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Social and Diegetic Hierarchies in Cases of Thievery. A Study of *Mǫðruvallabók*

Introduction

The crimes of theft and robbery are naturally connected to social and economic differences: someone desires something that belongs to another individual and decides to eliminate this discrepancy by appropriating the possessions of the other. Thus, such crimes relate to the hierarchy between victims and perpetrators and have a lasting effect on the relation between both parties.¹ The parties involved usually do not only differ in their role in the crime itself, but also according to their social standing.

The Sagas of Icelanders, largely composed during the 13th and 14th century, depict events that took place in the so-called Saga Age, spanning from the settlement of Iceland (c. 870) to the mid-11th century. They illustrate a relatively homogenous medieval society of immigrated farmers and their offspring. They all decided to leave other parts of Northern Europe to start anew in a society without a king or aristocracy.² Under closer scrutiny, however, the saga society is not as homogenous as one might believe; the social classes range from mighty landlords to homeless vagrants and wealth is just one of many differentiating factors along with gender, age, religion, ancestry and so forth.

In addition, the narrative's characters are not only part of a *social* hierarchy. Protagonists and minor characters, heroes and villains are by no means equal. Instead, there is a *diegetic hierarchy* within the tales, which does not necessarily correspond with the social status of the characters. The course of a conflict is not to be understood solely by the position of the characters within the saga society; it also obeys narrative logics, which will be considered in the following.

Against this background, the sagas of a 14th century manuscript, the *Mǫðruvallabók*, are used to investigate the effects of the social and diegetic position of persons involved in theft or robbery. By what means do socially or narratively deprived persons prevent an attack as opposed to those figures with a more elevated position?

¹ Cf. Gehrlach 2016, p. 384.

² For more general information on the Sagas of Icelanders, cf. Schier 1970, Vésteinn Ólason 2011, Vésteinn Ólason 2005 and Bödl 2011.

Theft and Robbery in Old Norse Legal Systems

Theoretically, there is a clear-cut distinction between theft and robbery in Old Norse legal systems, as found for example in a 13th century collection of laws, the *Grágás*.³ Within paragraph 227 on house searches, there is a short section on seizure in general with a particular focus on theft.⁴ It is stated that

- 1) If someone takes something worth a penny or more, he shall be summoned for appropriation and condemned to double indemnity and a three-marks fine.⁵
- 2) If a man takes property from someone else worth half an ounce-unit or more and
 - a. the man who has taken it does not conceal it, then the penalty for that is full outlawry, and he is to summon him with the charge that he took the property to profit from it but not with a charge of theft.
 - b. conceals it like a thief (*leynir þiof lavnom*),⁶ then it is possible to pursue it as theft and summon him and claim that, if a panel finds him guilty of the charge, he is under penalty as a full outlaw, and in such a case a panel of twelve is to be called for.⁷

The crucial difference between seizure and theft is the level of secrecy. Theft and robbery are thereby divided according to the same rules as manslaughter and murder. As both crimes – open robbery and secret theft – are punished with full outlawry, there must be some other reason for this distinction. The following paragraph explains the difference: if the plaintiff is not successful, he is liable for slander unless he can assure that he really believed the other party to be guilty and did not want to libel the accused. The charge of slander (*vm illmælit*) can lead to a penalty of lesser outlawry. This possibility to submit countercharge against the plaintiff shows that to be summoned for theft is a severe insult and attacks the honour of the accused sensitively.⁸

The cases of theft found in the Sagas of Icelanders are of course more complex, and it is sometimes hard to decide if something was taken secretly or not. But all in all, the difficulties arise between the theoretical law code and the individual case and only in rare circumstances between the ideas of the *Grágás* and a differing

³ The name ‘*Grágás*’ refers to two manuscripts, the *Konungsbók* (GKS 1157 fol.) and the *Staðarhólsbók* (AM 334 fol.). Probably, both manuscripts go back to the same original. They shouldn’t be understood as law books in a modern sense, but as private legal collections that may contain contradictory provisions. Cf. Naumann 1998, p. 569 and Strauch 2011, pp. 235–236. The *Konungsbók* is generally referred to as the older one of the two collections, cf. *Laws of Early Iceland*, p. 13.

⁴ Cf. *Grágás* § 227, pp. 162–163.

⁵ Shortened translation according to *Laws of Early Iceland*, p. 177.

⁶ *Grágás* § 227, pp. 162–163.

⁷ *Laws of Early Iceland*, p. 177.

⁸ *Grágás* § 227, pp. 162–163. Cf. Andersson 1984, pp. 496–497; Miller 1990, p. 250.

‘saga law’.⁹ Concerning these two crimes, the crucial question is not if there are differences in detail between the *Grágás* and the Sagas of Icelanders – but whether the law is applied at all or if the disputes are solved differently by the protagonists.

Criminal Law in the Sagas of Icelanders

In the Sagas of Icelanders, legal action is taken in relatively few cases of theft or robbery. Property crimes are portrayed as offences against which the upper class of saga society defends itself without judicial help.¹⁰ This is particularly interesting in view of the differences between the legal text of the *Grágás* and its representation in the sagas. This raises the question of the general attitude of the characters to negotiations at the thing. Within the greater branch of criminal law, one could ask whether there is anything unique about these crimes. Do saga characters react differently if their property is affected or do they act according to the same strategies that solve conflicts after someone was killed?

The standard work concerning the criminal law of the Sagas of Icelanders is still Andreas Heusler’s 1911 monograph *Strafrecht der Isländersagas*, which offers the best available basis for comparisons. Heusler summarises 401 criminal offenses in his study and focusses on the disputing strategies presented in the narratives. He concludes that only a small amount of crimes is brought before court, while a large quantity is solved privately: 297 cases are solved by violent forms of revenge and in 104 cases, the parties reach a private settlement. 119 litigation proceedings remain, of which 9 are resolved illegally and 60 conclude with a private settlement. Thus, in Heusler’s corpus, there are only 50 trials carried out lawfully.

The difficulty in making comparisons to Heusler’s figures is that his calculations are not fully comprehensible. He does not provide a list of the offenses, nor does he list the individual crimes. The majority of cases are homicides, the percentage of other offenses such as theft remains unclear. In addition, the 40 Sagas of Icelanders chosen by Heusler could (as every corpus selection) be disputed. Therefore, a smaller, but clearly defined corpus shall be considered here: The sagas of *Mǫðruvallabók*. This 14th century manuscript is the only medieval collection that contains exclusively Sagas of Icelanders, as well as the largest medieval assortment of the genre.¹¹ Thus, *Mǫðruvallabók* hints to an already existing feeling of close relation and genre

⁹ On the concept of ‘saga law’ see Burrows 2009, esp. p. 36.

¹⁰ Miller 1984 discusses the various ways to settle a conflict, referring to Heusler 1911.

¹¹ The manuscript *Mǫðruvallabók* (AM 465 fol.) contains the following sagas: *Brennu-Njáls saga*, *Egils saga Skalla-Grimssonar*, *Finnboga saga*, *Bandamanna saga*, *Kormáks saga*, *Víga-Glúms saga*, *Droplaugarsona saga*, *Ólkofra saga*, *Hallfreðar saga vandræðaskálds*, *Laxdæla saga* (including *Bolla þátrr*) and the beginning of *Fóstbræðra saga*. Today, there are 200 vellum pages preserved, 189 of them stem from the 14th century. A transcribed edition by Andrea van Arkel-de Leeuw van Weenen

classification.¹² Its sagas form the centre of most corpora of Sagas of Icelanders and are fundamental for our perception of the genre's characteristics.¹³ Therefore, its sagas represent the most obvious intersection between other choices and Heusler's own saga selection.¹⁴ Within *Mǫðruvallabók*, there is a group of 15 theft cases, only one of which is located outside of Iceland. The 14 crimes committed in Iceland are solved by five acts of revenge, two direct settlements and seven potential court proceedings. Of these, two are abandoned, and five result in a settlement, usually realised as a self-judgement. The first remarkable fact to point out is that in *Mǫðruvallabók* – which contains sagas such as *Laxdæla saga*, *Egils saga* and even the 'courtroom saga' of Burned Njáll – not a single person is judicially condemned of thievery.

A tentative comparison shall illustrate the differences in Heusler's data of criminal law in general (mostly homicides) and the property delicts of *Mǫðruvallabók*.

Despite the limited comparability due to the different corpora, one can say that in cases of theft, a trial is sought disproportionately often. Only 50% of the offenses are solved by acts of violent vengeance or direct private settlement, while in Heusler's investigation, 77% of the offenses are prosecuted this way. The great importance of arbitration in the medieval Icelandic disputing process, which has been stressed by more recent scholars,¹⁵ can especially be noted for acts of seizure. Yet, there is something peculiar to note: the parties rarely come to a conclusion without starting a formal complaint, 11% (settlements after a complaint) in Heusler's data stand opposed to 36% for acts of seizure in *Mǫðruvallabók*. One should also add the 14% of abandoned lawsuits: which are most often 'abandoned' because one of the adversaries is killed by the other before the trial starts.

What reasons could be the cause of these deviations? Is it the 'nature' of the crime that demands a certain reaction? Or is it a result of the opponents and their relation to one another? Heusler roughly distinguishes between revenge, private

and an online facsimile (<https://handrit.is/is/manuscript/view/is/AM02-0132>) help accessing this medieval treasure. See Müller 2001 on *Mǫðruvallabók* and its sagas.

12 The intentions of the original compiler are nevertheless unclear, certain features of the manuscript could point to a differing order or even an original plan to form two or more codices, cf. Lethbridge 2014 and Chesnutt 2010.

13 Cf. Stefán Karlsson 1967.

14 Heusler 1911 discusses the following sagas and þættir: *Bandamanna saga*, *Bjarnar saga Hítðelakappa*, *Bolla þátr*, *Brennu-Njáls saga*, *Droplaugarsona saga*, *Egils saga Skalla-Grímssonar*, *Eiríks saga rauða*, *Eyrbyggja saga*, *Finnboga saga ramma*, *Flóamanna saga*, *Fóstbræðra saga*, *Gísla saga Súrssonar*, *Grettis saga Ásmundarsonar*, *Grænlandinga þátr*, *Gull-Þóris saga*, *Gunnars þátr Þiðrandabana*, *Gunnlaugs saga ormstungu*, *Hallfreðar saga vandræðaskálds*, *Harðar saga (Hólmverja saga)*, *Hávarðar saga Ísfirðings*, *Heiðarvíga saga*, *Hænsa-Þóris saga*, *Hrafnkels saga Freysgoða*, *Hrafn þátr Guðrúnarsonar*, *Hrómundar þátr halta*, *Kormáks saga Qgmundarsonar*, *Laxdæla saga*, *Ljósvetninga saga*, *Qgmundar þátr dytts*, *Qlkofra þátr*, *Reykðæla saga*, *Svarfðæla saga*, *Valla-Ljóts saga*, *Vápnfirðinga saga*, *Vatnsdæla saga*, *Víga-Glúms saga*, *Þórðar saga hreðu*, *Þorsteins saga hvíta*, *Þorsteins þátr Síðu-Hallssonar*, *Þorsteins þátr stangarhöggs*.

15 Cf. Jón Viðar Sigurðsson 2014 and Orning 2013.

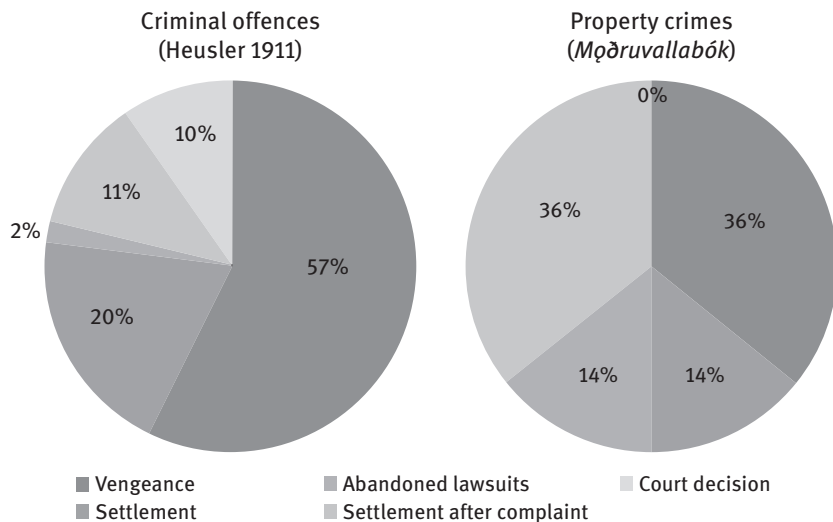


Fig. 1: The Statistical Distribution of Criminal Offences in the *Íslendingasögur* and of Property Crimes in *Mǫðruvallabók* (Daniela Hahn).

settlement and court proceedings as means of reacting to a crime. He does not see a direct connection between the nature of the offense and its way of prosecution. Instead, social power and personal reasons are the crucial factors in his opinion:

Vielmehr gilt für Altisland der Satz: ein und dieselbe Missetat kann Rache hervorrufen oder Vergleich oder gerichtliche Verfolgung. Dies hängt ab von der Macht der beiden Parteien, von dem Willen des Verletzten, den Ansprüchen, die er an die Vergeltung stellt; [. . .]

Rather, for Old Iceland, the rule applies: One and the same wrongdoing can provoke revenge, or settlement, or judicial persecution. It depends on the power of the two parties, on the wishes of the injured person, on the claims which he places on retaliation; [. . .]¹⁶

This statement should be modified: it is of course true that every crime can provoke every type of reaction. However, there are crimes that are more likely to be brought to court than others. *Rán*, (open robbery) for example, is most often counteracted with acts of violent vengeance, while *þjófnaðr* (secret theft) most often leads to a lawsuit. This is connected to the nature of both crimes: a robber must have the power to confront his opponent openly. Negotiating social dominance can even be seen as one of the key features of the crime *rán* in general.¹⁷

¹⁶ Heusler 1911, p. 42 (my translation).

¹⁷ Cf. Miller 1990, p. 83 and Miller 1986b, p. 24. He understands *rán* as a mode of transfer of goods that defines social power relations and demands a response. Miller goes so far as to even compare the social reciprocity of *rán* with that of gifts.

In the sagas, characters guilty of *rán* are most often of the same high social status as their victims and are either successful or punished straightaway. Here, *rán* is presented as a crime against which the upper class of saga society defends itself without judicial assistance. In contrast, a thief comes in secret, most often because he fears the reaction of his victim:

Ein Dieb ist also immer schwächer als ein Räuber, und er ist auch schwächer als der Bestohlene. Das ist insofern von Bedeutung, als der Dieb nicht nur während der Tat, sondern auch danach unbemerkt und unerkant bleiben muss, weil er sonst mit empfindlicher Strafe zu rechnen hat.

A thief is thus always weaker than a robber, and he is also weaker than the robbed. This is important since the thief must remain unobserved and unrecognised, not only during the act but also afterwards, because otherwise he will have to reckon with a severe punishment.¹⁸

Social standing is not only important when discussing the offender but also the victim. It is quite easy for a powerful chieftain to react if a slave stole one of his sheep. But what happens if it is the other way round? How can a socially disadvantaged person resist an attack or claim an appropriate compensation? And how does the social logic of the conflict relate to the logic of mimesis in the narrative?

Property Delicts in *Mǫðruvallabók*

In *Mǫðruvallabók*, seven out of 14 property delicts are solved by acts of vengeance or private settlements.

1. *Laxdæla saga*, ch. 19: After an inheritance fight, Hrútr robs 15 cattle from his half-brother Hǫskuldr. They reconcile and Hrútr acquires Hǫskuldr's respect due to the robbery. The whole action is solved privately.¹⁹
2. *Laxdæla saga*, ch. 35: Hrútr catches the socially lower standing Eldgrímr in the act of cattle theft and kills him in combat.²⁰
3. *Laxdæla saga*, ch. 30: Þuríðr, high-standing sister of the protagonist Kjartan, steals the sword *Fótbítir* from her Norwegian husband Geirmundr. The sword is cursed and will become the weapon that slays Kjartan. Judicially, there is no punishment or accusation.²¹

¹⁸ Gehrlach 2016, p. 20 (my translation).

¹⁹ *Laxdæla saga*, pp. 44–49.

²⁰ *Laxdæla saga*, pp. 95–100.

²¹ *Laxdæla saga*, pp. 80–83.

4. *Laxdæla saga*, ch. 46: Guðrún, another woman of high status, arranges the theft of Kjartan's sword and his wife's headdress. Again, there is no formal charge but personal suffering.²²
5. *Egils saga*, ch. 77: Escaped slaves plunder a storehouse, and are detected and tracked. The slaves flee and leave their prey behind.²³
6. *Bandamanna saga*, ch. 4: After the theft of a sheep, Oddr goði wants to reach a private settlement with his former worker Óspákr. When this does not come about, the agent is killed. A lawsuit for manslaughter follows and the theft is not pursued.²⁴
7. *Fóstbræðra saga*, ch. 20: The craftsman Véglágr is caught in several cases of heavy theft. The reputable men of Reykjahólar discuss possible penalties. Finally, Véglágr must leave the country. He commits theft again in Scotland and is hanged there.²⁵

In the first three cases of *Laxdæla saga*, all parties belong to the highest stratum of saga society and are even relatives. The conflicts are managed 'between themselves' without calling a third party as a conciliator or judge. The thieves in cases 4, 5, 6 and 7 are caught in the act and are significantly below the social strata of those whom they have robbed, although Óspákr as an independent farmer is of a significantly better social standing than the slaves of *Egils saga*. In all four cases, the robbed individuals have the power to proceed as they please. The other half leads to lawsuits:

8. *Laxdæla saga*, ch. 35: Although no theft has probably been committed, Kotkell and Gríma are summoned *um þjófnað ok fjölkynngi*. However, there is never a trial, as Kotkell and his family use sorcery to bring down the ship on which all the witnesses were aboard, so that all passengers drown. After they have killed a child by magic, Kotkell and Gríma are slain with stones, their son Hallbjörn is drowned and their escaped son Stígandi is also stoned shortly thereafter.²⁶
9. *Droplaugarsona saga*, ch. 5: Þorgeirr charges Þórðr for sheep theft. Both parties look for powerful supporters and a private settlement is reached. The injured Þorgeirr seeks help from Helgi Droplaugarson, who accepts the complaint and charges the thief Þórðr at the next Althing, which results in a self-judgment.²⁷
10. *Víga-Glúms saga*, ch. 7: While Glúmr's mother Ástríðr is alone in Iceland, her servants are accused of cattle theft and a private settlement is reached: the self-

²² *Laxdæla saga*, pp. 139–144. These female thieves in the Sagas of Icelanders are discussed by Hahn 2016.

²³ *Egils saga*, pp. 240–242.

²⁴ *Bandamanna saga*, pp. 305–315.

²⁵ *Fóstbræðra saga*, pp. 220–224.

²⁶ *Laxdæla saga*, pp. 95–100.

²⁷ *Droplaugarsona saga*, pp. 149–151.

judgment lies with the injured party and they set a fine. The accusation turns out to be untrue, Glúmr returns, kills one of the two plaintiffs, and charges the other for libelling the servants and for theft. Again, a private settlement can be reached: Glúmr regains the land and the second plaintiff is outlawed.²⁸

11. *Víga-Glúms saga*, ch. 17: A complaint for sheep theft can be averted before the trial. Glúmr reluctantly intervenes for the thief and the avoidance of the lawsuit brings him shame. Later, a controversial settlement is concluded.²⁹
12. *Bolla þáttr*: Bolli takes hay with a farmer and is therefore sued for outlawry. It comes to an unlawful conclusion when Bolli kills the plaintiff before a judgment can be made.³⁰
13. *Brennu-Njáls saga*, ch. 47–51: After Hallgerðr's theft of food, she and her husband Gunnarr are sued. A private settlement grants Gunnarr self-judgment. Before the lawsuit, he offered three options for compensation.³¹
14. *Egils saga*, ch. 80–82: Due to a dispute over grazing the land, it comes to a charge of theft. The fathers of the two parties take up the problem as they are old friends. A private settlement is reached, in which Egill is granted self-judgment. He decides on district outlawry and boasts of his social power.³²

Among these disputes leading to a formal complaint, Chapter 35 of *Laxdœla saga* is a special case, since no theft takes place and the complaint serves only to reinforce a charge of sorcery. In *Droplaugarsona saga* and in *Víga-Glúms saga*, the lawsuit is won by the party who manages to attain support from the mightier men. While the disputes start between men of the same social group, the conflict is later handed over to more powerful men. When Helgi Droplaugarson intervenes, Þórðr has no chance to attain a fair settlement. In *Víga-Glúms saga*, Ástríðr and her servants lose first, as they stand alone against the most respected family of the district. However, as her son Glúmr returns, the situation changes completely. As a determined character of noble descent, Glúmr knows how to reach a better settlement. The second theft of the saga occurs a few chapters later and shows that Glúmr is now so powerful as to have a lawsuit dismissed, even if he and everyone else knows that he is in the wrong. This, of course, inflicts on his honour, but does not affect his power in the district – he can successfully protect the thief.³³ Like within a feud, the little

²⁸ *Víga-Glúms saga*, pp. 20–26.

²⁹ *Víga-Glúms saga*, pp. 56–59.

³⁰ *Bolla þáttr*, pp. 239–248.

³¹ *Brennu-Njáls saga*, pp. 120–133.

³² *Egils saga*, pp. 277–288.

³³ Glúmr is well aware of the situation and reluctant to risk his honourful reputation ('*virding mína*', *Víga-Glúms saga*, p. 60) for the thief. He finally gives in to the pressure of his son Vigfúss, who wants to protect the thief since he was his foster-father. When another sheep disappears, the injured party does not hesitate and kills the thief without trial. As his son left Iceland before, Glúmr can accept a very low compensation sum and in return pay for the stolen sheep.

man's chance in the process lies in winning powerful supporters. This is particularly the case if the supporters want to harm the defendant for other personal reasons and therefore take the action as an occasion to start a dispute.

Examples 12 to 14 vividly illustrate how much it irritates the powerful to be summoned to court by a socially subordinate man. For case 14, Heusler also discusses this point:

Für den stolzen wohlgeborenen Mann kann es etwas Beleidigendes haben, sich vor das Gericht zerren zu lassen [. . .]. Ein Mann wie Gunnar will nicht, daß man den Staat mit seinen Angelegenheiten bemenge [. . .]. Diese Denkweise hängt doch wohl damit zusammen, daß die Gerichtsbank mit kleinen Leuten besetzt war; Bauern, die man schon mit ein paar Unzen glücklich machen und zur Umstoßung ihres ersten Urteils verführen konnte, [. . .]. Einer von denen sollte das Urteil finden über einen Gunnar von Hlitharendi! In solchen Leuten konnte ein Mann von Standesgefühl und mit den Gewohnheiten eines kleinen Selbstherrschers keine Pairs erblicken.

For the proud, well-born man it may be insulting to be dragged before court [. . .]. A man like Gunnar does not want the state to be burdened with his affairs [. . .]. This way of thinking is probably connected to the fact that the court was beset with small people; peasants who could be made happy with a few ounces and could be convinced to reject their first verdict [. . .]. One of them should reach a verdict above a Gunnar of Hlitharendi! A man with a sense of standing and with the habits of a small autocrat could not see his peers in such people.³⁴

Referring to the same saga, Klaus von See discusses a similar issue: is there any 'equality before the law' in medieval Iceland? In his opinion, this key feature found in modern societies seems to be missing – 'wohl nicht prinzipiell, aber doch in der landläufigen Auffassung und in der Praxis'.³⁵ The general notion von See talks about can also be detected in the sagas and corresponds to their logic of mimesis, as there is no 'equality before the narrative' either. Colourful protagonists deal with stereotyped minor characters, and the standing of the thief before the law and in the narrative depends on his affiliation to either the first or the second group.

This shall be discussed with reference to the three disputes in *Mǫðruvallabók* in which a socially disadvantaged character feels robbed by one of the protagonists.

Bolla þátrr

The *Bolla þátrr* is only preserved in manuscripts of *Laxdæla saga*; therefore, its *dramatis personae* is loosely connected to the saga and grouped around the grown-up

³⁴ Heusler 1911, p. 100 (my translation).

³⁵ von See 1964, p. 67; 'probably not in principle, but in common view and legal practice' (my translation).

Bolli Bollason. The text is not originally part of *Laxdæla saga* but emerged as a kind of a sequel towards the end of the 13th century.³⁶ The narrative deals with two legal disputes in which Bolli is involved. After a case of manslaughter in the first episode, the second dispute deals with a case of thievery.

Bolli and his men are travelling in the north of Iceland and arrive at a farmstead. It is said about the local farmer, Helgi, that '[h]e was ill-tempered and not of good family',³⁷ but has a wise wife. Bolli's men find a larger quantity of hay at the farm with which they feed their horses. When Helgi learns about this, his wife warns him not to struggle with such men, but he is already furious. The farmer goes outside where Bolli is leaning on his spear *Konungsnautr*. Helgi walks up to him and asks: 'Who are these thieves that harass me so, stealing what is mine and tearing apart my haystack [...]?'³⁸ Bolli responds calmly and promises that he and his men will compensate the farmer properly. Helgi remains unforgiving: 'I declare that what you have taken has been stolen from me and you have committed an offence liable to outlawry.'³⁹ Once again, Bolli tries to compensate and offers Helgi that he determines a reasonable reimbursement. The farmer, however, wants nothing else but the spear *Konungsnautr*, which Bolli will not give up under any circumstances.

Thus, Helgi charges Bolli for theft and wants him punished with outlawry. Bolli in turn now charges Helgi with slander (*um illmæli*),⁴⁰ although his men advise him to simply kill the peasant. When Helgi returns to his wife, he is already aware that he will not find any supporters against Bolli and that he has put himself in a hopeless situation. Helgi's wife tries to help her husband by asking Bolli's current host Þorsteinn to help her and tells him about her husband's foolish behaviour.

Þorsteinn does everything in his power, but Bolli is irreconcilable. The men separate in anger. Finally, there is a fight between the groups around Bolli and Helgi. When Bolli hears Helgi's voice, he throws the spear *Konungsnautr* at him. The spear pierces the farmer in such a way that his corpse dangles in the water. It is only through the intervention of a certain Ljótr that the battle concludes while Bolli and Þorsteinn are still alive, so that the case can be negotiated at a thing. The verdict is that Helgi had been killed because of slander, therefore, no fine must be paid. The *þáttur* ends with the statement that Bolli had acquired great fame in the north and even provided for Helga's wife, for whom he found an appropriate marriage.

From a legal point of view, the theft episode of the *Bolla þáttur* can almost be read as a case study to illustrate § 227 of *Grágás*. The special interest in lawsuits

36 Cf. Einar Ól. Sveinsson (ed.) 1934, pp. lxxii–lxxvi.

37 *Bolli Bollason's Tale*, p. 184; 'hann var ættsmár ok illa í skapi' (*Bolla þáttur*, p. 239).

38 *Bolli Bollason's Tale*, p. 185; 'Hverir eru þessir þjófarnir, er mér bjóða ofríki ok stela mik eign minni [...]?' (*Bolla þáttur*, p. 239).

39 *Bolli Bollason's Tale*, p. 185; 'Ek kalla yðr hafa stólit mik þessu, sem þér hafið haft, ok gort á hendr yðr skóggangssøk.' (*Bolla þáttur*, pp. 239–240).

40 *Bolla þáttur*, p. 240.

and legal terms of the *þátr* differs remarkably from *Laxdæla saga*, where such references are seemingly avoided consciously.⁴¹

Bolli and his men take the hay to feed their horses openly, and do not try to hide their deed. Helgi's question for *þessir þjófarnir* ('these thieves') is therefore too harsh from the very beginning. Thus, it is remarkable that Bolli does not deal with the provocation of the farmer at first and even offers him a high sum of compensation.⁴² If Helgi interprets the crime as *þjófnaðr*, the question of the value of the stolen property arises. Since the farmer seeks to have him outlawed, the hay would have had a value of half an ounce-unit or more after the division of the *Grágás*, which cannot be ascertained, since there is neither a reference to the price of the hay nor the quantity. Overall, the farmer's demand is presented as one of exaggeration and impulsiveness; the narrative guides the reader to assume that it cannot have been an asset of high value.

As no agreement can be reached and the complaints are pronounced, the episode corresponds exactly to the requirements of the *Grágás* by Helgi striving for a *skóggangssök* ('charge leading to outlawry') and Bolli in turn reacting with a charge *um illmæli* ('for slander'). The farmer is now aware that he will not find any supporters against a respected man like Bolli. His only chance to escape disaster is his wife, who has the necessary social standing to strive for reconciliation.

Although Bolli was still willing to compensate generously at the moment of the accusation, the charge of theft obviously represents such a strong offense that even Þorsteinn, with whom Bolli is on friendly terms, cannot appease him. Bolli's countercharge with slander (*um illmæli*) recounts the *Grágás* text verbatim, suggesting a well-established legal concept. After some men lost their lives because of the incident, Ljótr's arbitration takes place: a person whom both parties trust reaches a decision, which is noticeably close to the *Grágás* provisions, so that Helgi is declared to have died without any rights of compensation because of the slander.

In the narrative, the episode clearly serves the praise of Bolli, who is portrayed in this situation as a particularly self-controlled and wise man. As already mentioned, the allegation of theft represents a serious provocation, which incites extreme reactions. There is subtle irony in the way Helgi dies: he is impaled by the spear *Konungsnautr*. In a way, he receives exactly the compensation from Bolli that he had previously demanded.⁴³

Bolli represents a character from the highest social circles; his counterpart Helgi is of a much lower status. The subject of social status focusses here on the role of the plaintiff who, through his lack of understanding of legal and social conventions, makes an accusation that ultimately costs his life. His lack of social

⁴¹ Cf. Burrows 2009, p. 47.

⁴² Cf. Andersson 1984, p. 500.

⁴³ Cf. Andersson 1984, p. 501.

standing and insignificant ancestry is dealt with from the very beginning and constantly evoked by referring to the superior standing of his wife. Despite the unknown monetary value of the hay, Helgi's course of action is consistent from a legal point of view. However, within the narrative's logic, Helgi's case is hopeless from the very beginning, as everyone tells him, which he finally realises himself. The very idea that it is *heimskr* to accuse and summon a man such as Bolli is of course revealing of the underlying social norms in medieval Iceland.

Brennu-Njáls saga

The most famous theft of the Icelandic sagas is initiated by Hallgerðr Høskuldsdóttir in *Njáls saga*. Already in chapter one, Hallgerðr is introduced through a conversation between her father and uncle in which her uncle wonders, 'how the eyes of a thief have come into our family'.⁴⁴ From this moment on, the audience is waiting for her theft, which finally occurs during her marriage to Gunnarr of Hlíðarendi. Gunnarr tried to buy food at Otkell's farmstead unsuccessfully. After Otkell's refusal, Þráinn Sigfússon suggests that Gunnarr should simply take the food he needs, but Gunnarr answers: "I will not do any robbing."⁴⁵ Instead, he is sold the slave Melkólfr and returns to his homestead. Hallgerðr, deeply displeased after Otkell's refusal, sends Melkólfr to steal butter and cheese from his former homestead. Initially, the slave is unwilling to fulfil the order but eventually sneaks to the farmstead, steals the food, and sets fire to the pantry.

Melkólfr turns out to be an awkward and unwilling thief and loses his belt and a knife on the way back – two gifts from his former master. When Otkell's friend Skammkell finds the two objects, he recognises them and shows them around. Advice is then sought from Gunnarr's cunning enemy Mǫrðr. The men are already aware that it will be difficult to summon Gunnarr: "It's hard for us to deal with this," said Skammkell, "when such mighty men are involved."⁴⁶ Mǫrðr is paid for his advice and forges the following plan: they should let women go around with all sorts of small items, so that they pay attention to what the housewives offer them as payment 'because people tend to get rid of stolen property first, if they have any.'⁴⁷ The plan works, with Hallgerðr offering the stolen cheese as payment.

⁴⁴ *Njal's saga*, p. 4; 'hvaðan þjófsaugu eru komin í ættir várar' (*Brennu-Njáls saga*, p. 7).

⁴⁵ *Njal's saga*, p. 80; 'Með engi rán vil ek fara.' (*Brennu-Njáls saga*, pp. 121–122).

⁴⁶ *Njal's saga*, p. 82; "'Vant þykkir oss með slíku at fara," segir Skammkell, "er við slíka ofreflismenn er um at eiga.'" (*Brennu-Njáls saga*, p. 125).

⁴⁷ *Njal's saga*, p. 83; 'því at allir hafa þat skap at gefa þat upp fyrst, er stólit er, ef þat hafa at varðveita, [. . .].'⁴⁷ (*Brennu-Njáls saga*, p. 125).

A comparison with Otkell's cheese-form distinguishes her as the thief, whereupon Mǫrðr withdraws from the affair.

Gunnarr learns of the crime while dining one evening and loses his temper: he slaps Hallgerðr, which will turn out to be fatal for him. His verbal reaction focusses on his reputation instead of her crime: 'It's a bad thing if I'm partner to a thief.'⁴⁸ – he became the companion of a thief (*þjófsnautr*), a legal term also described in the *Grágás*. Thereby, he is now involved in a crime that is even more serious than the *rán* suggested by Þráinn Sigfússon previously. Hallgerðr taxed Gunnarr's patience multiple times before, but it is the theft that leads to the escalation of their quarrels as it now affects Gunnarr's personal honour.

Soon people begin to gossip about the theft.⁴⁹ Gunnarr is informed about the rumours by his brother: 'I have bad news: everybody is saying that Hallgerðr stole the cheese and caused the great damage at Kirkjubaer.'⁵⁰ He advises Gunnarr to visit Otkell and to make a generous offer. At his arrival, Gunnarr confesses to his wife's crime and makes three offers:

1. The well-respected men of the district shall arbitrate the dispute and set the fine,
2. A self-judgement should be made by Gunnarr,
3. A self-judgement should be made by Otkell.

Influenced by Skammkell's ill counsel, Otkell refuses every offer and wants to transfer the matter to the judgement of Gizur the White and Geirr goði. Both men concede Gunnarr to be very generous. Due to an ellipsis in the narrative, it remains uncertain what exactly the two recommend. Skammkell continues his evil scheming and tells Otkell that he had been advised to sue Hallgerðr for theft and Gunnarr for receiving stolen goods. As they arrive at Hlíðarendi and make their summons for the Althing, Gunnarr becomes impetuous.

Gunnarr, who is a powerful farmer himself, seeks help from his friend and advisor Njáll. As they ride to the Althing, they are accompanied by the whole Sigfusson kin-group and Njáll's sons 'and people were saying that no other group there was as vigorous as theirs.'⁵¹ Gunnarr seeks additional help from Hallgerðr's family. Now, Hrútr and Hǫskuldr enter the dispute, too. Hrútr advises Gunnarr to challenge Gizur the White to a duel if he is not willing to grant him self-judgement and heads towards a violent solution of the conflict: 'Men will be found to attack Otkell and

48 *Njal's saga*, p. 82; 'Illa er þá, ef ek em þjófsnautr' (*Brennu-Njáls saga*, p. 124).

49 On the function of gossip in legal matters see Miller 1986a, p. 110.

50 *Njal's saga*, p. 83; 'Illt er at segja: alræmt er, at Hallgerðr muni stólit hafa ok valdit þeim inum mikla skaða, er varð í Kirkjubæ.' (*Brennu-Njáls saga*, p. 126).

51 *Njal's saga*, p. 87; 'ok var þat mælt, at engi flokkur myndi jafn-harðsnúinn þeim' (*Brennu-Njáls saga*, p. 130).

his gang, and we already have a band of men so large that you'll be able to do as you wish'.⁵² As Gizur and Geirr realise what had happened after their original advice, they know that there is only one way to calm Gunnarr down: by offering him full self-judgement. Gunnarr judges that he shall pay for the food and the pantry. However, he finds that he has been summoned for slander and awards himself the exact same value for the crimes in return. He warns Otkell never to provoke him again and the episode concludes with a statement by the narrator that Gunnarr had earned great honour from the case.

The whole legal dispute is framed by questions about Gunnarr's personal honour, which is deeply affected by Hallgerðr's theft and the summoning by Otkell, but it is restored after his self-judgement. This episode is also used in Heusler's study on criminal law as an example of the negative attitude to court proceedings in general:

[B]ei einem Falle von Diebstahl nimmt die Staatsgewalt in der Anschauung der Isländer die Stellung ein, daß eine Anrufung dieser Gewalt, eine Ladung vor Gericht, als Schimpf empfunden wird, ebenso hoher Strafe würdig wie der Diebstahl selbst; und dies unter Billigung der wackersten Männer.

In a case of theft, the state authority, in the opinion of the Icelanders, takes the position that an invocation of this power, a charge in court, is perceived as an insult, as worthy of a high degree of punishment as the theft itself; and this with the approval of the bravest men.⁵³

Socially, Otkell is not necessarily considered to be in a position of lower-standing than to that of Gunnarr – neither of them is a *goði*, both are independent farmers and related to mighty men and *goðar* like Gizur und Geirr on Otkell's side and Hrútr and Høskuldr on Gunnarr's side. However, within the diegesis of *Njáls saga*, Gunnarr is the hero, whereas Otkell is a clumsy and weak minor character, who cannot resist Skammkell's evil scheming. Hrútr's statement that they have as many men as to achieve whatever they wish underlines the fact that this dispute is not about legal justice at all and that Otkell has lost his case for the same reason as Helgi in *Bolla þáttr* – by turning down the generous offer of the protagonist.

Egils saga

The final dispute in the conflict-ridden life of the great hero Egill Skalla-Grímsson revolves around a property issue. His son Þorsteinn gets in trouble with a certain Steinarr, the son of Egill's wealthy neighbour Qnundr. They are arguing about a

⁵² *Njal's saga*, p. 88; '[E]n fásök munu menn til at ganga at þeim Otkatli, ok höfu vér nú lið svá mikit allir saman, at þú mátt fram koma slíku sem þú vill.' (*Brennu-Njáls saga*, p. 131).

⁵³ Heusler 1911, p. 100 (my translation).

meadow that belongs to Egill's, where Steinarr's cattle grazed in the spring. Þorsteinn asks Steinarr to leave the meadow to him as it has been an old custom, but Steinarr replies that the cattle can graze wherever they want. Steinarr asks his workers to oversee the cattle; Þorsteinn kills three of Steinarr's workers and declares that he will kill as many of them as necessary to defend his property. Steinarr now gathers support against Þorsteinn and summons him at the Thing for the killings. Here their fathers, Egill and Qnundr, take over and want to solve their sons' disputes as they are old friends. Qnundr trusts Egill as much as to grant him self-judgement. Egill's self-judgement starts with a reminder that it was his father Grímr who settled at Mýrar and gave land to Qnundr's ancestors. But Egill judges the incident as a *rán* and proceeds differently from what Qnundr might have expected:

Nú var eigi þat, Steinarr, at þú gerðir þér óvitandi at beita land Þorsteins ok lagðir undir þik eign hans ok ætlaðir, at hann myndi vera svá mikill ættleri, at hann myndi vera vilja ræningi þinn, [...] en Þorsteinn drap fyrir þér þræla tvá. Nú er þat öllum mǫnnum auðsýnt, at þeir hafa fallit á verkum sínum, ok eru þeir óbótamenn [...]. En fyrir þat, Steinarr, er þú hugðisk ræna mundu Þorstein, son minn, landeign sinni, þeiri er hann tók með mínu ráði ok ek tók í arf eftir föður minn, þar fyrir skaltu láta laust þitt land at Ánabrekku [...].

'It was not by accident that you grazed your cattle on Thorstein's land, Steinar, and seized his property, expecting him to be such a disgrace to his family that he would let you get away with robbing him. When Thorstein killed two of your slaves, it is obvious to everyone that they fell by their own doing and do not qualify for compensation, [...]. Yet since you, Steinar, planned to rob my son Thorstein of his land, which he took over with my approval and I had inherited from my father, you will forfeit Anabrekka [...].'⁵⁴

After Qnundr tells him that this was a very crooked decision which will lead to more violence, Egill simply replies: 'I would have thought you realized, Onund, that I have always held my own against people like you and your son.'⁵⁵

This last example shows that, as in *Njáls saga*, not only social standing matters, but rather one's relation in standing to their enemy. Steinarr is a wealthy farmer from a powerful family and by no means a 'little man' of saga society. He is in an inferior position nevertheless, as Þorsteinn is a grandson of *landnámsmaðr* Skalla-Grímr Kveld-Úlfsson, which is stressed by his father Egill throughout the judgement. It is their noble lineage that sets them apart. As Egill's father gave the land to Qnundr, he is convinced that he has the right to take it back in the case of a conflict. While Þorsteinn is summoned for threefold manslaughter committed against Steinarr's workers, Egill considers the previous *rán* to be more important and his son's reaction as coherently consistent with the preceding actions. Within the logic of *Egils saga's* narrative, it is even more indispensable to solve the dispute in this

⁵⁴ *Egils saga*, p. 287; translation: *Egill's saga*, pp. 195–196.

⁵⁵ *Egill's saga*, p. 196; '[H]ugða ek, Qnundr, at þú myndir þat vita, at ek hefi haldit hlut mínum fyrir þvílíkum svá mǫnnum, sem þit eruð feðgar.' (*Egils saga*, p. 288).

way. Egill's family fought multiple times for their inheritance and estates and proved that they would not yield, not against kings – and certainly not against *þvílíkum svá mǫnnum*.

Conclusion

The property disputes in the Sagas of Icelanders are always connected to power and honour. A character's reaction to a seizure depends on his status in the narrated society. In *Mǫðruvallabók*, all of the examples relating to solutions of private dispute are carried out by mighty protagonists with the power to punish a thief without making a formal complaint. Laws corresponding to the provisions of *Grágás* are applied in seven disputes. Two of them are brought forward by major characters, whereas two more are initially brought to court by minor characters before the protagonists (Glúmr and Helgi Droplaugarson) intervene. While the protagonists can choose from the whole range of strategies, minor characters such as small farmers have little choice but to take action at court and to gain powerful supporters. On the one hand, the law appears to be conducive for 'the little man'. On the other hand, legal provisions such as the possibility to summon someone for slander, reflect a broad desire on the part of the wealthier class to protect intangible assets such as personal reputation.

The most significant difference between the representation of criminal law in *Grágás* and the Sagas of Icelanders can be found in the relation between plaintiff and culprit: while the legal text seems to assume that both parties are equal before the law, the narratives portray a hierarchical society. They are interested in powerful characters and the 'saga-worthy' disputes of a high social class. They do not recount disputes among normal farmers or 'little men', unless an influential character takes over and changes the balance of power dramatically. Addressing the consequences for source value with respect to social practice, this should always be kept in mind: supposedly, the untold tales of property delicts among a lower social class would produce completely different figures.

Moreover, the actual social standing of a saga character is outweighed by their position within the logic of the narrative. The 'point' of *Bolla þátr* is not whether Helgi is legally entitled to summon Bolli for thievery – but rather the brazenness of a little and foolish man against the reputation of the protagonist. *Njáls saga*'s Otkell is not socially inferior to Gunnarr but is indeed with respect to the narrative. He must lose his case as not even high standing men like Geirr or Gizur want to get in trouble with Gunnarr, who should technically be inferior to them. The highest standing man of all the examples discussed here is surely Egill, and he articulates the hierarchical order of saga society directly – a man from a family like Egill's will always know how to win against *svá mǫnnum*. In cases of thievery, there is neither

equality before the law nor before the narrative in the sagas of *Möðruvallabók*, and there is no effort given to pretend otherwise.

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Roland Scheel

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