

On legal terms in *Færeyinga saga*

By Peter Foote

How much the Icelandic author of *Færeyinga saga* actually knew about Faroese conditions is a puzzling question¹. He introduced some Faroese place-names, but not many, in his story, and he got Skúvoy and Stóra Dímun mixed up. He knew some authentic personal names, and he had heard excellent stories — ultimately but we cannot tell at what remove from Faroese sources — about the redoubtable Prádr í Gøtu and about feuds in the islands which he linked, as doubtless others did also, with the leadership of the Faroese and their conversion to Christianity. Politically the author seems to think in terms of his own time: the Faroes represented a single or shared *lén* under the rulers of Norway, and the individual

The following abbreviations are used in the notes: FJ — Finnur Jónsson, *Færeyingasaga* (1927); Gg — Vilhjálmur Finsen, *Grágás* Ia-b (*Codex Regius*, 1852), II (*Staðarhólsbók*, 1879), III (*Skálholtsbók*, 1883); Fritzner, *Ordbog* — J. Fritzner, *Ordbog over det gamle norske Sprog* (1883—96); *Gul.* — *Den ældre Gulathing-Lov* in NgL I; Heusler, *Strafrecht* — A. Heusler, *Das Strafrecht der Isländersagas* (1911); Heusler, *Fehdewesen* — A. Heusler, *Zum isländischen Fehdewesen in der Sturlungenzeit* (Abh. der königlich preussischen Akad. der Wissenschaften, Jahrgang 1912, Phil.-hist. Cl.); *KL* — *Kulturhistorisk leksikon for nordisk middelalder* (1956—); Maurer, *Vorlesungen* — K. Maurer, *Vorlesungen über altnordische Rechtsgeschichte* I—V (1907—38); NgL — P. A. Munch, R. Keyser, G. Storm, E. Hertzberg, *Norges gamle Love indtil 1387* (1846—95); ÓH — Ólafur Halldórsson, *Færeyinga saga* (1967); *Den store Saga* — O. A. Johnsen, Jón Helgason, *Den store Saga om Olav den hellige* (1941).

¹ For general discussion of this point see P. G. Foote, *On the Saga of the Faroe Islanders* (1965), 10—11, 13; ÓH viii—xii.

in charge could be called *sýslumaðr*². We think we know that this answers to conditions that obtained in the latter part of the twelfth century³. We can only guess how far it is relevant to earlier ages, for our knowledge of the period before c. 1040 depends on this entertaining Icelandic saga and of the period from c. 1040 to c. 1170 is virtually nil.

If we are interested in discovering what might be genuinely Faroese in a text like this, we must obviously start by isolating elements that cannot be readily explained in Icelandic terms and then attempt to identify them more closely. Given the background, one may assume that what is not Icelandic may be Faroese or may be Norwegian, or Faroese and Norwegian at one and the same time; it may also be fiction or reflect knowledge of conditions outside the West Norse sphere altogether. Among the few things in the saga that lend themselves to comparative investigation is the legal terminology (taken in a broad sense) which the author used in his various tales. The prime difficulties in such a study are obvious: the total absence of native Faroese material and the narrow range of Norwegian material come first; then the comparatively high degree of homogeneity in the way of life of the early Norse Atlantic communities; and then the fact that we work from the precepts and procedures of law codes and not from real knowledge of practice — how far they might or did deviate is hard to tell. After these remarks no one will expect much in the way of conclusions to the brief consideration of the legal material in *Færeyinga saga* that follows. They will be right.

We should begin by looking at those chapters of the saga that are preserved only in Snorri's *Óláfs saga helga*, separate or incorporated in *Heimskringla*⁴. Information they contain

² FJ 4/30—31, 5/9—10, 40/2, 52/14, 80/30—31; 23/12—13; ÓH 8, 50, 67, 116; 28. There are also references, doubtless anachronistic, to *sýslur* in Norway, FJ 20/3, 24, 41/16, ÓH 24, 25, 52.

³ See the references in Foote, *op. cit.*, 11, notes 1—2.

⁴ Cf. FJ v, ÓH xxiii; see *Den store Saga*, chs. 116, 118, 124, 132—3; *Heimskringla*, chs. 127, 129, 135, 142—3.

about legal matters clearly cannot be used with complete safety unless there is evidence to show that it is probably not an addition or alteration by Snorri. The chapters tell of the death of Þórálfr úr Dímun in Norway and of Karl mœrski in the Faroes. Possibly significant points are these:

(1) After the death of Þórálfr at Hernar in Hordaland an *orvarþing* was held.

(2) Sigurðr Þorláksson offers to clear himself of a charge of murdering Þórálfr with oaths *svá sem lög yður liggja til*, or failing that by *járnburðr*.

(3) Sigurðr is later made to say of King Óláfr: *er konungur sjá brogðóttir . . . lét hann fyrst drepa Þórálfr, en nú vill hann gera oss at óbótamönnum*.

(4) The Faroese leader Gilli is four times given the title *løgsgumaðr* (discounting the instance FJ 69/6).

(5) Þórshöfn on Straumsey is the site of the Faroese assembly.

(6) The assembly was held in late spring or early summer and lasted some days.

(7) At the assembly Práendr is made to refer to silver which his *landbúar* have delivered to him.

(8) At the assembly Sigurðr Þorláksson was *útlægr fyrir áverka við þann búðarmann Gilla, er hann hafði á unnit, en Þórðr ok Gautr fyrir víg Karls*.

Of these points (5) is obviously a Faroese fact and (6) hardly a distinctive detail: both are also paralleled elsewhere in the text of *Færeyinga saga*, so that it is likely that Snorri is faithfully reproducing his original⁵. The other points merit a word or two of discussion.

⁵ See FJ 7/1, 37/20—21, 41/27—8, 43/5—6, 70/23; 40/7, 48/4, 53/4; ÓH 10, 48, 52, 53, 97; 50, 60, 68. In the last three instances cited the phrase *stefna þing* is used, as if the writer was thinking of *ad hoc* meetings. The season for the assembly is given as *at vári, um várit* and *um sumarit* (FJ 41/27, 43/5, 70/23; ÓH 52, 53, 97); on its duration cf. FJ 70/24, ÓH 97. It is not possible to see whether the writer thought of a spring-time assembly followed by a summertime one, and he seems to have had little notion of local assemblies elsewhere in the Faroes. On thing-places

(1) The *qrvarping*, an assembly summoned immediately after an offence, belongs distinctly to the sphere of Norwegian law and does not figure in Icelandic terminology before *Jónsbók*⁶. It is an authentic word in the circumstances described. Outside legal texts the word appears very rarely: the only instances seem to be in the story of Steinn Skaptason, also in *Óláfs saga helga*, and as a variant reading elsewhere in *Færeyinga saga* (both of course refer to Norwegian events)⁷. The latter may possibly be an authentic reading. Snorri obviously knew this feature of Norwegian legal practice, and one may think it likely that the author of *Færeyinga saga* did too, but one cannot be sure.

(2) The words *svá sem lög yður liggja til* are obviously those of someone writing from outside the Norwegian system in which compurgation was a major means of prosecution and defence⁸. This is an appropriate point of view for an Ice-lander because in his country compurgation hardly existed⁹, but we cannot tell whether Snorri or the original author of the saga was responsible for the phrase. And of course, even if we knew that the words had stood in the saga from the beginning, we still could not conclude that they reflected Faroese as well as Icelandic reality. The allied appeal to *járnburðr* can be given no special significance because ordeal was

see A. W. Brøgger, *Løgtingssøga Føroya* I (1937), 201—7; Jóannes Patursson, *Føroya søga* I (1939), 98—100; on the dates of the general assembly in later times (officially 16 June, in fact 29 July) see K. Robberstad, *Fróðskaparrit* 10 (1961), 42.

⁶ *NgL* V s.v.; E. Hertzberg, *Grundtrækkene i den ældste norske Proces* (1874), 197—203; Maurer, *Vorlesungen* V 536—7, 775—7.

⁷ *Den store Saga*, 378/6; Ólafur Halldórsson, *Óláfs saga Tryggvasonar en mesta* II (1961), 48/7; cf. FJ 22/7—8 and variant readings *ad loc.*, ÓH 27. — I am extremely grateful to Miss Christine Fell, University of Leeds, who in 1968 abstracted for me the references for this word and some others from the files of Den Arnamagnæanske Ordbog, and to Dr Ole Widding, chief editor of the Ordbog, for this fresh instance of his ready courtesy in making the dictionary material available to others.

⁸ See e. g. *KL* III (1958), 492—9 (Lars Hamre).

⁹ *Gg* III 599.

known throughout the Scandinavian world in Christian times as a means of strengthening an assertion or as an ultimate test where a defence could not be substantiated by oaths or witnesses¹⁰.

(3) The word *óbótamaðr* here appears to have its normal Norwegian legal sense of irredeemable outlaw, a (living) man from whom, or on whose behalf, no atonement is acceptable — if Sigurðr were found guilty of *morð*, this would be his situation. In Icelandic, on the other hand, the term is not common, and when it occurs it has another aspect, being used of a (dead) man for whose killing no atonement can be expected — the same as *ógildir*¹¹. We cannot tell whether the word here is due to Snorri or the author of the saga, but it may be noted that in *Egils saga*, ch. 82, the word is used in its Icelandic sense¹², and many people nowadays are disposed to attribute that saga to Snorri.

(4) The only places where Gilli is given a title outside these chapters extant in *Óláfs saga helga* is in text only known to us in *Flateyjarbók*. There he is called *lqgmaðr*, but no significance can be attached to this because the same term is consistently used in *Flateyjarbók* where Snorri's text has *lqgsqgumaðr* (other manuscripts of *Den store Saga* make the same alteration)¹³. We can however be confident that in the original *Færeyinga saga* Gilli was given some title referring to his

¹⁰ See e. g. *KL V* (1960), 551—5 (Lars Hamre, Magnús Már Lárusson).

¹¹ Karl von Amira, *Das altnorwegische Vollstreckungsverfahren* (1874), 19; Maurer, *Vorlesungen V* 71; Heusler, *Strafrecht*, 117, especially note 3. One might perhaps argue that the posthumous aspect was also to the fore in the definition in *Den ældre Eidsivathing-Christenret*, II 40 (*NgL I* 405): *Gridnidingar. trygfoe. hæmsoknar vargar. þiofuar dæmdr. drottens suikarar. morduargar. brænnu vargar. þær ero aller obota men ok æi græfuer i kirkiu garde.*

¹² Finnur Jónsson, *Egils saga Skallagrímssonar* (Altnordische Saga-Bibliothek 3, 1894), 281, note to 19; Halldór Halldórsson, *Egluskýringar* (1967), 101.

¹³ FJ 69/20, 70/17, ÖH 96, 97. See FJ 60, note to 21, ÖH 124, note 2 to ch. 48 (read »Gilli« for »Leifur«); cf. variant readings in *Den store Saga*, 332/3, 361/12, 413/3, 419/9, 11 (whence FJ 69/6).

legal office, and it may be thought unlikely that Snorri would use the term *lqsgogumaðr* without some warrant for it. Although the possibility that it is his alteration cannot be dismissed, the explanation that lies nearest to hand is that he found it in his source, and Finnur Jónsson and Ólafur Halldórsson, the most recent editors of the saga, have acted on the assumption that he did. See further p. 174 below.

(7) The word *landbúi* appears to have been normally used in Iceland in a technical sense, »Nabobonde til en Jordeiendom«, who functioned in the legal process as »Vurderingsmand« or »Kvidmand«¹⁴. In Snorri's text the word evidently has its common East Norse and Norwegian sense of »tenant«¹⁵. Although this was obviously intelligible in Iceland, we can hardly regard it here as an Icelandic term transferred to Faroese conditions. It seems rather to reflect a realisation that the Faroes were foreign, but again, whether this is Snorri's realisation or the first author's we cannot tell. It may be noted that Snorri uses *land(s)búar* of tenants in Norway elsewhere in *Óláfs saga helga*¹⁶.

(8) The word *áverki* in Norwegian legal use retained a general sense of »effect, result of action« and it is found in various contexts, including some less commonly where it means »voldsomhed . . . mod person«, as in the saga here¹⁷. In Icelandic, on the other hand, the special sense of »wound, injury« for *áverk(i)* is predominant though not exclusively so¹⁸. Here it seems more natural as an Icelandic than as a Norwegian expression, but it is only a question of degree and we should

¹⁴ Gg III 636; cf. Fritzner, *Ordbog*, s. v.

¹⁵ The word is used alongside *leiglendingr* in Norwegian, and this latter is usual in Iceland, where *landseti* is also found. (According to *Den store Saga*, 418/8, note ad loc., two manuscripts have *landsetar* for *landbúar* at this point in the text from *Færeyinga saga*.) *KL X* (1965) has a separate article, *Landbo*, for Denmark, Sweden, Finland, and another, *Leiglending*, for Norway, Iceland.

¹⁶ *Den store Saga*, 7/20, 60/1.

¹⁷ *NgL V* s. v.

¹⁸ Gg III 587—8.

not underestimate our ignorance. The word could have been used equally well by the original author as by Snorri. On the word *útlægr* see p. 169 below.

Among legal terms and matter elsewhere in *Færeyinga saga* the following have a certain distinctive character¹⁹. They may all be set down to the author's account.

(9) After the death of their father Prádr and his elder brother *skiptu arfi með sér, ok vildi hvárrtveggi hafa heima-bólit í Gøtu . . . þeir lögðu hluti á, ok hlaut Prádr*²⁰.

The Icelandic laws do not prescribe how property should be divided. Vilhjálmur Finsen suggests that »naar der ikke var mindelig Overenskomst, foretoges det vistnok ved Nabobønder«²¹, but there is no reason why a private arrangement to draw lots should not have been made. Lot-casting was widely used in other matters in Iceland where a priority had to be established²², though I am not aware of any mention of it otherwise in cases of inheritance. (In *Gísla saga*, ch. 10, and *Eyrbyggja saga*, ch. 14, for example, we find variants of the principle which allows one of a pair to make the division and the other to have first choice.) In mainland Scandinavian laws, on the other hand, lot-casting is expressly prescribed for division of property as well as in many other cases²³. In *Gul.* it is, for example, explicit in §§ 87 and 123 (*Um Oðals skipti*,

¹⁹ The following phrases have legal connections but are not distinctive enough to be useful. I cite them in the hope that someone else may be able to squeeze something out of them. FJ 30/38—9, ÓH 41 *lífs grið ok lima ok landsvist* (cf. FJ 40/1, ÓH 50 *landsvist*); FJ 39/10—20, ÓH 49—50 *manngjöld; fjorráð; selja mansali; ógildir; Qzur skal eigi fé bæta fyrir þann ójafnað, er hann settiz í eignir þínar ok var þar drepinn*; FJ 41/9—11, ÓH 51—2 *fór hann . . . til Frostapings, ok þá flutti Sigmundur mál Þorkeils . . . at Hákon jarl gerði hann sýkenan ok gæfi honum landsvist sína at frjálsu*; FJ 65/8 *var. loc.*, ÓH 89 *húsþing*; FJ 68/8, ÓH 94 *landskylðir*; FJ 70/14—16, ÓH 97 *þingheimr; lögtekit*; weapons banned at assembly where *menn skulu lögskil sín tala ok spekðarmál*.

²⁰ FJ 2/3—5, ÓH 4.

²¹ Gg III 585.

²² Gg III 624.

²³ KL XI (1966), 13—16 (Svale Solheim, John Granlund).

Um arfskipti) and implicit in § 282 (*Um bræðra skipti*)²⁴. It is an odd fact that apart from this instance in *Færeyinga saga* the phrase *leggja (h)lut(i) á* appears to occur only (and rarely) in Norwegian writings, including these legal articles just cited²⁵. But we can hardly believe it had such a distinctive rarity as this might lead us to suppose, and it is better to attempt no assessment of the phrase's significance, especially against so nebulous an Icelandic background.

(10) In a quarrel arising from *mannjofnuðr* Eldjárn Kambhott hit Einarr with a stick and hurt his shoulder; Einarr hit back with an axe, knocked him out and opened his head. Einarr sought protection from Brestir. Hafgrímr, the chief in Suðrey whose man Eldjárn was, summoned Einarr to Straums-eyjarþing. It says (a) that Brestir *hafði lýst þegar frumblaupi því, er Kambhott hafði veitt Einari, þá er nýrðit var*; (b) that at the assembly Hafgrímr *gekk at dómum* to prosecute the case, but (c) Brestir *ónýtti . . . málit fyrir Hafgrími ok óhelgaði Kambhott at fornum landslögum, er hann barði saklausan mann*, and (d) he *bleypði upp dómnum fyrir Hafgrími*, and subsequently (e) they *sóttu Eldjárn til útlegðar ok fullra sekða*²⁶.

(a) The term *frumblaup* is apparently not known in Norwegian law, which uses *laup*, *atlaup*; it is the regular term in Icelandic²⁷. Proclamation of an offence, *lýsing*, was of course a necessary part of procedure in both Norway and Iceland²⁸.

(b) The use of the plural in *at dómum* presumably reflects the situation in Iceland where after the reforms of c. 960 four *fjórðungsdómar* were set up at the Alþingi. In Norway the

²⁴ NgL I 43, 53, 94; cf. *Den nyere Lands-Lov*, V 18, VI 1, 3 (NgL II 89, 93, 94; Ólafur Halldórsson, *Jónsbók* (1904), 98, 120.

²⁵ The recorded instances seem to be only NgL I 53 (= NgL II 89), NgL II 94 (= *Jónsbók* 98), NgL I 41 (*Gul.* § 82 = *Járnsíða* § 101, NgL I 290), and C. R. Unger, *Thomas saga erkibyskups* (1869), 268/15 (in the Norwegian *Quadrilogus* translation).

²⁶ FJ 6—7, ÓH 9—11.

²⁷ Gg III 612.

²⁸ See e. g. *KL XI* (1966), 24—8 (Arne Bøe, Magnús Már Lárusson).

system was different, because the private nature of the *dómr* long remained uppermost, but there is no reason to suppose that a similar plural form would ever have been appropriate to conditions there. Neither does it seem likely that a plurality of courts was a Faroese reality. The writer may possibly have had the notion that two courts would suit his division of the islands into two spheres of authority, the northern *lén* under Brestir and Beinir, the southern under Hafgrímr.

(c) The counter-charge answers closely to formulation in Icelandic laws (*Sa maðr bleypr til ohælgis ser er frumlaupe logmæto bleypr. til manz*) and the laws give specific rights of retaliation²⁹. Norwegian laws have the same provisions but their phraseology is less closely comparable. The motif is found not infrequently in other sagas³⁰. When the writer says *at fornum landslögum*, he was doubtless not implying a contrast with some hypothetical *ný lög*. It means rather law established from time immemorial, law unquestionably right and accepted³¹. The compound *landslög* probably reflects another recognition of the foreignness of the Faroese scene (an Icelander would hardly have used it if he was thinking of his own native law³²), but it may merely add some notion of universal validity to the idea of permanency conveyed by *forn*.

(d) The breaking-up of a court by force was doubtless possible under many circumstances. It is found elsewhere in Icelandic stories³³. Here it seems to be a dramatic extra, since the legality of the defence and the counter-charge seem un-

²⁹ Gg Ia § 86 (145), cf. § 87 (151), Gg II §§ 263—76 (296—305); *Gul.* § 189 (NgL I 68—9); *Den ældre Frostathings-Lov* IV 20, 22 (NgL I 164, 165), cf. *Járnsíða* § 29 (NgL I 270).

³⁰ Heusler, *Strafrecht*, 115—7.

³¹ But cf. Klaus von See, *Altnordische Rechtswörter* (Hermæa 16, 1964), 96—102. — *Landslög* (*forn*) can be used of native, secular law as opposed to *guðs lög*, canon law, and it is conceivable — but only by a stretch of the imagination — that the author of the saga meant to imply a contrast between legally justified retaliation and Christian precept.

³² It is used e. g. of foreign (Norwegian) law in Gg II 70/20, 22.

³³ Heusler, *Strafrecht*, 106; *Fehdewesen*, 67—9.

questionable. Presumably the author assumed that a legal court could be established by either of the leaders in the islands.

(e) The phrase *til útlegðar ok fullra sekða* offers a confusing combination. It may be that the author was writing in a cloudy manner and, despite the specific legal context, did not intend a specific interpretation of the legal terms he used — no more than »banishment and full rigour of the law« would mean in English, perhaps. But his legal terminology elsewhere and the fact that this does occur in a legal context mean that we cannot avoid considering the specific possibilities, even though some doubts must always remain. The root of the trouble is that, as is well known, the terms *útlegð* and *sekð* in their predominant technical usage mean more or less opposite things in Norwegian and Icelandic. The first generally means (compoundable) outlawry in Norway, a fine (usually of three marks of silver) in Iceland; the second generally means a fine in Norway, a penalty of outlawry in Iceland³⁴. There seem to be these major possible interpretations:

³⁴ Gg III 667, 685, NgL V s. vv.; K. von Amira, *Das altnorwegische Vollstreckungsverfahren* (1874), 48 (45—106); Heusler, *Strafrecht*, 124—35; *Fehdewesen*, 74—6. — Magnús Már Lárusson, *KL IV* (1959), 606, notes that »Termen *útlegð* anvendes í Grágás kun i Ia og II 204, hvor det drejer sig om no. ret.« Heusler, *Strafrecht*, 128, note 3, gives 20 examples from *Íslendinga sögur* of *útlagr*, *útlegð*, etc. in the sense of »outlaw(ry)«. The sources are *Grettis saga* (9 exx.), *Njáls saga* (5), *Harðar saga* (2), *Hænsa-Póris saga* (1), *Reykðæla saga* (1), *Fóstbræðra saga* (2). *Reykðæla saga* might have been written c. 1250 but none of the other texts is from before c. 1270 (the *Fóstbræðra saga* exx. are in *Hauksbók* only). Cf. also H. Magerøy, *Studiar i Bandamanna saga* (Bibliotheca Arnsmagnæana XVIII, 1957), 58—9 (younger *útlaga* for older *sekjan ok dræpan*). The J2 text of *Heimskringla* (ed. Finnur Jónsson, 1893—1900, II 345/19) has *sekr* for *útlagr* in no. 8 above. — It may be said in passing that the difficulty commentators find in the use of *útlegð* in *Hænsa-Póris saga* (A. Heusler, *Zwei Isländergeschichten*, 2. Aufl., 1913, xi—xii; Sigurður Nordal og Guðni Jónsson, *Borgfirðinga sögur*, Íslenzk fornrit III, 1938, 34 and note 1, cf. 41) need not arise if it is equated with *fjörbaugsgarðr* with emphasis on its compoundable nature. This equation might suit the attribution of the saga to a Norwegian-minded author in the period 1274—80, see Björn Sigfússon, in *Saga* 1962, 345—70. The

(i) Icelandic: a (three-mark) fine and maximum penalties (in terms of outlawry — *skóggangr* — or in terms of cash?).

(ii) Norwegian: (compoundable) outlawry and maximum cash penalties.

(iii) Icelandic-Norwegian: a (three-mark) fine and maximum cash penalties.

(iv) Norwegian-Icelandic: (compoundable) outlawry and maximum penalties (in terms of outlawry — *skóggangr* — or in terms of cash?).

Of these (iv) would not make much sense if *fullar sekðir* meant outlawry, and if it meant cash the sense would be virtually the same as (ii); (i) appears legally tautological, (iii) verbally tautological; (ii) would make best sense, but does not leave all problems settled.

It seems reasonable to give *útlegð* here its technical Norwegian sense of »outlawry« because this accords with the use of *útlagi* in nos. 11, 12 and 14 below and *útlægr* in no. 8 above. The ordinary Icelandic adjective for »outlawed« is *sekr*; the minor outlaw is *fjorbaugsmaðr*, the full outlaw *skógarmaðr*. A punishment of outlawry in this particular case also squares with the penalty prescribed (*skóggangr*) for *drep* in Icelandic law³⁵. The terms *útlagi*, *útlagr*, *útlægr*, »outlaw-(ed)«, and the abstract *útlegð*, »outlawry«, were of course familiar to Icelanders, but the author's consistent use of them suggests that he fully realised that he was dealing with non-Icelandic situations.

It is harder to see what precise meaning should be given to

terms *útlegð*, *útlagr*, etc. are of course usual in *Járnsíða* and *Jónsbók* and usually imply a sentence of banishment. A more general sense of »banishment, banished« for *útlegð*, *útlagi* had also long been known (cf. Fritzner, *Ordbog*, s. vv.), found not least in religious writings. They have this sense in the eloquent speech Óláfr Tryggvason addresses to Sigmundur Brestisson in *Færeyinga saga*, FJ 46/2, 21, ÓH 57—8, but this speech is undoubtedly the composition of the early fourteenth-century compiler of the expanded *Óláfs saga Tryggvasonar*, see ÓH viii. This sense also appears uppermost in no. 14 below.

³⁵ Gg Ia § 87 (149), Gg II § 273 (301).

fullar sekðir, and, as mentioned above, it may convey no more than something like »to the limit of the law«. That could imply in this case no diminution of the penalties out of deference to Hafgrímr or in respect of the more serious blow Eldjárnr received in retaliation. In Icelandic the singular *full sekð* normally means »full outlawry«, *skóggangr*, but it would seem less natural to use the plural in this sense. If, as with *útlegð*, the writer had foreign conditions in mind, he may have used the plural *sekðir* because of the various sums that went to make up the total payable in such a case under Norwegian law. According to *Gul.* a man who had been hit (*qfundardrep*) took his *réttr* from the offender and then an equal sum out of the *hundrað* (15 marks) that had to be paid to the king to compound the offender's *útlegð*. In the case of a serious wounding an offender paid *réttr*, atonement for the wound (*bætr*), the king's fine and physician's fee³⁶.

(11) In Norway Porkell Þurrafróst was *görr útlagi á þinginu*³⁷.

(12) Hákon jarl refers to Haraldr járnhaus as *útlagi minn*³⁸. On the use of *útlagi* see under no. 10 (e) above.

(13) At the assembly in the Faroes Þorgrímr illi and his sons confess the murder of Sigmundur Brestisson *svá at allir þingmenn heyra*³⁹.

The technical sense of *þingmaðr* in Icelandic is »free man contracted to a *goði*«⁴⁰. In Norwegian it was used of a man who attended the thing, bearing in mind that the central Norwegian things were not universal but nominated (albeit large) assemblies⁴¹. The word is of course immediately intelli-

³⁶ *Gul.* § 189 (*NgL* I 68—9); K. Robberstad, *Gulatingslovi* (2. utg., 1952), 347, note to p. 193; cf. von Amira, *op. cit.*, 63—4.

³⁷ FJ 22/7—8, ÓH 27.

³⁸ FJ 29/27, ÓH 38.

³⁹ FJ 60/9—10, ÓH 82.

⁴⁰ Gg III 706: »om Thingbesøgende i Alm. synes det ikke at være brugt«. Ólafur Halldórsson first drew my attention to this point.

⁴¹ *NgL* V s. v.: »i plur. snart om de ved den enkelte leilighed fremmødende, snart om samtlige til fremmøde berettigede«.

gible in the context here, but it may be thought odd that an Icelandic writer should use it when *allir (menn)* would have done as well. It seems not unlikely that he saw the *þingmenn* here as a selected, representative body of men, an audience of formal status who add to the solemnity of the occasion and the rigour of the execution. (It is thought that the Faroese thing was in fact an *alþing* and not a *nefndarþing*⁴².) Once again, it seems that the foreign nature of the scene is uppermost in the author's mind.

(14) Skopti varð útlagi af *Færeyjum*⁴³.

See the discussion under no. 10 (e) above and note 34.

(15) The boy Sigmundur says that he has learnt from Þrándr *allar saksókenir at sækja ok réttarfar sitt ok annarra*⁴⁴.

It is the latter part of this which requires comment. In the early law texts *réttafar* appears as the predominantly Icelandic form, *réttarfar* as the predominantly Norwegian one⁴⁵. Later on the latter became common in Iceland also, and its appearance in this text from *Flateyjarbók* can clearly be lent no significance. The words *rétta(r)far* and *réttr* are virtually synonymous in the sense of »personal satisfaction by prescribed legal payment«. Vilhjálmur Finsen equates them, for example, and glosses the Icelandic sense thus: »(egentl. personlig Ret), personlige Bøder, Bøder for en den Enkelte tilføiet Retskrænkelse den var i Alm. den samme for alle Samfundsklasser, og bestod af 48 Øre eller 6 Mark«⁴⁶. Hertzberg defines the words in their Norwegian use in these words: of *réttarfar*: »eg. retsforhold, nl. forsaavidt angaar nogens personlige ret, d. e. retten til bøder for personlige fornærmelser og anden overlast ofte dog ogs. om selve bøderne (= *réttr*)«; and of *réttr* (2): »den ethvert fuldmyndigt individ i tilfælde af visse betydeligere, personlige retskrænkelser tilkommende opreisning,

⁴² *KL X* (1965), 183 (Arne Bøe).

⁴³ *FJ 76/19*, *ÓH 108*.

⁴⁴ *FJ 77/19—20*, *ÓH 110*.

⁴⁵ Cf. Maurer, *Vorlesungen V* 182—3.

⁴⁶ *Gg III* 661—2.

der ydedes i form af et vist bødebeløb, hvis størrelse rettede sig efter den krænkedes stand»⁴⁷.

In saying *réttarfar sitt ok annarra* the author might merely mean, in unspecific terms, that the boy had learnt what his position under the law was and what the positions of other people were, but it seems much more likely that he meant that the boy knew what his »right« and what other people's »rights« were in accordance with the concrete definitions given above. That being so, however, the writer must have been thinking not of a system like that in Iceland, where payments as personal satisfaction of this kind were not graded, but of a system like the Norwegian one, under which social status dictated the size of the sum to be paid. A similar system was introduced in Iceland with *Jónsbók*⁴⁸, but of course Icelanders were familiar with such an arrangement long before then — they themselves took *hauðsréttr* when they were in Norway (and not resident for more than three years)⁴⁹. In his phrasing here the author again seems to have been content to remind an audience that the place he was talking about was not Iceland.

The author of *Færeyinga saga* knew something — perhaps rather a lot — about Norwegian legal matters, a fact that would need to be taken into account in any discussion about his identity or milieu, though I forbear from speculation on such matters at this moment. A point that might be made in passing, however, is the difficulty we should be in if we did not know that *Færeyinga saga* was written before Snorri's *Óláfs saga helga* and were unable to assume that it has not undergone detailed revision at any stage. On the basis of the legal terminology alone one would be under strong temptation to explain such a mixture of Icelandic and Norwegian vocabulary and notions as a post-*Jónsbók* author's projections into

⁴⁷ NgL V s. vv.

⁴⁸ Cf. e. g. Gunnar Thoroddsen, *Fjölmæli* (1967), 95—7.

⁴⁹ Cf. e. g. Jón Jóhannesson, *Íslendinga saga* I (1956), 135—6; G. A. Blom, *Kongemagt og privilegier i Norge inntil 1387* (1967), 63—6.

the past⁵⁰. From the notes above it appears that he was sometimes willing to emphasize that his story was taking place outside Iceland by using legal terms that appear inappropriate or less appropriate to Icelandic conditions. The question naturally arises whether or not he transferred elements from Norwegian practice to the Faroes because he really thought that in these matters there were no differences between the two nations. In the first of those chapters only known to us in Snorri's *Óláfs saga helga* it says that the king told the leading men from the Faroes *at hann vill hafa skatt af Færeyjum ok þat með, at Færeyingar skyldu hafa þau lög, sem Óláfr konungr setti þeim*. Later on the Faroese leaders swore to King Óláfr to keep *þau lög í Færeyjum ok þann rétt, er hann setti þeim, ok skattgildi þat, er hann kvað á*⁵¹. If these are the author's words, not essentially modified by Snorri, it would be natural then to think that he believed that Norwegian and Faroese legal conventions were generally the same. But we have small hope of discerning how far his belief was justified⁵², and it seems safer on the whole to conclude that the author used his knowledge of Icelandic law to help his story on and his knowledge of Norwegian law to reinforce the impression of a strange setting — foreign parts where Práendr, Sigmundur and the others and all their splendid mummery become perhaps that much more credible.

⁵⁰ The word *tún* is used twice in the saga, once of a Norwegian and once of a Faroese farm, in both cases with the sense of »gaardsplads«, in accordance with Norwegian and Faroese usage. The usual Icelandic sense is »enclosed home-field«, but in commenting on this point Ólafur Halldórsson (119, note 3 to ch. 12) observes that the Norwegian-Faroese sense »einnig hefur tíðkæzt í Eyjafirði«. The word could nevertheless be taken as another piece of local colour introduced by the author.

⁵¹ FJ 60—1, ÖH 83. It does not seem possible to make any useful distinction between *lög* and *réttr* or the preferable variant *landsréttr*, cf. Fritzner, *Ordbog*, under the last word, and Maurer, *Vorlesungen* I 305—6.

⁵² The existence of an independent codification of Faroese law is of course attested by the *réttarbót* of 1273 (Jakob Jakobsen, *Diplomatarium Færoense* (1907), 24), but how it may have differed from Norwegian law in any of the matters considered here is impossible to say.

Looking back over this discussion we may perhaps yet recognize one valid piece of information about the Faroese past. This is the description of Gilli as *logsqogumaðr*, certainly by Snorri, probably by the author of *Færeyinga saga*. The term is of course well known as the title of the elected president of the Icelandic *alþingi*. In Norway and Sweden, on the other hand, important legal functionaries were called *løgmen*, a title introduced in Iceland after *Jónsbók*⁵³. The author of the saga (let alone Snorri) knew enough about Norwegian affairs to know that *logsqogumaðr* was not appropriate in a description of Norwegian conditions, and he could easily have applied the un-Icelandic *løgmaðr* to Gilli if he wished to maintain the foreign atmosphere. As it is, *logsqogumaðr* is emphatically used and it must have been felt there was good reason for it. The best reason would be that it was regarded as the right Faroese term. This would accord with the theory that the name *logsqogumaðr* was more widely used in early Scandinavia than is attested by the direct witness of our sources. In Sweden *laghsagha* was used of the orally delivered law and of the district in which the law applied, and in Norway *logsaga* was similarly used of a jurisdiction; it was also a law-man's function *at segja lög*, both to pronounce what was law in a given instance and to rehearse the laws in general⁵⁴. It is thus far from likely that *logsqogumaðr* was an Icelandic neologism. In this case we may well believe that Gilli *logsqogumaðr* came to the author ready-made in the Faroese traditions that lie, however remotely, behind the fascinating and perplexing saga we now possess.

⁵³ NgL V s. v. *løgmaðr*. The *løgmen* in Norway originally formed a kind of committee at the assemblies but seem to have acquired individual status by about 1200. Cf. K. Helle, *Norge blir en stat* (1964), 126—7; P. G. Foote and D. M. Wilson, *The Viking Achievement* (1970), 90—2.

⁵⁴ Poul Johs. Jørgensen, *Dansk Retshistorie* (3. Opl., 1965), 19—21; E. Wessén, *Svenskt lagspråk* (1965), 14, 16—7.

ÚRTAK

Henda grein er ein roynd til at kanna eftir, hvørt lógamálið, ið høvundur Føroyingasøgu nýtir, bendir á, at hann hevði álitandi fregnir um Føroyar. Niðurstøðan er tann, at hann nýtti vitan sína um Íslendskar og norskar lógir til at styðja frásøgnina og at geva henni útlendskan dám, men hevði onga vitan, ið vísandi er á, um føroyskt lógarlag. Hann (ella Snorri Sturluson) var ivaleyst á beinari leið kortini í tí at nýta heitið *løgsgumaðr* um fremsta løgmalamann Føroya.