come to be known as Grágás, and while this is the term that shall be used from here on out to refer to the Icelandic laws, it is the Konungsbók manuscript, found within the 1852 edition completed by the Icelandic scholar Vilhjálmur Finsen, that has primarily been consulted.

1.4 Methodology

Considering the disparity between the two laws, one largely agreed to have been a private collection, the other what could be argued as an official code, it is difficult to address them both on the same plane. However, the fact that both these laws, official or not, were to a greater or lesser extent works of propaganda makes this comparison easier. Manuscript production at this time was a domain for the elite, and the elites responsible for the production of these law collections almost certainly had an agenda for doing so. While one is the product of an only recently-stabilized royal regime, the other, it may well be argued, is a statement against the reigning anarchy and the threat represented by Norway’s king. Determining to what extent these laws represented the reality of their time is not the object of this thesis, although it seems likely that the Gulapingslog was created with a bright royal future in mind, while the producers of Grágás had their heads turned back upon what may or may not have been, concerned about that very same royal future. Instead, this dissertation, within the time-frame of c.1150-1262/64 (to accommodate the political development that occurred at this time), will focus upon the nature of the two disparate political systems portrayed in these works of judicial propaganda, as can be evidenced by their respective treatment on outlawry and the punishment of lawbreakers. This shall be completed in three chapters. The first shall provide a brief introduction to the political situation of Iceland and Norway followed by a detailed analysis on the various types of outlawry that were provided for in each law, including some posturing in regards to why the evident differences existed. The second chapter shall build on this discussion, examining some of the crimes that were punishable by outlawry. When a different form of punishment for a similar crime appears, some effort will

34 Dennis, et al., Grágás, 14-16.
35 See Vilhjálmur Finsen, Grágás: Konungsbók (Odense: Odense Universitetsforlag, 1974).
36 For while, in theory at least, any new laws, or law books for that matter, had to be approved and accepted by the assembly before it could be ratified, the manuscript production of the Gulapingslog was almost undoubtedly sponsored and carried out by the king and his agents; few others in the realm would have possessed the means to do so at this time. The ability of the assembly to present more than a token resistance to the king at this time must also be questioned.

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be made to clarify potential reasons for this. The third and final chapter shall analyze the processes of settlement and litigation that seem to have been utilized by each society; in the context of a slaying, the procedure whereby a killer was made into an outlaw will be explored. Throughout the whole it shall be demonstrated that, though some geographical and societal factors are likely to have also played a role in influencing each respective system of punishment, the laws of a free society were created and maintained only if it was in the interest of its citizens to do so, while in a centralized state the law was used to maintain and increase the authority and resources of that state.
2. Chapter One: Types of Outlawry

2.1 Introduction

As soon as humanity invented law, it invented those who would break it. For no human law has existed that would not by some situation or act of primal instinct see it broken. The societies of the medieval North certainly recognized this fact, and made provisions for that eventuality. Although, then as now, these measures were more tolerant of acts of situational necessity than they were of deliberate acts, the perception of that which constitutes a situation in which violent action is deemed necessary certainly has changed. Vengeance was a fundamental aspect of conflict resolution in the middle ages. This in itself must have acted as a form of deterrent, but all the more so for the fact that in both Iceland and Norway the laws under many circumstances sanctioned it. This legal sanction took the form of outlawry. Those who had committed unlawful acts with insufficient justification for doing so were either heavily fined or stripped of their legal immunity (their protection under the law) and made vulnerable to violent reprisal. Oftentimes it was both. The aim of this chapter is to introduce the reader to the various forms of outlawry described in Grágás and the Gulapingslög. The purpose of this is twofold. Firstly, such an understanding of the consequences of criminal behaviour will better prepare readers and lend important context to the subsequent discussion on which actions constituted criminal behaviour and how different crimes were punished. Secondly, beginning in such a way will provide a clear introduction to the manner in which kingship impacted the issue of punishment and the effect it had on the shape of outlawry, prior to broadening our lens in the next chapter which will look at the circumstances in which it was actually imposed. In the interest of length, and in order to cover the conditions of each form of outlawry in necessary detail, this chapter shall restrict itself to doing just that, saving major discussion on the significance of the differences between the various sentences to the following chapter. Before any discussion can take place on outlawry however, some basic information must be provided on what the society and legislative structures looked like during the period in question in these two countries. To this we shall now turn.

2.2 Iceland & Norway in the 12th & 13th Centuries

2.2.1 Society in Commonwealth Iceland
The Iceland of the Commonwealth era was a land and society without a king. In spite of, or perhaps to compensate for this lack of central authority, early Icelanders held assembly every year at the Alþingi. At this general assembly chieftains, householders and the pingfararkaupsbændir (literally: Assembly-going fee-paying farmers) would convene to resolve disputes and arguments and settle any outstanding issues or business that had arisen from events in the past year. Additionally, local assemblies would be held every spring to further facilitate the redressing of wrongs and unlawful behaviour. This was a society in which “All free people enjoyed the same legal status.”357 Chieftains and householders, down to the lowest freeman, all shared the same legal rights in theory, though the higher one’s social rank the more responsibility they possessed in the eyes of the law. Grágás provided for thirty-six chieftaincies.38 The authority provided by this office allowed one to nominate courts at assemblies, confiscation courts, and provided a power of veto,39 and no doubt instilled in them a great deal of influence. But it is significant that, while a chieftaincy was privately owned, a chieftain who was seen as neglecting his responsibilities could be fined or stripped of that office and, in extreme circumstances outlawed.40 As the law makes clear, legal status and right to legal redress could only be diminished or lost by one’s own actions; this was no different with chieftains.41 Forfeiture of this right could have been conditional (applying to specific person or persons, time and place), or absolute (meaning any could do them harm with legal impunity, irrespective of time or location).42 But while forfeiture of legal immunity was dependent upon the actions of the individuals, so too was the law dependent upon individuals to enforce it.

The prevalence of social ties at this time, with every individual legally obligated to belong to a household, and networks of kin and friendship besides, meant that there was no

37 Dennis, et al., Grágás, 7.
38 Although c.1005 this number was increased to forty-eight, to account for changes in the legislative system, such as the creation of the fifth court. See Vilhjálmur, Grágás, 38, 77.
39 Although it was only in very specific situations that they could use it. See Vilhjálmur, Grágás, 47-49, 96-97, 102.
40 Although the law implies chieftaincies were purchased, in emergency circumstances it seems other chieftains could invest a man with the authority of the missing chieftain. While more than one person could own a chieftainship, only one could act with the authority it granted at any one time. See Vilhjálmur, Grágás, 43-45, 141-142.
41 Although in enforcing punishment on a chieftain who had broken the law, it may have been a more difficult task to gather the level of support that would have been needed. But even this was not necessarily too different from influential householders or freemen. The more popular a man was, the more difficult it would have been to rally support against them. It seems likely that there was almost a correlation between a man’s popularity and the reprehensibility of his actions. The more popular, the more heinous an act that would have been required to stir public opinion sufficiently against them.
42 Dennis, et al., Grágás, 7.
lack of support should one have had a strong desire to address a wrong. Indeed, the reality of chieftaincies was that those who held office were dependent on their supporters to maintain their influence, just as their followers were dependent upon them. If a householder became dissatisfied with the behaviour of his chieftain, he could apply to change at the next assembly. It was therefore in the chieftain’s interest to support his followers when they called for his support; otherwise he put himself at risk of losing others via the domino effect. This is the reality portrayed by Grágás though, by the beginning of the thirteenth century, this system was beginning to degenerate as more and more chieftaincies fell into the hands of fewer individuals. Territorial powers began to emerge, and there was thus less opportunity for this ‘democratic’ practice to operate. However, while this development no doubt had an influence on the production of Grágás, it is with the intent found within that collection of laws that this thesis shall concern itself.

2.2.2 Society & Kingship in Early Medieval Norway

Norwegian society prior to the arrival of Haraldr hárfagri did not likely stray too far from that recreated by the settlers of Iceland under the Free State: a society of farmers, with regional chieftains and lords allying and warring with each other as it suited them. According to Hans Jacob Orning, monarchy was established in Norway in the tenth century. However, in the first few centuries after its inception, it remained quite weak. Kings relied on a system of itinerancy and alliances with local magnates to maintain their power. Indeed, before the mid-twelfth century the political reality existed relatively unaltered by the formal institutions that had arrived in the form of kingship and the Christian Church. Co-rulership was a common feature in Norway between 1030 and 1160, with brothers and relatives sharing power between themselves; and what kings there were were often no more dominant than the most powerful magnates. In this regard, the situation was not so very different from Iceland, where the weakest chieftains were on near equal standing with the most influential householders.

43 Vilhjálmur, Grágás, 128-131.
47 Helgi, “Friends”, 304.
However weak the kings may have been, as Steinar Imsen argues in his introduction to *Rex Insularum*, the transformation of Norway into a state began c.1130, ending definitively in 1240 with the killing of Skule Bårdssohn, Hákon Hákonarson’s father-in-law. By 1240, the authority of the Norwegian king was not to be doubted; though his power was not limitless. As Larson argues, the person of the king was not considered sacred to the medieval Norseman, and if the king was found breaking the law, he was open to the same consequences. Still, from 1240 on, the state formation process in Norway would continue to accelerate rapidly. Under the reign of Magnús lagabœtir (1263-1280), Norwegian kingship would come to have new meaning, influenced by continental conceptions of sacral kingship, and as Ole Fenger argues, affecting the laws in the process. By Imsen’s argument, it was in the period immediately after Norway had consolidated into a state, and just prior to the reign of Magnús lagabœtir, that the *Gulapingslög* in its oldest surviving form came to be produced; and it is to the description of outlawry as found in *Grágás* and that law-code that we now turn to.

2.3 Outlawry

2.3.1 *Fjörbaugsgarðr*

*Fjörbaugsgarðr* was the most common of the sentences of outlawry in *Grágás*. It entailed the confiscation of property, and a term in exile for at least three winters, although in some instances this forced exile could extend for longer than twelve. Along with this came the condition of safe zones, or areas of immunity, in which these lesser outlaws could dwell before finding passage out of Iceland. At the conclusion of the assembly at which an individual became declared a *fjörbaugsmaðr*, or the time at which the appropriate chieftain was requested to nominate it, a confiscation court was to be declared and held at the outlaw’s home a fortnight later. At this court, all of the property of the outlaw was to be listed and divided between those to whom assets were considered due. The outlaw’s wife, the chieftain presiding over the court, and any creditors, were all entitled to their own due share.

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48 Though here, similarly to the case with Iceland’s chieftains, it depended upon the degree of outcry and whether the freemen could raise sufficient force to defeat the king and his retinue and drive him out of the country. See Larson, *Earliest Norwegian Laws*, 21; Keyser and Munch, *Norges gamle Love*, 172-173.


51 It seems to have been, in most scenarios, that chieftain to whose assembly-group the outlaw had belonged was considered the appropriate person to preside over the assembly. See *Ibid*, 84.

52 *Ibid*, 83.
In addition, decision was taken on what was to be done with the outlawed man’s dependents. After all of these considerations had been made, half of whatever property remained was to be awarded to the man responsible for having the outlaw condemned, and the other half was to go to the men of the assembly, or the Quarter, depending upon whether he had been outlawed at a local assembly or at the Alþingi, or General Assembly. The terms of the individual’s sentence were also to be worked out at this court, and at the end of the proceedings the sentence was declared to be in effect, unless a special arrangement for time had been negotiated. Significantly, if no confiscation court was held, the sentence of outlawry was considered null.

Three homes were to be reported for a fjörbaugsmaðr at his confiscation court. Immunity was provided within bowshot of those homes in every direction, and, provided he did not travel by it more than once a month, on the road between them as well. There was the additional condition that, if men were to come towards him while on the road, the outlaw was obliged to step off and go so far from the road that he could not be reached by spearpoints from there on. Immunity status applied also on the road to and within bowshot of the ship upon which passage would be sought. Three summers in which to successfully obtain passage and fare out from the land before formal punishment came into force.

In seeking passage abroad, there was a certain protocol the outlaw had to follow. Perhaps the greatest duty involved paying the fjörbaugr, or “life payment”. Valued at a mark in legal tender, it was to be paid to the plaintiff orchestrating the confiscation court. Additionally, the alaðsfestr, the final ounce of the fjörbaugr, was to be paid to the chieftain presiding over the confiscation court; however, this pledge was waived if that chieftain had been able to acquire a cow or an ox from the property of the sentenced man. Making these payments was essential for, although the forfeiture of other property would take place

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53Ibid, 85-86.
54 This is very emblematic of the Icelandic judicial system in the Commonwealth. There were incredibly elaborate procedures in place by which a proper prosecution had to take place. If any one of them was carried out incorrectly, it provided the defence a great opportunity to attack the validity of the charges, and indeed to prosecute the prosecutors in turn for their lapse in legal protocol. It is also representative of the singular role private enforcement played. If a plaintiff failed to follow through to the end of the litigation, even if a guilty verdict and sentence had been declared, the defendant would walk free of penalty; on the assumption that the sentence had been fjörbaugsgarðr. See Ibid, 92-94.
55 Ibid, 88-89.
56 In the form of the expiration of the immunity status once enjoyed on the road and within the three residences allowed the outlaw.
57 Eight ounces of silver, though medieval Iceland was not a cash society, and it is likely that, in the absence of silver, the equivalent value of homespun (woollen cloth) or livestock would have sufficed. See Dennis, et al., Grágás, 251.
regardless, the outlaw could have found it very difficult to leave the country without having
done so: “Sa maðr er fjörbaugs manne fylgir til scips scal beiða fars med vatta at þeir tace
við honom oc lata bera vættis vætte þav er nefind voro at ferans domi. hue fyrir sect hans var
mælt. oc sva þav er fjörbaugr galdz ef hann var fjörbaugs maðr eða þav fe onor er hann yrði
scogar maðr ef eigi gyldiz.” (‘The man who goes with a lesser outlaw to a ship is to ask for
passage before witnesses and ask the shipmen to take him on and have the testimony brought
of those men named at the confiscation court to witness the testimony produced there of the
terms laid down for his outlawry, and the testimony that the “life ring” was paid, if he was a
lesser outlaw, or the other money for which he would have become a full outlaw if it were not
paid.’)\textsuperscript{58} Without making the payment, therefore, the fjörbaugsmaðr would have lost the
protections he still enjoyed and fallen into full outlawry. Still, once the testimony had been
provided that he had paid the fjörbaugr, all should have been fine for the lesser outlaw. As
long as he fulfilled the conditions pertaining to his sentence, he was protected by the law until
he left the country. Indeed, if the ship’s captain and crew refused to take the outlaw on board,
they would have been liable to pay a fine of three marks.\textsuperscript{59}

Significant measures seem then to have been put in place to ensure the fjörbaugsmaðr
was able to fulfill the terms of his sentence, at least in terms of leaving, and they were
relatively forgiving if he was unable to do so through no fault of his own. If the lesser outlaw
approached three ships in a summer, none of whom were willing to take him on, he was
excused from trying further until the next summer. Three attempts were all that was required
each summer and, as long as he made such efforts, the immunity stipulated for him would
renew itself from one summer to the next. However, “enda scal hann iafnt leita við brott
forna þeirra þrigia. enda er huert sumar fra öðro slið hælgi hans mælt. En þegar er hann
leitar nöckort sumar eigi sva við brott forna sem mælt er. þa er hann havst þat secr maðr at
vetri dræpr oc o öll.” (‘And he is to try to get away in the same fashion in each of the three
summers, and the same immunity is prescribed for him from one summer to the next. But as
soon as he does not try to get way one summer as prescribed, then that autumn at the onset of
winter he is an outlawed man, one who may be killed with impunity and may not be

\textsuperscript{58} Convention is to italicize foreign languages in an English paper, but as much of the primary text is non-
normalized, I will demur on this custom in order to preserve the distinction of the expanded abbreviations and
other notations common in these edited editions. Unless stated otherwise, all translations of Grágás will be those
made by Dennis, Foote and Perkins. Vilhjálmur, Grágás, 89; Dennis et al., 93.
\textsuperscript{59} Unless they had already taken on three or more outlaws already by that point. See Vilhjálmur, Grágás, 90.
sustained.’)\textsuperscript{60} If then the \textit{fjörbaugsmaðr} was seen to be neglectful in his duty to travel into exile, he would lose his protected status and become a \textit{skóggangismaðr}. Just as the lesser outlaw was rewarded for his efforts with continued immunity, so too were those ships’ masters and crews increasingly penalized if they failed to assist in conveying the sentenced man overseas. The first two summers the fine remained steady at three marks for each denial, but if in the outlaw’s third summer after receiving his sentence the outlaw was still denied passage, the punishment for those not complying was lesser outlawry themselves.\textsuperscript{61} Thus the whole system was designed to provide the maximum possible motivation for all parties to see the outlaw abroad.

Unless an extraordinary case, once three winters had passed the \textit{fjörbaugsmaðr} was free to return to Iceland and would enjoy the same standing and immunity in the eyes of the law as he had enjoyed prior to his sentencing. He was then to “taca erfþir allar slicar sem þa beþ til handa honom. oc sva scal hann taca við onogom þeim er at ferans domi voro fyrið hans sacir aför demþir. oc sva við þeim er þa bert til handa honom. oc sva gialda sculdir sinar ef vanlocnar voro er hann fór þeim ef hann hefið fer til.” (‘If he comes back here when he has been away for three winters, he is as free from penalty as if that outlawry had never befallen him. He is then to take all inheritances that fall to him and he is also to take over the dependants who were judged itinerant on his account at the confiscation court and any who then fall to him, and he is to pay what debts of his were not fully paid before he left the country if he has the money for it.’)\textsuperscript{62} So after three years away, the \textit{fjörbaugsmaðr} would return almost as if nothing had happened. He would reassume responsibility for those dependents he had left, pay any outstanding debts he could afford to pay, and otherwise resume his life. It is no small wonder that comparison has been made between \textit{fjörbaugsgarðr} and a rite of passage. The outlaw would fare abroad, spend three or more years testing his mettle overseas, and so return with any wealth he may have acquired, and oftentimes with more honour and standing than he had possessed prior to leaving, if the sagas were to have their way.\textsuperscript{63} Whatever the reality of those three years spent abroad in exile, \textit{fjörbaugsgarðr} was without question the mildest of any of the other types of outlawry provided for in either

\textsuperscript{60} Ibid, 90; Dennis et al., \textit{Grágás}, 94.
\textsuperscript{61} Vilhjálmur, \textit{Grágás}, 90.
\textsuperscript{62} Ibid, 91-92; Dennis et al., \textit{Grágás}, 95.
\textsuperscript{63} More shall be said on this matter in the following chapter. Marion Poilvez, \textit{The Inner Exiles: Outlaws and Scapegoating Process in Grettis saga Ásmundarsonar and Gísla saga Súrssonar} (Master’s Thesis, Háskóli Islands, 2001), 10-12.
law, and certainly appears in contrast to both the Norwegian equivalent of lesser outlawry, as well the full outlawry of its own system.

2.3.2 Skóggangr

The stark alternative to fjörbaugsgarðr was skóggangr (literally, forest-going), or full outlawry. Full outlawry, as opposed to lesser outlawry, was banishment for life and, unless privately arbitrated, removed even the option for passage abroad. Full outlaws were thus exiled to the harsh Icelandic interior, banished to a life in the wilderness. Unlike lesser outlaws, these skóggangarmenn enjoyed no immunity and could be killed with impunity. They could not be granted sustenance, and any found assisting them risked receiving a similar sentence themselves. What’s more, there was a price on their head; a measure no doubt intended to boost enthusiasm for hunting down such men and delivering them to their end. The provision also existed, in certain cases, which would grant reprieve to a full outlaw in exchange for killing other outlaws. This, in theory at least, reduced the risk of outlaws banding together and creating a greater threat than that posed by individual skóggangarmenn. As with fjörbaugsgarðr, a sentence of skóggangr required a confiscation court, although under the circumstances it was probably doubtful that the skóggangsmáðr would have been in attendance. At this court, all property belonging to the outlaw would have been forfeited and, unlike the case of the fjörbaugsmáðr, the full outlaw had no hope to reclaim any of his property or inheritance at the conclusion of his sentence. There is no technical duration for a sentence of skóggangr; it was presumably a life-sentence, and skóggangarmenn were, in theory, not expected to live very long.

The severity of the punishment was orchestrated to suit the severity of the crime, and, in general, a sentence of full outlawry was reserved for those considered to have committed the most heinous offences in early medieval Iceland, or for those lesser outlaws who through misconduct had violated the terms of their immunity by either committing another offence punishable by lesser outlawry (or full outlawry), or failing in their efforts to sail abroad within

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64 See Chapter 3 for the discussion on private settlement.
65 Three marks in legal tender. See Vilhjálmur, Grágás, 178.
66 Or indeed, it seems that individuals could kill outlaws for the reprieve of other outlaws who had committed crimes that were able to be settled. It seems thievery was not among those. Ibid, 187.
the required time. The worst of these crimes were those acts committed and followed by subsequent attempts to cover them up; crimes such as murder and thievery.

2.3.3 Úbótamál

Unlike with the laws found in the Grágás, there is no explicit and detailed description for the different types of outlawry found within Gulapingslog. While it does provide some description of the processes to be followed after one is outlawed, this is quite lacklustre when held up alongside its Icelandic equivalent. Indeed, for the bulk of the text of Gulapingslog, the only vocabulary to be found for a crime resulting in outlawry is útlagr, or utlegðar, which in the context given refers only to the general state of outlawry and fails to specify the degree of outlawry intended. Only sporadically is some added context provided to give a full impression of the sentence being called for and so, in this regard, the Gulapingslog can be said to lie in stark contrast with Grágás, which provides distinct terminology for each of the degrees of outlawry allowed for in its law. Regardless, despite the greater difficulties involved, one can glean a picture of outlawry as provided for by the Gulapingslog; and the very fact that the punishment for many crimes does not go further than a simple statement of útlagr may in itself be revealing.

Even without a close reading of the text, it is evident that there are at least two forms of outlawry to be found within Gulapingslog. The heading for article 22 runs as follows: “Her hevir Magnus konongr gort at ubotamale. er Olafr [hafðe gort at .iij. marca male.]” (‘Here Magnus provides permanent outlawry for a crime for which Olaf had decreed a penalty of three marks.’) So here already we find an example of two kings providing two different forms of punishment for the same crime. That there is an escalation here in the severity of punishment offered for the same crime is indicative of the increasing efforts of successive kings to bring the sphere of punishment under their control. In this passage, as well, can another important example of vocabulary of concern to this thesis be found: úbótamál. Geir Tómasson Zoëga, in A Concise Dictionary of Old Icelandic, defines úbótamál as “a case

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67 Or any of the other more specific examples of what was considered misconduct already discussed under lesser outlawry.
68 For more information on perception of ‘secret crimes’, see Larson, Earliest Norwegian Laws, 17-18.
69 The lack of specificity in the text suggests that there may have been a degree of liberty that could be taken when declaring the sentence.
70 All translations for the Gulapingslog shall be those made by Laurence M. Larson unless otherwise stated.
71 Óláfr helgi Haraldsson (1016-1030), Magnús Erlingsson (1162-84).
72 Though the fact that this particular instance is located in the Christian Laws Section means that an increase in the influence of the church may also have played some role in the increased severity of punishment.
which cannot be atoned for with money”.

Permanent outlawry in the *Gulapingslög* was thus a state in which the purchase of atonement to return into the peace was not an option. The contrast then between ûbótamál and the more common ûtlagr looks to have been the ability to purchase atonement with money. Zoëga’s definition, however, is quite specific. It does not state that the ûbótamaðr cannot be atoned but that he cannot be “atoned for with money.” There seems to have been only one recourse open to ûbótamenn to return into the protection of the law: “En hvervetna þess er maðr vig niðings vig. þa fare hann utlagr oc uheilagr. oc firigort hverium penningi fear sins. i lande oc lausum eyri. oc koma alldrigi i land. hvarke með kononge. ne iarle. nema hann bere hersogu sanna.” (‘And in every case when a man is [found] guilty of a nithing crime he shall depart as an outlaw who has forfeited his personal rights and his property to the last penny, land as well as moveables. And let him never return to the land either with king or with jarl, unless he comes bearing truthful tidings of hostile incursions.’)\(^{74}\) The law is explicit here: the permanent outlaw was banished for life, never to return unless he came bearing truthful tidings of a hostile war party. Such a condition no doubt reflects the geo-political reality of the external threats facing each country. Denmark was a powerful neighbour and proved itself a danger to the Norse kingdom time and again, and the emerging Swedish kingdom was not to be overlooked either. Iceland on the other hand, protected as it was by the Norwegian Sea, shared no such concerns; the internal threat posed by its population of *skógarman* was arguably a more relevant worry.\(^{75}\) Still, however difficult it may have been to kill another outlaw, it very likely provided a far more viable opportunity to return into the peace than that offered by the *Gulapingslög*.

While the *Gulapingslög* does not contain a great deal of reference to the issue of ûbótamál, based on what explicit mention does exist, it was little better than Iceland’s *skóggangr*. Just as with the *skógarmaðr*, ûbótamenn were deprived of all their rights to peace and property, both land and moveable wealth, as well as any immunity they enjoyed by the protection of the law.\(^{76}\) The only real recourse left to such individuals was to flee to the woods


\(^{74}\) A *niðing* crime is referenced here, and the presence of this term seems to be one of the few other indicators that the sentence involved was permanent outlawry; for a *niðing* crime refers to those acts considered taboo, such as murder. See Keyser and Munch, *Norges gamle Love*, 66; Larson, *Earliest Norwegian Laws*, 137.

\(^{75}\) The threat offered by the military might of the Norwegian king is arguably a far less tangible threat than the Danish king’s was to Norway.

\(^{76}\) *Ibid*, 19.
and mountains, unless they could catch a ship abroad before news of their sentence spread.  

Certainly, the reality of Norway’s geography was more forgiving to its outlaws than was Iceland’s. In Norway, one could attempt to cross the mountains to Sweden, or south to Skåne and the lands held by the Danes, from which places they could either hope to start a new life or to find passage aboard a ship taking them even further into exile.  

Such a journey at this time would have been a daunting prospect. Still, the alternative of remaining in Norway was on paper no better. An ûbótamaðr would have been forced away from his home and family, or put their own legal rights and protection at risk, opening them up to attack from the outlaw’s enemies through their protection of him. The permanent outlaw would thus have been faced with the prospect of carving out an existence in the wilderness; the domain of wolves and bears, not to mention the, albeit more intangible, threat of trolls. Additionally, the outlaw would likely have been hunted for a time by those who had made the suit against him. With no clear and easy way to return into the law, a sentence of ûbótamál was, like skóggangr, little different from an order for execution.

2.3.4 Útlagr

Útlagr, or útlegð, by definition simply means ‘banished’, or ‘outlawed’; an útlegðarmaðr was thus an ‘exile’. In this sense, it is not at great odds with the fjöðraugsmaðr as mentioned above. In most of the cases in the Gulapingslög in which outlawry is mentioned, it is in this form (útlagr), or one of its conjugations, that it appears. When permanent outlawry is touched upon, it is typically the word ûbótamál that is used, so it is probably safe to assume that when Útlagr is used, as it is in the majority of cases of outlawry found in Gulapingslög, it is the common type of outlawry that is being referenced.

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77 Although a wife could sustain her husband for five nights after he had been sentenced. The same conditions extended to a minor, however, if a woman was convicted as an outlaw, her kinsmen were responsible for seeing her out of the land. See Ibid, 62, 72.

78 Although those knowingly providing conveyance to an outlaw would have been subject themselves to a fine of forty marks. See Ibid, 61.

79 Útlagr is an adjective, sharing identical meaning with the almost uniform adjective útilegr. As útlagr appears to have been more widely used in the Gulapingslög, it is this version that shall be utilized. See Zöega, Concise Dictionary, 464; Richard Cleasby and Gudbrand Vigfusson, An Icelandic-English Dictionary (Oxford: The Clarendon Press, 1874), 671; Johan Fritzner, Ordbog over det gamle norske sprog (Kristiania: Feilberg & Landmarks Forlag, 1867), 712.

80 Indeed, in one notable case the Norwegian-American historian and translator, Laurence M. Larson, did in fact translate útlegrar as permanent outlawry. Working as he was with multiple Norwegian law codes, it may well be that he was drawing from his experience with these other laws, which may have been more clear on the subject of punishment for certain crimes, to inform his translation of the Gulapingslög. Due to its focused nature, this thesis shall not seek to contest Larson’s translation, but it shall proceed on the assumption that útlagr / útlegrar was used, in most circumstances, to refer to the common form of outlawry. See Larson, Earliest Norwegian Laws, 122; Keyser and Munch, Norges gamle Love, 56.
Common outlawry, barring a few specific instances, does not seem to differ altogether too
greatly from ûbótamál, apart from the fact that these outlaws could atone for themselves using
money, and, as Larson argues, in the case of common outlawry, the sentence was usually
allowed to lie in suspense until the opponents in the case had had an opportunity to settle via
an acceptable monetary payment. This right to atone, however, is a significant difference. As
Anne Irene Riisøy argues, the difference between these terms was semantic, each bearing
distinct legal connotations.81 While the circumstances seem to have varied depending upon
the type and gravity of the crime, in most cases it seems that if a man became subject to a
sentence of útlagr, his livestock and other property was to be seized until he offered to meet
the demands of the law.82 It is this submission that seems to have been the key component. In
a society with a king, the public peace became the domain of that king, with any violations an
affront to him personally. Any individual or group who committed a violent or damaging act
against another, therefore, not only had to settle with the victim and their relations but also
with the king. Submitting to the demands of the law represented the willingness of an
individual to abide by the rules of society. Running off like a beast into the forest, on the other
hand, would warrant just such treatment - if the fugitive wished to behave like a beast, than
they could be hunted down like one in turn.

There were three terms to refer to this atonement, or payment, out of outlawry, skógar-
kaup, landkaup, and friðkaup; namely, a purchase made to regain the right to return
from the forest, right to reside in the country, and return into the protection of the law,
respectively.83 But while the terminology may have subtle differences in connotation, the
basic principle of each was the same: this was a purchase made by an outlaw to return in
peace to the society from which they had been banished. The successful completion of the
payment would see the full reinstatement of legal rights and protection to the individual. The
amount of this payment may not have been uniform but, in most cases, it seems to have been
forty marks, the equivalent of 138 head of cattle; no small amount to pay, especially in light
of the fact that although this payment served as reparation to the king for the breach of his

82 Keyser and Munch, Norges gamle Love, 72.
83 Friðkaup shall be the term used from hereon to refer to all three fines, as it best represents the concept that the
outlaw was buying their way back into the peace and protection of the law (the other two terms, while also aptly
crafted, more heavily emphasize the geographical conception of outlawry; the legal reality shall be emphasized).
The fredløyse, as the Gunnhild Vatne Ersland describes the outlaw in modern Norwegian (literally peace-less),
was effectively purchasing back the fred, or peace, they had previously enjoyed.
peace, it went nowhere toward compensating the victim or victims whose atonement would also have to be paid before the outlawry sentence could be absolved. It would thus have been a very expensive prospect, paying the various atonements to the victim, their kin, and the king (and, depending on the crime, possibly the church as well); potentially crippling. There were two saving graces that may have applied here, however, and to these will we now turn.

Firstly, it was provided by law, and the articles on this subject are quite detailed, that one’s kin group was legally obligated to assist in the payment of atonement. Those of closer relation were responsible for paying a greater proportion of the sum. Secondly, there is a provision stated in Article 32 of the Christian Laws Section, which holds as follows: “Oc söke konongr. æða syslogmenn hvarom tveggia til handa. oc take hinn skulld sina fyst upp efter þvi sem domr dómde. En sect hvarstveggia se skipt efter fiarmagne.” (‘And let the king or his officials bring suit in behalf of both, but let him [the complainant] be paid his dues first according as the doomsmen have decided. In either case the fine shall be assessed according to the [defendant’s] ability to pay.’) This excerpt essentially states that the fine shall be assessed according to the defendant’s ability to pay it. Presumably, the circumstances would have been adapted if the defendant was able to demonstrate his inability to pay the fine. The problem is, however, that there is no description provided in the laws of just what percentage of the wealth and property of the outlawed individual and their kin the friðkaup was supposed to represent. It was not a light fine, and was likely to have been heavy enough to act as some form of deterrent to the breaking of laws, but how heavy a deterrent was it meant to be? An answer to this question would require a far greater knowledge of the general wealth of the population of the Gulathing in the twelfth and thirteenth centuries than currently exists. That said, while outlawry may have been a tool used by the king to lay low his enemies and seize

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84 See Keyser and Munch, Norges gamle Love, 216ff.
85 But so too were kinsmen, by the same ranking system, entitled to receive a percentage of the atonement payment, should they have fallen on the side of the victim. Such measures for a balanced settlement, seeing that everyone got a cut, may have been designed to discourage violent retaliation, or simply to ensure that while the wealth in a settlement would be evenly paid out, it would also be evenly received. That one’s kin group was also facing a loss if one committed legal wrongdoing may also have been intended as a measure to discourage lawbreaking and unnecessary violence, but in an honour-based society it may well have been simply expected of kin. Indeed, there is no way of knowing if in such a society the reception of a piece of the settlement would not spur members of the kin-group to take retaliatory action, seeing the payment as offensive blood money. But again such interpretation relies largely on the interpretation of the sagas and the earliest laws, the latter of which, as has already been discussed, is impossible to know with any certainty. See Keyser and Munch, Norges gamle Love, pp. 74-82.
their property, it is unlikely to have been very different from the situation in Iceland, where measures were set in place to limit the number of vagrants and dependants in society.

2.4 Conclusion

As this chapter has sought to demonstrate, forms of outlawry took different shapes in Iceland and Norway, although there is certainly evidence of a shared common tradition. Skóggangr was not itself the most appropriate way of referring to outlaws in Iceland, which as early as 920 had been largely cleared of the birch-forests that had once covered it. As Riisøy points out, however, the term skógarkaup, conceptually coming closest to the Icelandic skóggangr, was by the mid-thirteenth century becoming quickly replaced by friðkaup; perhaps a direct result of the shifting conceptualization of punishment brought on by the centralization of the Norwegian state. Útlegð, as well, took a different meaning in Iceland than in Norway, referring instead to the state of being ‘fined’ or ‘punished’. Indeed, by the thirteenth century it was more than just vocabulary that had shifted. As has already been mentioned, the description of outlawry in the Grágás is far more detailed than that to be found in the Gulapingslög. An explanation for this can be found in the political reality. The comprehensiveness of the laws found within Grágás may well represent a reaction to the lack of any real central authority. As the famous proverb in Njála runs: “með lögum skal land várt byggja, en með ólögum eyða.” (‘with law shall our land be built, but with lawlessness destroyed.’) While similar maxims appeared elsewhere in the Nordic world, such as in Norway’s Frostaþingslög, it can be said that in Iceland it was most truly the case. The law was the only real authority that existed, and as it was largely up to private individuals to

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88 Refer to the following chapters.
89 Though Grágás is far more explicit on this issue. For example, see Vilhjálmur, Grágás, 133.
91 Though such a connection raises questions as to why Grágás does not allow skóggangarmenn to buy their way back into the peace. A matter that shall be touched upon in the following chapter.
pursue their own justice within this system, the law had to contain such amount of detail in order to be effective.\footnote{Serving as an effective tool that allowed for only a minimal amount of room for interpretation. This was both its weakness and also its brilliance. The provision mentioned again and again throughout the text, that it was law so long as the plaintiff pursued the case, gave the legal system a great deal of flexibility. Carlyle and Carlyle argue in that the main flaw of the system of medieval society was that it was too rigid in its conceptions of rights and obligations, and that this left it at risk of becoming both ungovernable and stagnant. While Grágás is no doubt comprehensive in its legal contents, the fact that it contains this proviso for the law’s enforcement provides, in some ways, an escape valve. Justice could only be pursued successfully if the plaintiff could rally enough support from within the community; and therefore those laws that were deemed less relevant, or cases in which the cost outweighed the perceived benefit, would be disregarded. Certainly, societal values of honour and right would have played no small role in determining the crimes and personal affronts that were worth bringing before the assembly (or pursuing private justice over). See R.W. Carlyle and A.J. Carlyle, \textit{A History of Medieval Political Theory in the West, Vol. III} (Edinburgh: William Blackburn & Sons Ltd., 1928), 31.}

In Norway, the case was different. The central authority took the form of a king. While not possessing absolute legislative powers, as Konrad Maurer argues, the king and his representatives would have had great influence over the decisions made by any assembly they happened to attend.\footnote{Maurer, \textit{Retskilders Historie}, 15.} The lack of details found in the \textit{Gulapingslag} on subjects such as outlawry suggests that it was not needed, much being contingent upon the word of the king, or his representatives, to dispense justice, or at any rate to reprieve individuals once judgement had been made. This is not to say that the king was infallible in this role, but he would still have been constrained to a fair degree by popular opinion and regional politics. In Iceland, such politics may have simply resulted in a reluctance to push a case through the assembly if it was unlikely to succeed, instead seeing the injured party wait for another occasion in which the wrong could be more successfully addressed. In Norway, the greater obscurity of the law in this area could have been in some sense a similar orchestration. Formal or not, that such powers of interpretation existed in the hands of the king at this stage seems evident, and so what sense was there in tying those hands by being overzealous in written detail.
3. Chapter Two: Crimes & Punishment

While in Chapter One the emphasis lay on providing a general sense of the types of outlawry provided for in Grágás and the Gulþningslög, Chapter Two shall focus on those crimes that were punishable by outlawry. In the interest of length, two categories of crimes have been selected as best reflecting the impact centralized power had on punishment: those found within the Christian Laws Section, and violent offences. Indeed, it is in the way each legal system treated the punishment of these crimes that the realities of power Iceland and Norway, at least as is portrayed within these laws, can most clearly be seen. On certain issues, these realities had minimal impact. Iceland’s chieftains, whose duty it was to oversee the assemblies and to nominate judges and courts, had no formal powers by that office to create new laws; though as a collective when sitting on the logrêta, they could influence it. The Norwegian king, though he evidently had no small leverage over the legislative process, did not in the first half of the thirteenth century possess formal powers over it. The differences between the two laws are notable, however. The chieftains did receive the aladþfestr, no doubt a measure meant to provide incentive to support plaintiffs in the judicial process, but this paled in comparison to the scope of those fines owed the king when one broke the law. Indeed the former should be viewed more as legal fees than anything else, while the latter, in what shall be the most consistent argument throughout this chapter, represented a step not too far away from conceptual ownership of the law. Other explanations can be made for the disparity in the use of fines, however, and these shall be presented in the section on Christian Laws.

3.1 Christian Laws

3.1.1 On the Matter of Baptism

The first section to be found in both the Gulþningslög and Konungsþóbók is the Christian Laws Section, and while the first sentence in each declares the Christian religion and that all must put their faith in Christ, thereafter a key distinction becomes evident. The fact that principals could transfer plaintiff status to another no doubt also assisted in this - for the share received by the plaintiff in the confiscation court was far more substantial than the aladþfestr. See Vilhjálmur, Grágás, 127, 167-69. Granted, in the first sentence the difference is already clear, with the position and importance of the king enshrined, it is mentioned in the Gulþningslög: “oc láðar drotni varom heilum. se hann vinr varr. en ver hans. en gud se allra varra vinr.” (‘and that our lord may have strength and health; may he be our friend and we his friends, and may God be a friend to us all.’) This, is in contrast to the Icelandic text, which is quite blunt in stating: “Pat er upphaf laga vata, at allir menn scolo kristnir vera a landi her. oc trva a ciN Guþ fopur oc son oc helgan anda.” (‘It is the first precept of our laws that all people in this country must be Christian and put their trust in one God, Father, Son, and Holy Ghost.’) See Keyser and Munch, Norges gamle Love, 3; Larson, Earliest Norwegian Laws, 35; Vilhjálmur, Grágás, 3; Dennis et al., Grágás, 23.
Grágás, the scribes proceed immediately to the issue of baptism. Here it is stated that failure to have a child properly baptized was punishable in most cases by lesser outlawry, any who obstructed the process were either fined three marks or punished with lesser outlawry as well. In the event that a man or woman was obligated to baptize the child in the absence of a priest, if the priest later came to believe that the baptism had been incorrectly administered, “þa varþar fiþorbaþs Garþ korlom oc konvþm. xij. vetra gomlvm.” (‘then the penalty is lesser outlawry for anyone, man or woman, of twelve winters or more.’) Two things are signified by this passage. Firstly, that expectations were placed on the Icelandic population to be familiar with central elements of the Christian faith. The words to be uttered in the baptismal process, and the actions required as well, were to be known. Secondly that, in some matters at least, no distinction was made between man or woman in the eyes of the law in Iceland, at least not in terms of the Church law. A woman could be sentenced to outlawry just as soon as a man, so long as she was above the age of twelve winters.

There is stark contrast with the structure of the Gulapingslog, which opens with the issue of succession, and proceeds with many other administrative and organizational matters, such as the setting of assembly days, the building and maintenance of churches, and mass days; all before the subject of baptism is breached (an even that finally occurs in Article 21). When the matter of baptism finally is discussed, it is done so with some variation to the way it is treated in Grágás. It is more concise in that it does not provide so many situational scenarios, and it provides more detail on the subject of how soon a child was to be baptized after birth. On a stronger note, while Grágás states that a priest who refused to baptize a child was subject to lesser outlawry, in Gulapingslog the charge was simply a fine of three marks to the bishop. Indeed, if the child was not baptized within the appointed term, the punishment was a fine of three oras. Three marks were to be paid if it was longer than two

98 Vilhjálmur, Grágás, 3-7.
99 Ibid, 6; Dennis et al., Grágás, 25.
100 Grágás states that it was lawful for a woman to teach a man this process if he were ignorant. While ignorance in such matters may have been excusable in most circumstances, especially in the matter of a child’s baptism, if a priest or person knowledgeable in such things were not found in good time, such ignorance may well have proven a great liability. Ibid, 6.
101 The system was based on the Christian feast-day after which the child was born, and while it differed based on the time of year, a father usually had no more than several months in which to baptize his child. On this matter Grágás is uncharacteristically vague, stating simply that it should be done at first opportunity. See Keyser and Munch, Norges gamle Love, 12; Vilhjálmur, Grágás, 3.
102 Significantly, in the event that a fine for the breaking of Christian laws was worth more than three marks, half would then go to the king, and half to the church. This shall be expounded upon further in the next sub-chapter. See Keyser and Munch, Norges gamle Love, 13.
terms and, if the baby’s baptism was delayed for longer than twelve months, the man would forfeit all of his property; he would then have to confess and do penance. It was only if he refused this last condition that he would be forced to depart the kingdom with his unbaptized child. So it is here that we find a trend that seems to continue throughout both laws: the Gulaþingslǫg seems to rely far more on the use of fines for crimes and misdemeanours, crimes that Grágás would see punished by outlawry. In the context of the Christian Laws, only one real argument can help to explain this disparity.

3.1.2 An Economic Argument

The economic position of Iceland and Norway in relation to each other is a subject that has been, if not altogether neglected by scholarship, not explored to a merited extent. A three mark fine, such as that charged a priest for refusing to baptize a child, was the equivalent of about 10 heads of cattle. Not insignificant, certainly, but just what percentage of the wealth of an average person, or indeed, an average priest, in Norway in the twelfth and thirteenth centuries did this amount represent? While such a study would not be an easy endeavour to undertake, with the lack of sources probably being one reason why the topic has not been pursued as vehemently by scholars of medieval Scandinavia as it has by their continental and British counterparts, it would undoubtedly be worth the effort. Even if the availability of sources discourages such an approach, they do not prohibit it. It is unlikely, for example, that the fines decreed in the law would be an entirely unrealistic depiction of what people could afford; heavy they may well have been, but impossible? Extremely doubtful. With this judgement in mind, it is not unreasonable to propose that the reason for this disparity in the frequency of fines versus outlawry in the Icelandic context was an economic one. The prevalence of lesser outlawry found within Grágás existed for the very reason that the people of Iceland in large part could not afford to pay fines like they could in Norway. But then, why not simply demand lower amounts for fines?

For a society that placed so much importance on ensuring that everyone belonged to a household and was provided for, it might appear strange that the dominant form of

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103 Keyser and Munch, Norges gamle Love, 13.
104 Keyser and Munch, Norges gamle Love, 74.
106 There is a stark difference between the three mark fine, which was the only form of fine (and punishment other than outlawry) found in Grágás, and the forty mark fine stated by the Gulaþingslǫg as the price of redemption for útlegðarmenn.
punishment for a breach of law was to deprive an individual of his property, and thereby his ability to provide for his dependants, deporting him abroad for a period of three years or more.\textsuperscript{107} A closer look at this issue, however, may suggest otherwise. The bulk of those laws whose breach meant lesser outlawry could be construed as a mark of the ability of one to properly provide for himself and his household and dependants.\textsuperscript{108} Lesser outlawry might therefore be seen on similar terms as the practice of the state today of removing children from the care of those deemed to be unsuitable parents. Indeed, one of the primary purposes of the confiscation court, in addition to the confiscation of the outlaw’s property, was ensuring that any dependants of an outlawed individual were to be transferred elsewhere and provided for until the outlaw’s return.\textsuperscript{109} The outlaw was sent abroad, on probation as it were, and returned, as may well have been hoped, with a better awareness and respect for their societal responsibilities. The time abroad may also have helped to allow tensions to simmer down in a situation in which the crime could have led to feud; removing the catalyst from the situation in the hope that wider-scale violence would not erupt, thus providing a juridical alternative to violent action.

There was another function to the use of outlawry over fines, for why tax further an already poor population when there was another option available. Icelandic outlaws could well have served in a similar manner as that which Timothy Bolton argues was the case for Iceland’s skalds: faring abroad to seek fortune and the economic opportunity that was not so freely available at home.\textsuperscript{110} Lesser outlaws enjoyed the same rights abroad as they had enjoyed in Iceland prior to their sentence,\textsuperscript{111} and while it was certainly not the case that all lesser outlaws would return to Iceland with more wealth than they had possessed prior to their

\textsuperscript{107}Vilhjálmur, \textit{Grágás}, 128-31.
\textsuperscript{108}This is true even of the provision for properly baptizing a child. The concept of baptism was of central significance in the middle ages. Baptism not only brought a new child into the community, religious, but also society generally (for while distinction was made between temporal and spiritual power, no such division was marked for society as a whole), but the failure to baptize a child was basically consigning it to a eternity in hell (an action worse than murder at this time). For example, see William F. MacLehose, “Suffer Little Children: Baptism, Heresy, and the Debates over the Nature of the Child,” in “A tender age”: cultural anxieties over the child in the twelfth and thirteenth centuries (New York: Columbia University Press, 2006), accessed May 27th, 2017, http://quod.lib.umich.edu/cgi/t/text/text-idx?c=acls;idno=heb99013.0001.001;rgn=div2;view=text;cc=acls;node=heb99013.0001.001%3A7.1#.
\textsuperscript{109}Vilhjálmur, \textit{Grágás}, 86-87.
\textsuperscript{111}Vilhjálmur, \textit{Grágás}, 96.
departure, it may have been hoped that they would. The fjörbaugarmenn may thus have been as much a product for export as in the manner of homespun and dried fish, sent abroad in the hope that it would see a profitable return.

While outlawry was far more prevalent in its use in the Christian laws of Grágás than in the Gulapingslög, common to both is the affirmation that outlaws were not to receive Christian burial in consecrated ground. In Iceland, this directive was aimed at skógar-menn, although even these could be redeemed if the bishop of the district permitted them to be. In Norway, it was simply applied to anyone who were found dead in outlawry, which included “udaða menn. drottens svica. oc morðvarga. trygggrova. oc þiova. oc þa menn er sialver spilla ond sinni.” (‘evildoers, traitors, murderers, truce breakers, thieves, and men who take their own lives.’) It is therefore apparent that in becoming an outlaw, it was not just the society temporal and the protection of its laws that one became excluded from, but also the spiritual community. The banishment of anyone from the chance of going to Heaven was a profoundly serious form of punishment in the medieval world, and it was not one that was taken lightly; generally reserved, as it was, for those who had committed truly terrible, often violent, crimes, and it is thus to these violent crimes that we now direct our attention.

3.2 Violent Crimes

3.2.1 The King’s Monopoly

While the explanation for the prevalence of outlawry over fines in the Grágás provided above may serve especially well in the context of the Christian Laws Section, and for other non-violent crimes as the case might be in which the fines that were charged (most notably in the Gulapingslög) were destined for the church and not the royal coffers, a different interpretation can be brought to bear in the treatment of violent crimes in the two laws. It is a common feature of the fully-formed state that it holds a monopoly on violence. Any violent acts carried out by individuals or groups without state-sanction are in breach of the law, and the perpetrators are punished accordingly. In Iceland, which as Sverrir Jakobsson

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112 Such is the impression given by the portrayal of many lesser outlaws in the sagas. See Poilvez, Inner Exiles, 10-12.
113 Vilhjálmur, Grágás, 12.
115 The inclusion of drottens svica is quite interesting. Treason would more often be considered a temporal crime than one spiritual. That the king’s traitors were included in this truly spiritual form of punishment suggests a notable dependence of the church on the king in Norway. Such dependence is well acknowledged, and was by no means one-way, as shall be discussed in greater detail in the following sub-section.
remarks, was a land experimenting in the establishment of a government without a state,\textsuperscript{116} the law addressed the issue of violence, but, without a state-apparatus to ensure that no breach of the law went unpunished, it was up to private groups and individuals to ensure that justice was carried out.\textsuperscript{117} This was not so true of Norway. As Fredrick Pollock observed: “All existing civilized communities appear to have gone through a stage in which it was impossible to say where private vengeance for injuries ended and public retribution for offences began, or rather the two notions were hardly distinguished.”\textsuperscript{118} The impression given in the \textit{Gulapingslog} affirms this view, that there was no such cut-and-dry scenario. Indeed, it seems likely that the two conceptions of justice coexisted for a time, the latter growing ever more ascendant at the expense of private vengeance. It is this state of coexistence that the \textit{Gulapingslog} portrays, and it is no more apparent than in those articles addressing the issues of assault, man-slaying, group crimes, and murder.

A rather long passage, in the second last article of the Christian Laws Section of the \textit{Gulapingslog}, summarizes well the position of violence in medieval Norwegian society as portrayed in this thirteenth century law-code. Bandits and thieves, murderers, practicers of witchcraft, men who carried off other men’s wives or daughters in violence and without their consent, assassins, and men who took revenge for outlaws; any and all who engaged in such acts were considered permanent outlaws. However, if those assassins were acting in the service of the king: “late refsa til landreinsanar. oc friðar.” (‘to rid the land of criminal vagabonds and to promote peace.’)\textsuperscript{119} Herein lies evidence of the king’s employment of men to patrol the kingdom and rid it of outlaws to maintain or promote peace or, at the very least, that such state-sponsored violence was already enshrined in the law in Norway by the early-to-mid thirteenth century. It is evidence as well, for the king’s concern for the peace of his

\textsuperscript{117} Outlawry was an important tool in this regard. Unlike in many modern Western states in which people charged with murder or manslaughter retain certain rights, skógarmenn in medieval Iceland lost all right to legal protection, and could be killed at will. With no state monopoly on violence, there could be no punishment for carrying out private justice, as private and public conceptions of justice in this society were far more intertwined than they are today.
realm. As soon as the predominant power in a land comes to take a central interest in the peace of the land, the peace becomes the domain of that power.

This was certainly the case in Norway, and the composition of punishment under this system reveals that a mastery over the management of the peace, and therefore a monopoly on the violence that could be used in the realm, was a lucrative enterprise. Fines that did not go to the church, or were above the rate of three marks, would go to the king or be divided equally between him and the church. Crimes punishable by common outlawry were only redeemable by paying a fine of forty marks to the king. Crimes punishable by permanent outlawry would see the entire property of those offenders confiscated, and only a pardon by the king could redeem them. Quite significant in this is the reference to atonement, that “ef vigande verðr utlagr. þa missa þeirrar botar. En þa er vigande verðr dauðr. þa tecr ervingi við þe.” (‘But if the slayer is outlawed, there are no atonements; and when the slayer dies his heir assumes the responsibility for the ax.’) It would appear that, with regard to an outlawed individual’s property, all would, in theory at least, go to the king. Only after the outlaw had been killed would the victim’s kin be entitled to atonement from the outlaw’s heirs. However, running contradictory to this is the passage in Article 162, which states that if a man, including all of his property, became outlawed at a thing, “þa scal armaðr gera fimtar stefnu skulldar monnum ollum til. have hverr sina skulld þeðan sem vattar vitu. fyrr en armaðr take.” (‘the bailiff shall issue a five-day summons to all the creditors, and each one shall have what is owing him so far as the debt is known to witnesses before the bailiff takes [anything].’) It is not uncommon in any system of laws for contradictions to exist; here is no exception. Nevertheless, it seems likely that the latter policy was the more realistic, as it exists in similar forms in several other articles. So, in any case in which atonement or debt

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120 The traditional role of the king in Norwegian society was likely little more than that of a leader in war. However, this role seems to have expanded over time to include more civilian and judicial matters. In Rome, the duty of the emperor to his people was to provide for their welfare, and defend and maintain justice throughout the empire. The rediscovery of classical philosophy on the subject of governance and rule had a strong bearing on continental conceptions of kingship. To what extent and how early these ideas came to affect kingship in medieval Norway is contested, but it seems quite apparent in the progression of the laws that at least from the twelfth century on Norwegian kings were expanding upon their traditional role. For example, see: Larson, *Earliest Norwegian Laws*, 5, 20-24; J.H. Burns, ed., *The Cambridge History of Medieval Political: c.350-c.1450* (Cambridge: Cambridge University Press, 1988), 34; Keyser and Munch, *Norges gamle Love*, 4-5.


122 Or an adjusted amount based on what the offender could afford. See *Ibid*, 19.

123 ‘Ax’ in this instance referring to one’s duty to pay the wergeld, or atonement. See Larson, *Earliest Norwegian Laws*, 150; Keyser and Munch, *Norges gamle Love*, 74.


was owed to private individuals, priority would be given first to them. The remainder would go to the king. The law, and so the institution of outlawry, while still looking after the freemen’s interests, was clearly being used to benefit the king.\textsuperscript{126}

### 3.2.2 An Eye for an Eye

In point of fact, there still existed some rights to the recourse of violence for the inhabitants of the \textit{Gulapingslög}. The law still defended the right of men to defend themselves and their property against the ravages of aggressors. The following extract demonstrates this well: “Nu veitir maðr òðrom handrân. en hann skirskotar undir vatta. þa er hinn seccr .iii. morcom. er hann rente. Nu ef hinn rennr í brott með þann grip. þa rennr sa epter er atte. oc vígr at hanom. þa fellr hann utlagr.” (‘If a man attacks another and robs him, and the deed is called to the attention of witnesses, the robber shall owe a fine of three marks. If he runs away with what he took, let the owner pursue him; and if he slays him, he falls as an outlaw.’)\textsuperscript{127} An individual therefore had every right to kill and attack another, so long as the other had attacked them first, or provided instigation.\textsuperscript{128} As long as there existed sufficient evidence that the action had been instigated, and that witnesses had been present who could attest to that fact, the issue should not have been difficult to resolve.\textsuperscript{129}

Looking at it from this perspective, the picture does not look altogether very different from \textit{Grágás}: “Þat er mælt. at maðr a sin at hefna ef hann vill sa er á verþr unít til þess alþingis er hann er seylldr at sökia of averkin oc sva þeir menn allir er vigs eigo, at hefna. En þeir eigo vígs at hefna er vigsacar ero aðília. Sa maðr fellr o heilagr fyrir honom er a honom van oc sva fírir þeim monnom öllum et honom fylgja.enda er rétt at aðrir menn hefne hans ef vilia. til iæfn lengðar avars degr.” (‘It is prescribed that a man on whom injury is inflicted has the right to avenge himself if he wants to up to the time of the General Assembly at which he is required to bring a case for the injuries; and the same applies to everyone who has the right

\textsuperscript{126} Again, though the king’s right may have held more value than the average \textit{bóndi}, or freeman, it did not exclude it. See Lawrence M. Larson, \textit{Earliest Norwegian Laws}, 14, 21; Aron Ia. Gurevich, “The Early State in Norway,” in \textit{The Early State}, ed. Henri J. M. Claessen and Peter Skalník (London: Mouton Publishers, 1978), 415.


\textsuperscript{128} Keyser and Munch, \textit{Norges gamle Love}, 70; Vilhjálmur, \textit{Grágás}, 144-45, 155.

\textsuperscript{129} Indeed, even if no witnesses existed, and an individual had killed another, the law encouraged them to publish their crime. The \textit{Gulapingslög} allowed them to pass by two houses, but by the third house they had to publish, regardless of the inhabitants. \textit{Grágás} was a little more generous, requiring the killer to publish their crime at the first house they did not feel in danger of doing so, but specifying that it had to be done within twelve hours of the crime, or of their return to an inhabited area if the killing took place in the mountains. In either case, if the individual went without publishing their action, the crime would be considered murder, in both \textit{Grágás} and the \textit{Gulapingslög} this was among the worst acts one could commit; to be punished accordingly with the harshest form of outlawry. See Keyser and Munch, \textit{Norges gamle Love}, 61-62. Vilhjálmur, \textit{Grágás}, 154.

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to avenge a killing. Those who have the right to avenge a killing are the principals in a killing case. The man who inflicted the injury falls with forfeit immunity at the hands of a principal and at the hands of any of his company, though it is also lawful for vengeance to be taken by other men within twenty-four hours.)\textsuperscript{130} \textit{Grágás}, therefore, like the \textit{Gulapingslög}, provided the legal proviso that when a man assaulted another, to a sufficient degree and uninstigated, he sacrificed his legal immunity on the spot, rendering himself \textit{úheilagr}.\textsuperscript{131} \textit{Grágás} also sets a very clear timeline in which vengeance could be taken. If a man was assaulted, wounded, or even killed, he, or his principals (in the event the man was killed),\textsuperscript{132} had every right to seek vengeance upon the perpetrator. It seems that in such instances, these men had the period from the assault until the General Assembly in which to take action, at which time they would have to present a case to the assembly and wait for litigation to successfully deliver an outlawry sentence before, and if, they could again take legally-sanctioned violent action.\textsuperscript{133} Private vengeance appears thus to have been enshrined in both laws. So long as there was evidence and witnesses to attest to the fact that one had struck first, the victim had every right within the law to retaliate to whatever extent was deemed necessary. An eye for an eye, perhaps, but just as likely, and just as legal, a life for an eye.\textsuperscript{134}

3.3 Conclusion

While there are certainly similarities that exist between the two legal systems, the differences that can be identified are often quite notable. In some sense, it is as if the \textit{Gulapingslög} had two layers: the one containing the (seemingly older) influence of customary

\textsuperscript{130} Vilhjálmur, \textit{Grágás}, 147; Dennis et al., \textit{Grágás}, 141.

\textsuperscript{131} \textit{Úheilagr} translates directly as ‘unholy’. In this instance, however, it seems to refer to an individual’s legal immunity, or rather lack thereof. Such vocabulary lends itself rather well to the occasion, considering the connection to the fact that men who were \textit{úheilagr} were excluded from Christian burial. On a separate note, if the victim decided to avenge the blow with his own strike at the same place and time, the matter became more complicated. Nine neighbours to the site of action were to be called to decide on who made the first assault, and a panel of twelve was to make decision in regards to the blows exchanged. See Vilhjálmur, \textit{Grágás}, 157-158; Zoëga, \textit{Concise Dictionary}, 456; Cleasby and Vigfusson, \textit{Icelandic-English Dictionary}, 661; Fritzner, \textit{Ordbog}, 692.

\textsuperscript{132} While it depended upon existing kin of the individual slain, the principal usually took the form of the slain man’s son. See Vilhjálmur, \textit{Grágás}, 167.

\textsuperscript{133} If the sentence was to fall short of full outlawry, the slighted party would have lost valuable opportunity to take revenge. Any action they took thereafter, unless the perpetrator neglected the conditions of his sentence (presuming he received lesser outlawry; or regional outlawry, if the matter fell to private settlement - however, as has already been discussed, this type of sentence is not mentioned at all in \textit{Grágás}) and opened himself up to such danger.

\textsuperscript{134} Strong penalties were allotted in both laws for the wounding and maiming of another. No doubt in part this is related to the issue of dependants in these societies: to maim a man meant impacting his ability to provide for himself and others. In such communities in which hard work had to go in to producing food and feeding everyone, and indeed, it is likely that, regardless, this could not always be done, it was almost better to kill a man and so at least make one less mouth to feed than to add further burden to society. See on maiming: Keyser and Munch, \textit{Norges gamle Love}, 66-67; Vilhjálmur, \textit{Grágás}, 144-149.
law, upon which the shared tradition with Grágás would appear to be based, the second layer (the newer), accommodating the growing prerogative of the expanding royal office and state. Pollock’s view regarding public and private retribution is therefore evident. Private vengeance, just as it formed the backbone for Iceland’s Grágás, still had a place in Norway’s legal system and society. Private individuals were well within their rights to avenge wrongs committed on them, so long as those wrongs were recognized by the law.\textsuperscript{135} Public penalty was also coming to play a significant role, however. Heavy fines and confiscation of property by the king, coupled with provision for his employment of flugmenn, or bounty hunters, to track down outlaws loose in the realm, suggest that the stage was beginning to change for private vengeance. The centralization of power in Norway does not, at this point, seem to indicate a complete monopoly over violence by the state, as it did still allow for private retribution to occur.\textsuperscript{136} However, the monopoly of the king over the matter of outlawry which, barring lesser fines, marked the sole form of punishment in medieval Norway, was in essence a monopoly over violence in itself. While the king did not yet control the law in itself, he did control the means by which men who had broken the law could return into it. So long as an individual was outside of the law, their life was essentially forfeit — open to anyone to end without penalty.

This marks the greatest ideological difference between punishment and redemption in the Gulapingslög versus that found in Grágás. In Grágás, the law was supreme, but only so far as it had interested parties to enforce it. Specific sentences and terms of punishment were laid out for specific crimes; and private settlement, where and when it occurred, would have to have been just as explicit. It was then in the hands of the plaintiff and his supporters to

\textsuperscript{135} These rights and limitations applied to everyone. While the Gulapingslög is perhaps notably lacking in any such reference, the Frostapingslög, a law-code dated somewhat later from the area around Nidaros (Modern-day Trondheim), is most explicit: “Engi maðr scal aftörf orðum geru hvárfi konungr ne annar maðr, en ef konungr gerer, þá skal or scera oc fara látu fylki òll innan. oc fara at honum oc drepa hann ef taca má. En ef hann kemz undan. þá skal hann allðregi koma i land aptr. En hverr er eigi vill fara at honom skal giallda mer. en ef svá ef þá feller.” (‘No man shall attack another in his home, neither the king nor any other man. If the king does this, the arrow shall be sent forth through all the shires; and [men shall] go upon him and slay him, if they are able to seize him; and if he escapes he shall never be allowed to return to the land. And whoever refuses to join in pursuing him shall pay [a fine of] three marks, and a like amount shall be due for failing to forward the arrow.’) The king therefore, while his person may have been more valuable than the average freeman, was bound by the same laws that ruled his subjects. While he was shaping the laws to work in his favour, he was not himself above them. See Keyser and Munch, Norges gamle Love, 172-173; Larson, Earliest Norwegian Laws, 278.

\textsuperscript{136} Imsen argues that prior even to 1200 a “‘modern’ local administrative apparatus” was in place, with the realm divided into some fifty districts each governed by a sýslumáðr, whose role it seems was quite diverse, comprising military, judicial, and tax-collecting functions. This structure, was by no means complete, but it provided a permanency to the presence and authority of the king that could not have been maintained otherwise. See Imsen, “Introduction,” 23-24.
enforce the sentence they had seen imposed. The law, outlawry included, was a tool for social order, much the same as feuding. In any society, it only functions if the vast majority of the population respect and abide by it. In medieval Icelandic society, there was the added addendum that the law would only function if enough of the population were willing to enforce the penalties incurred for breaching it. In the *Gulapingslög*, while the laws laid out which crimes were punishable by what, and while the freemen shared in the responsibility for enforcing punishment, there does not appear the same emphasis of responsibility which *Grágás* places on the plaintiff. Indeed, once an outlaw had eluded whatever initial chase that had been given, it was as much the prerogative of the king or his local representatives to see justice carried out, as it was the victim’s of the crime; and it was completely the king’s prerogative to accept, or not, any outlaws back into the peace. This marks the great difference of the law under a centralized power: the general population and the power that presided over it were to hold each other accountable. It is towards this issue of accountability and how the law was institutionalized that we shall now turn. By analyzing how processes of litigation functioned under each legal-political system, and how a sentence of outlawry could come to be imposed, a better picture on the extent of kingly powers in Norway in the thirteenth century can be acquired, and how Icelandic society operated in its absence.
4. Chapter 3: Litigation & Settlement

4.1 Introduction

In the preceding chapters, the reader has been introduced to the varying types of outlawry in each collection of laws. As well, the argument has been made that many of the primary differences between the systems of outlawry were economical in nature. In Iceland, the private system was such that outlawry was meant to compensate the victims directly affected by the crime, and the punishment recognized the limited resources of the people. In Norway, this same objective was still in place, but the huge fines levied from útlégðarmenn who wished to return into the peace, not to mention the confiscation of outlaw’s property, of which a substantial portion often went to the king (once creditors had received their due), indicate that royal efforts to foster a monopoly on the peace were strong; the profits from which boosted the further expansion of the state. In this final chapter I shall seek to clarify one final aspect, the judicial-legislative system, and how the process of litigation, which is to say how a sentence of outlawry, was carried out and imposed. How did the process of public settlement function in each society, what influence did the king have over this, and why was private settlement allowed for in the legal system portrayed by Grágás but expressly forbidden in the Gulapingslög? These are the questions that shall be addressed, and in the process it is hoped that the rough sketch created in the first two chapters, on how outlawry was used as a tool to maintain each political system, will be completed.

4.2 Public Settlement

As far as can be discerned, public settlement, which is to say the litigation of cases through the assembly, was the primary mode through which legal disputes came to be resolved in the Gulapingslög. In Grágás as well, the impression given is that public settlement was the main method for the resolution of legal conflict. However, unlike in the Gulapingslög, Grágás allows for the possibility of private settlement. More detailed discussion on this topic shall be provided in the following section, but for now the public process portrayed in the two laws shall be explored: how did a sentence of outlawry come to be issued, and what differences existed in the manner in which this was carried out under each system? In the interest of space and continuity, this process shall be considered in the context of a reported slaying.

4.2.1 Open Societies
In both *Grágás* and the *Gulathinglög*, the matter of publishing one’s deeds, ill or otherwise, was incredibly important. As Laurence M. Larson argues, it was a vital principle in medieval Norwegian society that any dealings taking place between individuals be made public knowledge. The key features of any transaction were to be made known and set on record. The fact that writing at this time was still in the domain of the elite meant that a group of men would be brought in to witness the arrangement; in this way, if legal dispute ever arose over the matter, the same men could be brought in to provide witness. Essentially, any and all business transactions, if they were to be considered legitimate, had to be completed in the presence of witnesses.

The same principle applied to crimes. It was in most cases highly advantageous for witnesses to have been present during a violent incident. Such witnesses, who would play an important role in the ensuing litigation, could establish the facts (the guilty party, the circumstances surrounding the event, and so on), which would on the one hand save valuable time and energy, from a juridical perspective. On a broader societal note, however, such clarity could also help to combat the issue of violent retaliation. It has already been noted in the previous chapter that committing a violent act on another, in the majority of cases, resulted in the immediate forfeiture of one’s legal immunity. In the event that there were no witnesses to a killing, and the killer did not own up to their deed, there was a very great risk of the kin of the slain making assumptions as to the responsible party or parties, and taking action of their own along these lines. While such assumptions may have often been correct, in the absence of a witness, any violent action taken would have been committed without legal sanction, opening up the avengers to retribution in turn, legal or otherwise. Such a premise thus held far greater risk of causing a feud that could quickly grow to become unmanageable, as opposed to if the guilty party had announced the killing as their deed from the outset, and so contained the near inevitable retaliation to those deserving of it. It is likely for this reason

Although the discovery of over 670 rune sticks in the wake of a fire at Bryggen, in Bergen, has given rise to the idea that the indigenous writing system was far more utilized in everyday life than had previously been thought. The use of such sticks varied in purpose, but the marking of property and record of transactions are two such ways. Knut Robberstad has suggested that the oldest committal of the laws to writing may have occurred using runes. See Terje Spurkland, *Norwegian Runes and Runic Inscriptions* (Woodbridge, England: Boydell and Brewer 2005), p 184; Aslak Liestøl, “Correspondence in runes,” *Medieval Scandinavia*, Vol. 1 (1968), 17-27; Knut Robberstad, *Rettssoga I* (Oslo: Universitetsforlaget, 1976), 158.

The impression given by *Grágás* suggests a similar culture existed in Iceland.

that *nãðing* crimes, as they are referred to in the *Gulapingslög*, were so harshly punished; and perhaps why the issue of reporting a slaying is so well-addressed in each law.

**4.2.2 The Slayer’s Report**

While differences exist, the general concept of the slayer’s report is consistent between both laws. “Maðr lysir vigi at skilum. þa scal hann ganga þingat fra vigi sem hann vill. oc lysa at nesta husi. nema þar se inni firi. nefgilldismenn. æða baugilldismenn. æða namagar hins dauða.” (‘If a man [wishes to] report a slaying in the proper way, he shall go from the place where the deed was done in whatever direction he likes and report [the slaying] at the nearest house, unless there be found inside near kinsmen of the slain man, either on his father’s or on his mother’s side, or near relations by marriage.’)\(^{140}\) Leeway was given to the killer in regard to where, and thus how soon, he had to make his report, to account for the potential danger he may have faced in publishing his action.\(^{141}\) But while the *Gulapingslög* extends this courtesy only so far as three houses (the killer to deliver their report at the third house come hell or high water), the *Grágás* is far more lenient. The publishing, in the Icelandic context, was to be done within twelve hours after the killer had left their victim. If the event had taken place up in the mountains or some remote location, then within twelve hours of their return a publishing had to be made. As the *Grágás* states “Hann scal ganga til þöðar þess er næstr er þeirra er hann hyGi ohætt fiorve sino af þeim söcom.” (‘He is to go to the first house where he thinks is in no danger on that account.’)\(^{142}\) So rather than an allowance of three houses, the man-slayer in Iceland was provided with a theoretically infinite amount of homesteads at which to make his report, so long as he did so at the first place he came upon at which he felt no risk of losing his life from the inhabitants within.\(^{143}\)

There could be a number of reasons for this disparity. It could simply have been an issue of geography and different realities of networks of friends and kinship in Iceland that made provision for a report to be made by the third house unrealistic. It could also be that in the absence of any centralized power, punishment had to be strict for serious misdeeds, with

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\(^{141}\) It would not have been the most prudent action, required by law or not, to appear on the doorstep of the family whose member you have just killed and announce to them the fact that you have done just that; especially in a society in which ideals of honour and the understanding that the use of violence was a valid form of conflict-resolution were so prevalent.

\(^{142}\) Vilhjálmur, *Grágás*, 153; Dennis et al., *Grágás*, 146.

\(^{143}\) It is unclear as to which provision took precedence, the twelve-hour time limit or the individual’s comfort in making the report. Such was likely an area open to be capitalized on by lawyers, but in any event, it was likely not in the interest of the killer to tarry to long in announcing their action.
every opportunity made available to be open about one’s actions. As the legal scholar David Friedman argues: “Since civil offences were offences in which the criminal made no attempt to hide his guilt, a reasonably low punishment was sufficient to deter most of them. High punishments were reserved for crimes whose detection was uncertain because the criminal tried to conceal his guilt. A high punishment was therefore necessary to keep the expected punishment (at the time the crime was committed) from being very low.”¹⁴⁴ In Friedman’s estimation then, sufficiently severe punishment had to be in place for certain crimes to ensure that none who committed such a crime did so in the belief that they could get away with it with only light consequences. Whatever the case, in both societies it was gravely important to publish a killing correctly. Failure to do so would have resulted in the certain failure of any legal defence: the slaying, instigated or otherwise, would have been regarded as murder, and the immunity of those found guilty forfeit with the strictest form of outlawry imposed.¹⁴⁵

The differences found in the requirements associated with the slayer’s report in each law, whatever the potential significance of them, remain relatively minor. The contrast grows, however, in the procedure that was to follow it. The Gulapingslog makes clear that as soon as report of slaying had been made, an arrow was to be sent out with the name of they who admitted to having done the act. In this way, an orvarping, or ‘arrow thing’, was called. Such an assembly seems to have been irregular, only called under such special circumstances as a killing. It may be that an orvarping would have been unwarranted if the events necessitating it fell close to the time of another assembly, such as the logbingi, provided for rather as a sort of immediate and local form of action intended to deal with urgent business such as a killing. It seems that in the case of an orvarping or in many other forms of assembly in which a legal judgement was called for, as Larson argues, that while it was the responsibility of all who attended the assembly to listen to the facts stated, and to make note of all evidence presented, these assembly-goers usually had no say in the actual judgement.¹⁴⁶ Instead, it appears to have been common for a lagadóm, or independent panel of judges, to be appointed to deliberate and present a final ruling.¹⁴⁷ No such special assembly seems to have been allowed for in Grágás; any business of killing was to be raised at the alþingi or, at one of the regional spring assemblies. At these as well, a logdóm would have been appointed to hear and pass

¹⁴⁴ Friedman, “Private Creation,” 408-09.
¹⁴⁵ Vilhjálmur, Grágás, 154; Keyser and Munch, Norges gamle Love, 62.
judgement on a case. While the Norwegian lagðómr consisted of six or twelve individuals, appointed by the þing and out of the hands of the plaintiff or defendant or their parties, the Icelandic version seems to have been comprised of about thirty-six judges nominated by chieftains, though these nominations were open to challenge by the litigants if their qualification could be called into question.

4.2.3 Growth (& Decline) of the (Free) State

Although it would be simple to attribute every difference found between the two laws to the presence of a king, or lack thereof, one should not always fall so quickly upon this crutch. It must be remembered that many of Norway’s various laws and legislative structures originated in a time prior to the presence of any strong and central power. While the argument of certain scholars, such as Gerhard Hafström, that certain elements found within Scandinavian laws written down in the thirteenth century can be traced back to several hundred years earlier, should be approached with some caution, it should not be disregarded entirely. The institution of the orvarþing should therefore not so rashly be accredited to the fact of kingship. Still, the reality suggested in the Gulþingslög was that while the institutions of assemblies may have been based upon a tradition of independent freemen coming together to address problems and disputes that had arisen, the Norwegian king had been gaining more and more power over the make-up of these assemblies. Evidence of this can be found in Article 3, which dictates the number of assembly-goers attending from each fylki, and notes the changes that the process underwent from Óláfr kyrre Haraldsson (1016-1030) to Magnús Erlingsson (1162-84). Magnús decreased the number by about one hundred and fifty attendees. Again, while neither the king nor his officials may have had formal power to enact laws or pass sentences without the approval and consent of the assembly, if the king or a prominent representative attended the assembly and expressed a certain wish or opinion, a very significant influence would likely have been exercised on

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148 As each chieftain was entitled to appoint one judge, the exact number of judges serving on these courts can be called into dispute, on the same grounds that the exact number of chieftaincies detailed in the laws has recently been. See Jón Viðar Sigurðsson, Chieftains and power in the Icelandic commonwealth, trans. Jean Lindsøren-Nielsen, The Viking Collection vol. 12. (Odense: Odense University Press, 1999), 39-62.

149 Vilhjálmur, Grágás, 38, 46-50.


151 Although certainly, addressing the issue of a killing as soon as possible was in the interest of public institutions, whose authority over the sphere of justice would not necessarily have been helped by private individuals taking said justice into their own hands before the matter of guilt had been established.

152 A territorial/administrative area roughly corresponding to a county, or English shire. See Larson, Earliest Norwegian Laws, 5.

whatever final decision was made.\footnote{Konrad Maurer, 
*Retskilders Historie*, 15.} Formal powers or not, it is evident that the king in Norway, from the eleventh century on, at least, was able to shape the legislative activities of his realm with increasing ease; the example provided above an excellent illustration of this.

Contrasting this was the Icelandic system, whose chieftains no doubt could exert considerable influence, but seem to have been far more constrained by the legislative structure. As Helgi Þórðarson maintains, there did not exist a great deal of difference between the most influential householder and the least powerful chieftain.\footnote{Helgi, “Friends,” 304.} Even in the late twelfth and into the thirteenth century, when the chieftaincies became concentrated in the hands of fewer and fewer individuals, it was unlikely that any chieftain came to exercise so much authority that they could completely disregard the protests of freemen and householders, especially if such protests were valid, as in the case of the appointing of a lögðóm. It is even more improbable that they ever grew to a stature whereby they could influence the legislative practices of the lögretta in the way that the Norwegian king looked likely to have been able to. Even though the lögretta was composed in large part of chieftains, while the system was working as it was meant to even the voices of the more influential chieftains would have been balanced out by the whole. As the system deteriorated, with chieftains becoming more territorial as fewer individuals collected more and more chieftaincies (perhaps a side effect of the fact that a chieftaincy was regarded as property and could be purchased), the lögretta still had to be filled. If the few remaining chieftains appointed qualified supporters to serve on the lögretta with them, deadlock may have been one probable outcome. Indeed, the only danger at this later stage then was if one individual managed to collect a significant majority of chieftaincies.\footnote{The situation in this later scenario then does not feel too far off from a modern parliamentary system, disregarding the lack of democratically elected representatives.} As Jón Viðar Sigurðsson argues, this is essentially what happened when Norway’s king finally acquired overlordship of that island.\footnote{Jón Viðar, 
*Chieftains and Power*, 74-76} At any rate, whatever the political realities, in an average case of man-slaughter the proceedings likely progressed with little interference; though of course, this depended on the players involved.
Once an *orvarping* had been called, the accused — or self-proclaimed guilty party — was to be summoned to answer to the charges. A similar process was called for in *Grágás*, although in this case the plaintiff, in the presence of witnesses, was to personally make the home summons to the accused: “Han *scal* uinna eið at því at hann segi sok sina fram, oc queða a þat huerium hann stefnði eþa um huat hann stefnði. eþa hvat hann let honum uarða. oc queða a tíl huers þings hann stefnði. oc hann stefnði logstefnvo oc hann segir sua skapaþa sok sina fram. i dom yfir hoði N.N. sem hann stefnði honum.” (‘He is to swear it on oath that it is his case he is presenting and state whom he summoned and for what he summoned him and what he made his penalty and state to which assembly he summoned him, and that he summoned him with a legal summons, and that he presents his case before the court, speaking especially to N.N., in the same form as he summoned him.’) In order to present a case to the assembly, one had to ensure that they had already taken the necessary steps, which included the summons. While the accused may have been summoned, it would appear that, in the case of Iceland anyway, they were not necessarily even permitted to attend the assembly, instead having their principal serve as the defendant. In both laws, the defendant had just as much right to defend himself as the plaintiff had to prosecute him. The initiative, however, usually lay with the plaintiff. In Norway, to contest any point made by the prosecution, the defendant was obligated to provide one additional witness to the number already employed by the plaintiff. If they failed to do this, their defence would fail. In Iceland, witnesses gave testimony before a panel, whose majority verdict would decide the sentence.

### 4.2.4 Witnesses & Oath-Giving

When it came to the witnessing of the slayer’s report, while the *Gulapingslóg* acknowledged the testimony of a single man at the assembly as sufficient, *Grágás* required five neighbours from the site of the slaying to serve witness to the publishing of that action. These individuals would later serve on a panel of nine neighbours at the trial. Dennis et al.

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158 Alternatively, the wife of the slain man could summon the assembly to the site of the slaying where, so long as twenty-seven were in attendance, a decision could be rendered on the spot. See Keyser and Munch, *Norges gamle Love*, 60–62.

159 Vilhjálmur, *Grágás*, 54; Dennis et al., *Grágás*, 65-66.

160 If the correct format for conducting this summons had not been adhered to, and subsequently correctly recited to the court, the case would have been spoiled and the plaintiff would have had to begin again. See *Ibid*, 55.


162 A statement from his household would also be accepted, to supplement his own testimony.
argue that one reason for this could be the fact that this panel of neighbours represented the best local knowledge, selected as they were on the basis of their proximity either to the site of the slaying or to the home of the man being prosecuted. Through the panel of neighbours, Dennis et al. suggest, it was likely presumed that the local feelings regarding the man on trial would be made evident in the verdict.\footnote{Dennis et al., \textit{Grágás}, 8.} Justice, in this mindset, did not then necessarily represent the sentencing of a guilty man on the basis that he was believed guilty beyond a reasonable doubt, but rather it was a matter of whether or not the wider public felt he was deserving of the sentence. In a way this makes sense, for in a society in which the law could only be enforced privately, what purpose did it serve to convict a man to a sentence that did not hold promise of being enforceable anyway? If a significant proportion of the population, and in particular his immediate neighbours, looked likely to support the man regardless of what the courts decided, a sentence of outlawry could only serve to delegitimize the juridical process, rather than reinforce it; especially as the survivors of the victim would be entitled to a paid atonement in either event. As Friedman states: “A fine is a costless punishment; the cost to the payer is balanced by a benefit to the recipient.”\footnote{Friedman, “Private Creation,” 408.}

The system of oath-giving in Norway was not altogether different. While there were different levels of oaths required for different levels of crime, ranging from threefold to the more elaborate twelvefold oath, the general principle was the same throughout. In the context of the threefold oath, the defendant would stand with two of their peers on either side of them, and each would swear in turn. Larson argues that the evidence provided by the oath helpers was in essence no different from that offered by the general witness. Both seem to have been testifying according to belief as opposed to any tangible evidence, and the only real shift in the testimony offered by the two groups was that the oath helpers were required to swear an oath, while the general witness was not.\footnote{Larson, “Oath Helpers”, 146.} If just one oath-helper refused to swear to the accused’s innocence, the oath was considered to have failed and the accused, in the vast majority of instances at least, “fellr til útlégðar”.\footnote{\textquotedblright{Falls to outlawry.\textquotedblright} Keyser and Munch, \textit{Norges gamle Love}, 62.} Not only this, but if the oath failed and there were oath helpers who had sworn to the accused’s innocence, they became discredited.
and lost the right to serve as an oath helper, or indeed as a witness, in any future cases. In addition, they owed a fine of three marks to the king.\textsuperscript{167}

These consequences can in themselves be seen as strong motivation to play above board; if even one of the oath helpers was known to have been doubtful of the accused’s innocence, the other oath helpers would have been hesitant to lay their own reputations on the line, knowing there was a likelihood that they were to be sacrificed.\textsuperscript{168} The fine to the king is just one more example of the process of royalization, in which the king imposed his own fines on more and more illegalities. It should be noted, and considering the stakes involved it is perhaps unsurprising, that the giving of an oath was only performed as a last resort. If all else failed, the accused could make this one last effort to escape what would otherwise be their fate; however, as Larson suggests, this recourse was generally reserved to those situations in which the facts were unknown, and in which the accused vehemently maintained their innocence.\textsuperscript{169}

Oath-giving represented somewhat of an extreme example and, in the context of a slayer’s report, was far more likely to be necessary if the plaintiff decided to accuse a different individual than the one who had initially delivered the report. The main issue to be addressed after a report had been made was whether the killer had been sufficiently instigated to warrant killing the other individual; in other words, had the slain man sacrificed his immunity through a previous action. If sufficient witnesses could be found to attest to the fact that the slain had indeed done so, bearing in mind Larson’s opinion that it was just as much, if not more so, a matter of belief as opposed to hard evidence that witnesses were expected to supply, the defendant would likely have been spared any sentence. In both Iceland and Norway, if it was accepted that the slain had forfeit their immunity prior to their death, the killer could walk away free of penalty. If the two men had engaged in argument prior to the act, but it was established that the victim had not made himself \textit{úheilagr}, the case would have

\textsuperscript{167} \textit{Ibid}, 32. \\
\textsuperscript{168} The \textit{Gulathinglag} provides only a general sense of how these oath helpers were to be selected. In terms of the sixfold oath it states that “Nu skal nemna menn .vi. a hvara hond hanom iamna at rette við hann. oc hava två af þeim firi þýui oc bruna. einn of alla aðra settar eðda.” (‘Now, six men shall be named [and placed] on either side of the accused, all of his own rank; in cases of theft or arson let him have two of these, but [only] one in other cases that call for the sixfold oath.’) Larson, drawing mostly from the slightly younger \textit{Frostathinglag}, presents a slightly more comprehensive picture. He argues that the courts made assurances that the defendant did not bring too many of his own friends into the oath with him. Several weeks were usually given to the defendant to prepare for the oath, suggesting that finding men willing to serve as these “oath helpers” was not necessarily an easy endeavour. See Keyser and Munch, \textit{Norges gamle Love}, 56; Larson, \textit{Earliest Norwegian Laws}, 121; Larson, “Oath Helpers,” 146. \\
\textsuperscript{169} Larson, “Oath Helpers,” 143-44.
been slightly different. Presuming the killer had made the report and accepted guilt, but the defense failed to demonstrate that the slain had forfeit immunity, the penalty would, in theory, have been a sentence of outlawry. In Iceland, a confiscation court would have been held, atonement secured for the victim’s kin, and the man condemned to skóggangr. In Norway as well, an unprovoked killing was to be punished with ubótamál.

It seems that in Norway, in the event of death, it was only in matters of accidents, so-called acts of insanity, or flokks vig, in which two groups of men fought each other, that a killer could procure a lighter sentence. In terms of accidental death, the circumstances varied. If the survivors of the dead man chose to press charges against the man who had been present at the accident, he could only refute it with a threefold oath.\(^{170}\) If he had been indirectly responsible, he could pay atonement to the kin and that should have concluded the matter. If the slain individual was closely related to the slayer, such as a father, or a mother or a sibling, then the slayer was classified as a madman. They were deprived of inheritance, it going instead to the one who was next in line, or to the king if no one but the slayer stood to inherit. But the slayer in this case retained their right to remain in the land and to whatever property they possessed. In the event of flokks vig, or fighting between bands of men, if neither group admitted to having provoked the fight, “pa scolo þeir giallda giolldum aftr frendum. oc .xl. marca kononge. af hvaromtveggia flocke.” (‘they shall pay the wergeld to the kinsmen [of those who are slain] and each band shall pay forty marks to the king.’)\(^{171}\) So it seems that each group was considered as their own entity, and, while also paying atonement to the kin of the fallen men, were spared from being treated as individuals, owing the king the friðkaup as a collective instead. Grágás does not seem to have recognized group crimes in the same manner as the Gulabingslog, and states explicitly that there was no such thing as accidents.\(^{172}\)

There were only three ways in which the slayer could escape skóggangr (barring the killing of one made úheilagr). Firstly, in cases of insanity, the candidate for this consideration had to have first done injury to themselves, before another. The insane were granted sustenance, but were otherwise under the same penalty as a sane individual who had committed the same crime. Secondly, those younger than twelve winters were under no legal penalty for killing; the only caveat being that their kinsmen were responsible for paying atonement to the family

\(^{170}\) Keyser and Munch, Norges gamle Love, 65.

\(^{171}\) Ibid, 64; Larson, Earliest Norwegian Laws, 134.

\(^{172}\) Vilhjálmur, Grágás, 166.
of the slain. Finally was the option for private settlement, and it is to this issue that we shall now turn.

4.3 Private Settlement

*Grágás*, detailed as it is in what would appear to be the predominant form of judicial procedure, did provide another avenue of litigation. Private settlement entailed exactly that, a private settlement reached between two groups or individuals, free from the confines of the public system of assemblies and courts. Mostly free, anyway, for even a settlement reached privately still had to be ratified by the *logrèttta* before it could be considered valid. An argument has proven popular among scholars that the disparity between public and private settlement in the *Grágás* does not reflect the reality of the prevalence that private resolution had in Icelandic society, as is portrayed in the sagas. I myself am inclined to agree with this position, for while unmentioned in *Grágás*, there was a third form of outlawry in Iceland. Reference to it only exists in certain sagas, and it is for this reason that it was not included in the discussion in Chapter One. It is also for this reason that it is brought up now, for a number of scholars, including Magnús Már Lárusson and Jesse Byock, have attributed the reason for this lack of mention in the laws to the fact that it only arose in cases of private settlements.

Several terms apply, and slightly different meanings can be attributed to each, but local outlawry, or *lokal fredløyse*, as Gunnhild Vatne Ersland describes it in her dissertation “*…til død og fredløshet…*”, basically entailed that the *fjörbaugsmaðr*, rather than serve out his exile overseas, would be banished from a certain area, or areas, of Iceland until his sentence expired.

The treatment on private settlement in *Grágás* is quite brief, and it seems likely that what is discussed on the matter does not provide a complete picture. However, what can be gleaned indicates a system with far more possibilities for resolution and punishment. Not least can this be seen in the two not insignificant provisions of sustenance and passage. It is

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176 See Ersland, “*…til død og fredløshet…*”, 22.
177 As mentioned in the introduction, a third possibility existed. Not mentioned in *Grágás* and only appearing in the sagas, regional outlawry did not stray too far from *fjörbaugsgarðr*, except instead of a three (or more) year exile abroad, the individual who received this sentence was banished from a certain area of Iceland, or restricted to a certain district. Breaking the terms of their regional confinement would open the regional outlaw up to the danger of being attacked and killed by their enemies. See Ersland, “*…til død og fredløshed…*”, 22-24.
fairly evident that under private settlement, those who would have otherwise received a sentence of skóggangr had the hope of obtaining a better deal. Indeed, outlawry could not even be imposed under private resolution unless both parties agreed to it; and if they did, there was the potential for a deal to be struck. The killer, though perhaps still being made a full outlaw, may have been allowed to retain rights to sustenance (in which case his kin could feed and shelter him without fear of legally-sanctioned reprisals), they may have avoided penalty being placed upon their property, or they may have been granted rights to passage (under which terms the skógarmaðr was granted the right to find passage on a ship abroad, very much in a similar spirit to a fjörbaugsmaðr), and perhaps avoid penalty being placed upon their property. The only caveat to the right to passage was that passage abroad may have translated into a lifetime sentence of exile, and, unlike the lesser outlaw who retained his legal immunity so long as he was out of the country, the skógarmaðr remained úheilagr wherever he went; though the opportunities for survival abroad were still likely to be better than remaining in Iceland to starve in the mountains or be killed by one’s enemies.

Unlike Grágás, which (however succinct) does at least acknowledge the option of private settlement, the Gulapingslog is quite clear in forbidding it. “Nu kenner armaðr þat manne at hann have drepit niðr konongs rette. en òðrum þat at hann have uvene fengit. En þeir kveða nei við. þa scal armaðr stefna þeim til þings baðom tveim. þa scolo þeir a þvi þingi festa firi sic lyritar eið. hvárr þeirra. at þeir hava eigi sætt gorva firi þat mal. ef þeim fellr sa eiðr. þa fellr til .xv. marca vitis hvarom þeirra.” (‘If a bailiff accuses a man of having cheated the king out of his right [to fines] and [charges] the man’s opponents with having suffered the injury, and they both deny the charges, the bailiff shall summon them both before the thing. At that thing they shall, each one of them, offer to deny with a threefold oath that they have come to any [private] settlement in that case. If the oath fails, they become liable to a fine of fifteen marks each.’) Private settlement then, was seen as an attack on the king’s right to the fines owed to him through wrongdoing. Indeed, the terminology used is very illustrative of this, men engaging in private settlement were quite literally considered to have ‘struck down the king’s right.’ Men accused of this had the right to deny it with a threefold oath but, if it failed, they each became liable to a fine of fifteen marks. Perhaps no better example exists for the presence of state monopoly over the judicial process in twelfth/thirteenth century Norway.

Private vengeance still existed in the sense that it was the plaintiff who was ultimately responsible for ensuring the judgement was carried out and enforced, though they held the right to request assistance from as many assemblymen deemed necessary to perform this function. While the Norwegian king may have at times hired groups of men to patrol areas of his kingdom and eradicate outlaws and criminals, as was discussed in Chapter 2, this was nothing like a regular and professional force; the plaintiff remained the primary driver of enforcement. Interestingly, in instances of suspected private settlement, it was an injury suffered by the one party that seems to have given rise to such suspicions, reinforcing our sense for the importance of publishing wounds in medieval Norwegian society, or at least of having witnesses on hand when it occurred; all the more so with a king determined to ensure he received the fines he perceived as his right.

4.4 Conclusion

The litigation process portrayed by Grágás is remarkably detailed and complex. For a country without a king at this time, and quite likely as a result of this fact, Icelandic society seems to have developed incredibly sophisticated institutions with which to manage legal disputes and conflicts. It punished unsocial killing with the harshest sentence provided for by the law, but allowed for an individual to avenge transgressions made against themselves, even if such vengeance took the form of killing itself. This was no doubt aimed at accommodating and appeasing the strict code of honour that still remained prevalent. The fact was that, while public institutions existed to assist in maintaining the peace, justice was very much a matter that had to be pursued privately. Indeed, that the possibility to settle disputes existed privately as well made crime a matter largely to be resolved between individuals. The Gulapingslag in contrast, while bearing many similarities to Grágás, is far less meticulous in its treatment on key matters, including the procedure for litigation, and it is evident that while they may have shared common roots, Norway’s legal and legislative system had experienced and was in the midst of a period of flux. Justice, while still largely expected to be enforced privately, was pursued publicly. Crime remained in many cases an issue between individuals, but by this point, in a large number of circumstances, it was also a matter between those individuals and the king. Outlawry, to those who failed to settle with both parties.

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5. Conclusion

As this thesis has sought to argue, the nature of a political system has a profound effect on the manner in which crimes are punished. Iceland and Norway in the twelfth and thirteenth centuries are an ideal example of this. The settlers of Iceland descended mostly from Norwegian stock, and it is clear that the institutions and judicial system they established in Iceland were inspired to a greater or lesser extent by those found back in Gulaping. Herein lies the virtue of a comparison between Grágás and the Gulapingslög, for while they both share common roots, both experienced roughly three centuries of development relatively independent of each other, and each under a distinct political reality. Iceland was not immune to the events and ideologies occurring and circulating throughout the rest of Europe at this time, but the reality of its geography (the Norwegian Sea must have provided some peace of mind in regard to invasion), and the distinct character of its political system from almost every other realm on the European continent at this time, probably helped to ensure that such external influences were mitigated more so than they might otherwise have been. Norway, on the other hand, though still located at the northern fringe of western civilization, was far more vulnerable to these pressures. Scholars such as Konrad Maurer, Poul Gædeken, and Elsa Sjöholm, have offered differing opinions on the extent of this influence on the judicial-political systems of Scandinavia. Even by the most conservative of these arguments, it seems clear that by the mid-to-late thirteenth century, Norway’s kingship had been affected by the same ideologies on royal power and sacral kingship that had been adopted by many of the other courts of Europe. While even within the Gulapingslög of 1240 there are clear indications that the nature and power of Norwegian kingship had been shifting, with the reign of Magnús lagabötir (1263-1280), the institutions that had been maintained by customary tradition would face serious revision.181

In Iceland, to the contrary, the laws surviving in Grágás do not seem to reflect the same strains of socio-political change that can be found in the Gulapingslög. The degrading situation through which domains were becoming established by fewer and more powerful families is not represented in the system portrayed in Grágás, although the means by which this state of affairs was brought about can be identified in the commodity-like quality in which chieftaincies were treated. Here it must be remembered that Grágás, unlike its

181 Imsen, “Introduction,” 21; Fenger, Romerret, 57.
Norwegian counterpart, was not an official law code. It was a private collection of laws whose legitimacy can never be considered a certainty, far from it. The timing of its production is suggestive, however. Just as Ármann Jakobsson and Theodore M. Andersson argue for the propaganda-like virtue of thirteenth century sagas for and against kingship, as the prospect of Norwegian overlordship grew ever more likely, the privately-produced manuscripts of Konungsbók and Stadarhólsbók may have been commissioned in a similar light: a record of Iceland’s illustrious legislative history to serve, not just as a reaction against the dilapidated state in which Icelandic society had fallen, but also as a means by which the new king could be persuaded of the validity of Icelandic institutions.

The disparity in legitimacy notwithstanding, the legal-political systems depicted in the two laws say a great deal in respect to the ways in which punishment was regarded and utilized in each society; and surely, whatever the uncertainty concerning the actual agenda behind the production of the manuscripts composing Grágás, the laws found within them must have been based upon some truth. In Iceland, outlawry was employed as a means of dispute resolution, removing the legal immunity of a serious offender, perhaps in an attempt to isolate them from their kin and limit the scale of feuding, or to ensure they left the country for a sufficient period of time to allow tensions to subside. Atonement would go to the family of the victim, and enough would be retained to provide for the dependents of the outlaw, until that time (and if) he should return. The provision for private settlement also serves to emphasize that even if there was a very strong public element to litigation in Iceland. This publicity was, as Larson argues, a necessary component of the largely oral society, and that justice was largely a concern to be settled between two groups or individuals.

In Norway, while all of the above, barring private settlement, was still of great concern, there was an additional element imposed by the fact of kingship. Atonement was not just a payment to be made by the perpetrator of a crime to the victim (or victim’s kin), but also to the king. By monopolizing violence, outlawry became a tool by which the king could greatly increase revenue to the royal office and the growing apparatus of administration. By the estimation of Halvard Bjørvik, the fines and confiscated property raised via such modes of punishment were, by the first half of the fourteenth century, the most important source of

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income to the king, forming some 35.8% of the royal revenue in any given year.\textsuperscript{183} Although this timespan is some one hundred years later than the oldest most complete surviving manuscript of the *Gulapingslög*, it is not unreasonable to believe, particularly as the king’s other forms of tax revenue were not yet as developed, that these penal fines made up a comparable, if not greater, proportion of the royal income in the mid-thirteenth century. That private resolution was strictly prohibited in the *Gulapingslög*, regarded as an affront to the king’s right to his share of the settlement, also provides strong indication to the fact that punishment in thirteenth century Norway was as much a way to line the king’s pockets and sustain the growing machinery of the state as it was to ensure the perception that justice had been served. Indeed, it can be argued that just as views of kingship were changing, so too were notions of justice.

While the Icelandic chieftains were by virtue of their office endowed with many responsibilities similar to that of the king or his royal officials, each in a general sense responsible for the oversight of certain aspects of the assembly and judicial system and ensuring that institutions operated as they were intended, the chieftains, unlike the king, possessed no monopoly on violence. They in themselves had no real power to redeem an outlaw back into the peace, and they were entitled to no huge fine of atonement independent to that owed to the victim’s kin. They are thus more aptly compared to the king’s *ármaðr* then they are to the king, although even this is a stretch, for with no royal authority above them they carried no such power to collect fines on its behalf. Indeed, it may be that with the prevalence of Icelanders at the Norwegian court in the twelfth and thirteenth centuries, chieftains became exposed to the concept of royal power and, liking what they saw, set out to recreate something similar for themselves in Iceland. The ensuing strife and chaos was as much a byproduct of kingship then as the peace which was to follow.

The violence experienced in Norway and Iceland from the twelfth to the thirteenth centuries had a formative experience on the political structures of each country. Perhaps ironically, both countries emerged from this violence with a stronger form of kingship than they had seen before. In the wake of this violence as well, in both countries manuscripts would come to be produced containing the laws of each society, as if the lawlessness that had occurred during the period of conflict had inspired a greater priority in recording the law —

perhaps that it might be better remembered should such violence return. Though like as not in
Norway, it was produced at the king’s behest to capitalize upon the new gains to his authority
while the rest of society remained weakened. Any work of writing is susceptible to the biases
and motives of its producers: the Grágás, as a private collection, is perhaps a little more open
to these biases than the Gulaþingslög, which had to be ratified by the assembly. Considering
the incredibly costly nature of manuscript production at this time, the people of this time were
likely far less inclined to cast it away over an unsatisfactory turn of phrase. Both works then,
can be argued as works of propaganda, if one a little more so than the other. However, as this
thesis has sought to illustrate, the information to be found within these laws, and the
comparative approach adopted between them, are invaluable in terms of the insights they can
provide on how outlawry was shaped and utilized by two distinct judicial-political systems.
6. Bibliography

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