

## FORM OF GOVERNMENT

### *The Founding of the Althing*

Germanic tribes in earlier times were governed by so-called *things*, assemblies of the freemen, which were a much older institution than monarchy. At the beginning of the Viking Age there were many *things* in Norway and the law differed from one district to another. The area in which a particular legal code was valid was never very large. The most important *thing* in each law province was a general assembly called the *althing*,<sup>1</sup> where every able-bodied man had the right to vote. The Norse vikings adopted this form of government wherever they settled, and some of these *things* lasted for a long time. The one on the Isle of Man is still in existence, though in a modified form, and the word *thingvöllr* which is reflected in various place names in the British Isles commemorates these ancient assemblies. The most important *things* in the Norse colonies were called *althings* just as had been the case in Norway.

The settlers of Iceland brought with them Norwegian laws and judicial customs, and one can safely assume that in the Age of Settlements the leading chieftains among them tried to establish the same kind of government by *things* as they had known in their homeland. However, only two such *things* are known to have existed. One of these, styled as a local assembly (*héraðsting*), was founded by Thórólfr Mosterbeard, who settled at Thórsnes in Snæfellsnes. It is not known whether it was confined to Thórólfr Mosterbeard's settlement or covered a wider area, but it was probably for a smaller area than the one serving a whole assembly district.<sup>2</sup> Ari the Learned does not make any reference to this particular *thing*, and it is only mentioned in unreliable sources. But Ari the Learned has this to say about the assembly at Kjalarnes:<sup>3</sup>

The Althing was established by the counsel of Úlfljótr and all the people of the land where it now is (i.e. at Thingvöllr by Öxará). Previously, however, there was a *thing* at Kjalarnes which Thorsteinn, the son of Ingólfr the settler, and the father of Thorkell Moon the law-speaker, held there together with other chieftains who joined him.

<sup>1</sup> Cf. Absalon Taranger, (*Norsk Historisk Tidsskrift* (1924), pp. 1-15.

<sup>2</sup> Cf. Ólafur Lárússon, *Byggð og saga*, pp. 199-229.

<sup>3</sup> [North of Reykjavík in Kjósarsýsla.]

It is conceivable that Ari mentioned only the assembly at Kjalarnes because he had no knowledge of any others before the founding of the Althing, and as he must have known the true origin of the Thórsnessting, one is compelled to reject the accounts of its early founding. Whether or not the assembly at Kjalarnes was the only *thing* in this early period, Ari's account of it implies that it was the precursor and model of the Althing. This is clear from another source. *Thórðarbók* contains the following paragraph which probably derives from the original version of *Landnámabók* and was certainly written during the Commonwealth Period:

On the advice of Helgi Bjóla, Örlygr of Esjuberg and other wise men, Thorsteinn Ingólfsson became the first man to convene an assembly at Kjalarnes before the Althing was founded. That is the reason why the chieftains wielding his authority still perform the 'hallowing of the Althing'.<sup>4</sup>

The chieftaincies of Thorsteinn Ingólfsson and his co-founders of the Kjalarnes Assembly have been merged into one, and the function of performing the inaugural ceremony at the Althing was assigned to its holder. The reasons for this must have been that Thorsteinn and his colleagues were the principal instigators behind the founding of the Althing, and that the preparatory steps for this event were taken at the Kjalarnes Assembly<sup>5</sup> where, perhaps, some kind of general assembly was held under the leadership of Thorsteinn and his allies.

The land-claim made by Ingólfr Arnarson was both the oldest and the largest, which explains why the first assembly worthy of note was established within its confines. But it must be borne in mind that the Kjalarnes Assembly did not have a legislative role; its only function appears to have been judicial. The Kjalarnes assembly must have followed the laws and procedures which Ingólfr and his kinsfolk had been accustomed to in Norway. It is also quite probable that settlers in other districts who came from the same part of Norway as Ingólfr may have found it expedient to refer their cases to this assembly. It is unlikely that others attended.

It would have been a natural development if, on the Norwegian model, many local assemblies had been founded, each serving its own district and following its own laws, and the size of the country and difficult communications should have helped to bring this about. But the idea that the Icelanders needed a single general assembly and one code of laws for the entire country began to take shape. This is an ideal which reflects a broader outlook and a nobler vision than existed elsewhere among Northern peoples. Throughout the era of the Icelandic Commonwealth

<sup>4</sup> *Landn.* (1921), p. 145. The paragraph could have originally been in the chapter about Ingólfr.

<sup>5</sup> Cf. *Vaka*, 3 (Reykjavik, 1929), p. 112.

neither the Norwegians, nor the Swedes, nor the Danes succeeded in creating a uniform code of laws for their nation.

There are many reasons why the founding of the Althing became a necessity. After the migration to Iceland families became separated, and relatives and in-laws were no longer neighbours, but were scattered all over Iceland; the establishment of one national assembly enabled these people to pursue matters of common interest. Although the social conditions that prevailed during the Viking Age, particularly in the Norse colonies, may have weakened traditional bonds of kinship, family ties remained strong. According to the Icelandic lawbook *Grágás*, bonds of kinship extending as far as fourth cousins entailed certain rights and duties regarding such matters as vengeance, inheritance, maintenance of the poor and payments of wergild.<sup>6</sup> These features are much older than the settlement of Iceland, dating back to the very remote period when the clan or the family represented the only administrative unit. These legal customs would have lost their significance if the Icelanders had not been able to agree on one code of laws for the entire country.

The same conditions which weakened the influence of the clan among the settlers of Iceland also tended to reduce the unifying effect which different district codes in Norway had had upon their adherents. In Iceland people who had come from various 'law provinces' in Norway, as well as some individuals from other countries, became neighbours. This created confusion in the administration of justice, and it was natural that the Icelanders should seek to solve this problem by introducing a new code of laws for the entire nation. Finally, it is conceivable that King Haraldr Finehair's decision regarding the extent of individual settlements played some part in the establishment of the Althing. His decree had a particularly adverse effect on those chieftains who had claimed the largest areas of land. It would therefore be logical to conclude that these chieftains and their descendants unanimously supported the idea of a national assembly in order to prevent the referral of important matters to the arbitration of a foreign power.

Hardly anyone could have been in a better position to play a leading role in the founding of the Althing than Thorsteinn Ingólfsson. He was one of the most powerful men in the country, the son of Iceland's most illustrious settler, and he had already taken part in founding an earlier assembly. The *Thórðarþók* version of *Landnámabók* appears to be correct in pointing out that Ingólfr Arnarson was the brother (i.e. half-brother) of Björn of Heyangr.<sup>7</sup> This would then have enabled Thorsteinn Ingólfsson to count among his relatives and in-laws the members of the largest and most influential family in Iceland, i.e. the descendants of

<sup>6</sup> Cf. *Grg.* III, p. 613 (under *frændsemi*); *Dipl. Isl.* I, pp. 383-388.

<sup>7</sup> *Landn.* (1921), p. 26.

Grímr from Sogn. These people were in turn related to other powerful families. Thus, a great many Icelanders were bound together by strong kinship. It was only logical that these people should join forces in promoting the idea of a national assembly. It was the most effective way in which they could secure peace and safeguard their position against intervention by the King of Norway and against the unrestrained spirit of freedom and independence which was bound to prevail as long as new immigrants to Iceland continued to extend their power and influence. This also explains why Thorsteinn Ingólfsson and his followers sought the support of other influential clans, even though they did not have any kindred ties with them. They must have realized that such support was important if a national assembly was to be successfully founded.<sup>8</sup>

Ari the Learned informs us that an 'Easterner' (i.e. a Norwegian) by the name of Úlfljótr was the first man to bring a code of laws — Úlfljótr's Law (Úlfljótslög) — from Norway to Iceland:

But this law was chiefly modelled upon the Gulathing Law of that time, additions, omissions, or different provisions being made therein upon the advice of Thorleifr the Wise, son of Hörða-Kári.

*Landnámabók* states that Úlfljótr, a nephew of Thorleifr the Wise, bought property in Lón<sup>9</sup> in eastern Iceland from Thórðr the Bearded, whereupon Thórðr, on the advice of Ingólfr, moved west into the Mosfell district and took up residence at Skeggjastaðir.<sup>10</sup> Thus Thorsteinn Ingólfsson may have obtained information about Úlfljótr from Thórðr the Bearded. In Norway Thorleifr the Wise apparently enjoyed an excellent reputation as a lawmaker; unfortunately, it is not possible to determine to what extent the stories about him are historically accurate. Ties of kinship between Thorleifr and Úlfljótr probably explain why the latter was engaged for the journey to Norway, and it may be that his genius for lawmaking was inherited. It is believed that Úlfljótr spent three winters in Norway composing the new law code for Iceland. Since Thorsteinn Ingólfsson and the majority of the settlers had come from the Gulathing Province in Norway, it was to be expected that the new laws for Iceland would be based on the Gulathing Law. This code appears to have extended to Hörðaland, Sogn, and the Firðir. The merging of these areas into one province was probably a late development brought about by King Haraldr Finehair.

The following statement occurs in Ari the Learned's book:

and it is said that Grímr Goatbeard was his (Úlfljótr's) foster-brother, the man who, on Úlfljótr's advice, explored all Iceland before the

<sup>8</sup> Cf. Sigurður Nordal, *Íslensk menning*, I, (Reykjavík, 1942), pp. 111-119.

<sup>9</sup> [In Austur-Skaftafellssýsla.]

<sup>10</sup> [In Kjósarsýsla.]

Althing was established. And every man (i.e. every adult male who enjoyed normal rights and privileges?) in this land gave him a penny<sup>11</sup> for this (i.e. for exploring the country), but afterwards he gave this money to the temples.

The terseness of this account makes it very difficult to understand what the words *explored all Iceland* mean precisely. It would seem quite plausible to deduce from these words that Grímr Goatbeard explored the country for the purpose of selecting a meeting place for the Althing. But some scholars have argued that Grímr was assigned the duty of explaining the proposed code of laws to people and that he was to solicit support for its adoption and announce both the date and the place of the inaugural session of the Althing. This interpretation is hardly tenable, however, since the expression *að kanna land* (to explore the country) is not known to have been used in this sense. Selecting a meeting place for the Althing was a practical problem. It was to the advantage of prominent men and other pioneers to have the shortest distance possible to travel to the Althing, but it is unlikely that just a handful of individuals would have been able to dispose of this matter without the consent of the majority. One may even speculate that choosing the site for the Althing grew to be a matter of such major dispute that it became necessary to explore the whole country in order to find the most suitable site. In those early days there were no maps to aid the explorers, and mental images of geography were anything but clear. Moreover, it would be taking Ari the Learned's statement too literally if one deduced from it that Grímr Goatbeard not only explored the main regions of Iceland but that he visited every distant point along the coastline. Suffice it to say that in view of the means of travel in those days the choice of the site for the Althing was made with such good judgement that it would be difficult to point to a more suitable location. As a result, it is safe to say that a decision was not made about the meeting place of the Althing until all circumstances had been carefully examined. One is perhaps justified in assuming that some kind of a national assembly was convened at Kjalarnes upon Úlfljótr's arrival from Norway with the proposed code of laws and that an agreement was reached at the assembly on almost everything regarding the founding of the Althing except its location. Úlfljótr may then have suggested that Grímr Goatbeard be asked to explore the country in search of a suitable location, and that every participant of the Kjalarnes Assembly pay Grímr a fee for his service.

Ari maintains that according to the "counsel of Úlfljótr" the Althing was established at Thingvöllur by the river Öxará, but he does not state the year. He only mentions that Úlfljótr brought the code from

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<sup>11</sup> It is uncertain whether the word *penningr*, 'penny', means a coin (of foreign origin) or a unit of weight.

Norway “when Iceland had become widely settled” and that Hrafn, son of Hængr the settler, assumed the lawspeakership “next after Úlfljótr” in 930 A.D., about the time when the country had become “fully settled”. From this it is obvious that Ari must have believed that a period of no less than 10 to 15 years elapsed from the time of Úlfljótr’s arrival from Norway to the year in which Hrafn became lawspeaker. In the *Konungsannáll* Úlfljótr’s arrival is assigned to the year 927. This entry in the annal merely represents a conjecture based on the assumption that Úlfljótr proclaimed the laws for three consecutive sessions of the Althing, the normal three-year period over which the lawspeaker’s tenure of office extended. It is also quite apparent that Ari considered Úlfljótr to have held this office, although he did not indicate the length of his term in the same way as he did with all other lawspeakers listed in his book. From the list of lawspeakers written in the 13th century it can be seen that writers at that time were in doubt as to whether or not Úlfljótr ever held the office<sup>12</sup> of lawspeaker. *Egils Saga*, from which *Landnámabók* has derived information on this matter, lists Hrafn as the first lawspeaker in Iceland. However, *Egils Saga* cannot be accepted as historically accurate on this point. In all probability Ari knew neither the length of Úlfljótr’s term as lawspeaker nor the year in which the Althing was founded. It is even questionable whether he had accurate information about the beginning of Hrafn Hængsson’s term as lawspeaker. It is rather odd that Ari should assign Hrafn and his immediate successor, Thórarinn Ragabróðir, the same number of years as lawspeaker, i.e. a term of exactly twenty years each. His account of this matter seems to be based on conjecture. It is therefore not certain that the Althing, as is commonly believed, was founded in 930 A.D., but there does not appear to be any way of determining the date more accurately.

In accordance with the Norse tradition, the national assembly in Iceland derived its name *Althing* from its function as a public forum for all free men in the country. Having founded their national assembly, the citizens of Iceland became united by one code of laws. As a result of this, Iceland now attained the status of a unified state, even though it lacked an executive body. One notes, however, that the Icelanders never referred to their society as a state; instead they spoke of ‘our laws’ (*vár lög*). This expression could refer either to a certain code of laws or to the provinces in which this code obtained. This explains such geographical names as *Gulathingslög*, *Thrændalög*, *Danalög* (Danelaw in England) and others.<sup>13</sup> The founding of the Althing was an event of major consequence in the history of the Icelandic people.

<sup>12</sup> *Dipl. Isl.*, I, p. 500; *Landn.* (1921), p. 146.

<sup>13</sup> [Modern Icelandic usage also shows a distinct correspondence between *vár lög* and the names *Gulathingslög*, *Thrændalög*, *Danalög*.]

## *The Site of the Althing*

The Althing was held at Thingvöllur (Thing Plain) by the river Öxará (Axe River) from the time of its founding throughout the entire Commonwealth Period and up until the year 1798. In 1799 its meeting place was moved to Reykjavík, and in 1800 it was discontinued. *The Saga of Hænsa-Thórir* maintains that the Althing was convened by Mount Ármannsfell (undir Ármannsfelli) at the time when Iceland was divided up into Quarter districts, i.e. about the year 962 A.D., but this must be incorrect. The site by Ármannsfell was merely a meeting place for a Quarter assembly.<sup>14</sup>

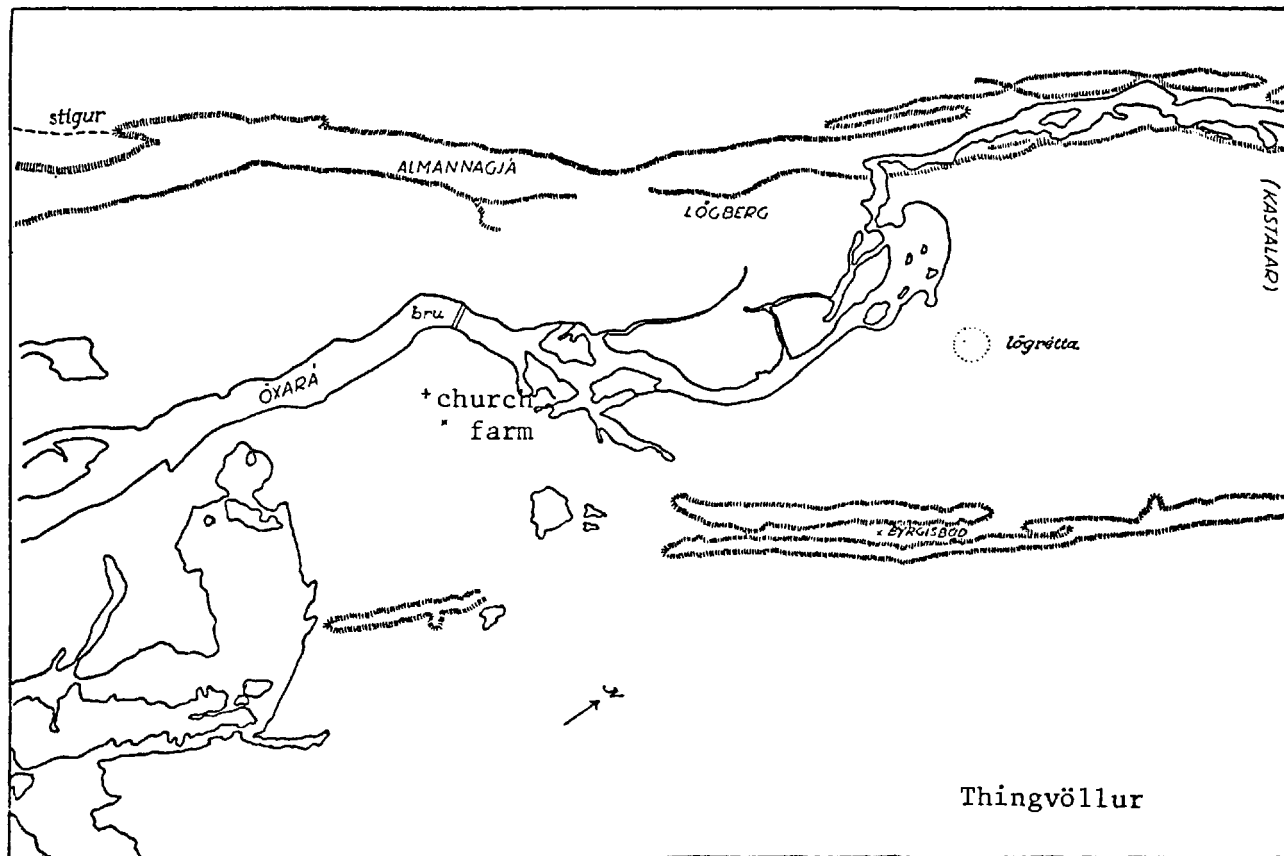
It is not certain to which settlement Thingvöllur originally belonged. The *Hauksbók* version of *Landnámabók* says that Hrafnagjá marked the boundary of Ingólfr Arnarson's settlement. According to this account the entire Thingvöllur would then have come within Ingólfr's settlement. But this statement of *Hauksbók* may be dismissed as an interpolation used to fill in a lacuna in the accounts of this particular version. The *Sturlubók* redaction of *Landnámabók* mentions the river Öxará as the boundary of Ingólfr's settlement and this statement appears to be based on more reliable information. But originally the river Öxará did not follow its present course. Sometime during the early years of the Commonwealth Period the river "was diverted into Almannagjá so that now its course lies through Thingvöllur";<sup>15</sup> west of Almannagjá one can still detect the old riverbed.<sup>16</sup> This major task of diverting the river Öxará into a new channel was no doubt undertaken to ensure that the members of the Althing would have easy access to a permanent water supply. From this it does not appear that any part of Thingvöllur ever lay within the settlement of Ingólfr Arnarson. Ari the Learned maintains that a certain man named Thórir Crop-Beard, who owned property in the neighbourhood of Bláskógar (Blue Woods), was convicted for the murder of a slave or a freedman and that as a result of his crime Thórir's farmland became public property which was designated for the use of the Althing. Ari says about this place that "there is free cutting of wood for the Althing in the forests, and on the moor there is pasture for the keeping of horses". The entire area to the north and also to the west and the south of the lake Thingvallavatn was referred to in the olden days as Bláskógar. Thórir's property most likely consisted of the farmland which was called Thingvöllur (Thingvellir), with its outlying estates. Apparently this area remained in some kind of public ownership for a long time.<sup>17</sup> Ari's statement indicates that Thórir's conviction occurred before the

<sup>14</sup> Ólafur Lárússon, *Byggð og saga*, pp. 125-128.

<sup>15</sup> *St.*, I, p. 57.

<sup>16</sup> *Árbók hins íslenska fornleifafélags* (1881), pp. 22-23.

<sup>17</sup> Cf. Einar Arnórsson, *Réttarsaga alþingis*, p. 124.



founding of the Althing; this is implied in the words “had been found guilty”. The verdict would then have been reached at the Kjalarnes Assembly. This may have been the fortuitous event which helped to decide the site of the Althing.

The Althing used to meet in the open as there were few buildings at Thingvöllur other than a farmhouse. During the pagan period, sacrifices were probably held at every regular *thing*, but these must have taken place in the open as there is no reference to temples of any kind where the assemblies convened, nor is there any archeological evidence for the existence of such buildings.<sup>18</sup> A church was built at Thingvöllur in the 11th century. Some historians believe that King Ólafr the Saint of Norway (1014-1030) provided the timber for it; others think that it was King Haraldr Sigurðarson (1046-1066) who donated it. This is where the laws were proclaimed and the court of the Church was held in bad weather. The records mention a ‘farmer’s churchyard’, which has given rise to the speculation that there were two churches at Thingvöllur, one for the attendants of the national assembly (thingmannakirkja) with no adjoining graveyard, and another called the farmer’s church (i.e. a church belonging to the farmers of Thingvöllur). But whatever the original meaning of ‘farmer’s churchyard’ may have been, historical sources mention only one church at Thingvöllur.

Payments of various debts and fines were made in the farmer’s churchyard on Wednesday in the middle of each annual session of the Althing, and a market seems to have been held there also.<sup>19</sup>

The people who came to the Althing lived for the duration of the session in booths (búðir). These were shelters of turf and stone built around a framework of timber and roofed and decorated with homespun cloth. In the Old Icelandic literature many of the booths are identified by name, but their exact locations are long forgotten except that of *Snorrabúð*<sup>20</sup> (Snorri’s Booth) which stood close to Lögberg. All sorts of people would go to the Althing: sword cutlers, tanners and even vagrants. Some of them had their own booths at Thingvöllur, but others lived in tents.

The most important business of the Althing was transacted at two different locations at Thingvöllur, *Lögberg* (Law Rock) and *Lögretta* (the Court of Legislature). Lögberg was situated on the eastern bank of Almannagjá<sup>21</sup> and constituted the very centre of the Althing. From this rock the laws were proclaimed when weather permitted, and it was also from here that members of the Court of Legislature and the Courts of Justice (dómar) went to carry out their business. The hallowing of the

<sup>18</sup> Cf. Ólafur Lárússon, *Byggð og saga*. (1944), pp. 227-228.

<sup>19</sup> Cf. *Nordisk kultur*, XVI, p. 182.

<sup>20</sup> [The booth of Snorri the Priest.]

<sup>21</sup> In the eighteenth century it was referred to as the Law Rock of the Christians (Kristna-Lögberg), but the Law Rock of the Heathens (Heiðna-Lögberg) (*Annálar hins íslenska bókmenntafélags*, IV, p. 356) or the Old Law Rock (Gamla-Lögberg) was located on a ridge called Spöngin between Flosagjá and Nikulásargjá.

Althing was performed at Lögberg, and here also its annual sessions were formally prorogued. Lögberg was the place where public announcements were made, summonses delivered, and speeches addressed to the general assembly.<sup>22</sup> At the local assemblies the *thingbrekka* (an elevation of land at an assembly site) corresponded to Lögberg at Thingvöllur. Elevations of a similar kind are to be found on all the ancient sites which the Nordic peoples selected for their *things*. When Iceland came under the Norwegian crown, Lögberg lost its importance as the centre of the Althing, and before long most people even forgot where it had been. The Court of Legislature and the Courts of Justice will be discussed further in a later chapter of this book.

### *The Dates of the Annual Sessions of the Althing*

The very size of Iceland made it difficult to send out special announcements about the forthcoming session of the Althing every year, so this had to be decided at least one year in advance, even though discrepancies in the calendar greatly complicated the issue. The Icelanders reckoned only 364 days in the year, or 52 weeks, and it was divided into two seasons (summer and winter). Thus the year was a day or two short. The week, as a unit of time, was borrowed by the Scandinavians from West Germanic tradition, as the ancient names for the days clearly show, especially *Frjádagr* which should have been *Friggjardagr*<sup>23</sup> in Old Norse. This borrowing had taken place before the Age of Settlements and was a part of the accepted reckoning of the early Icelanders.

The Icelanders soon discovered the discrepancy in their calendar and undertook a serious and comprehensive study of chronology. Some of them became veritable experts in this branch of science. Ari the Learned says that “men noticed by the course of the sun that summer was moving backwards into spring” or, in other words, that the year was not long enough. In the early years of the Althing it may sometimes have become necessary to move the opening date of the annual session forward in time, otherwise the Althing would eventually have been convened in the spring before the roads to the assembly site became passable. Finally, at the suggestion of Thorsteinn Surtr Hallsteinsson, who acted upon the advice of Thorkell Moon and other wise men, it was made a law “that one week should be added to the year every seventh summer” in an attempt to eliminate chronological discrepancies.

Thorkell Moon was the son of Thorsteinn Ingólfsson of Reykjavík. He was lawspeaker from 970 to 984. By observing the way in which Ari the Learned arranged his material in *Íslendingabók*, scholars have con-

<sup>22</sup> *Grg.*, III, pp. 644-645, (under *lögberg*): [cf. also *Kulturhistorisk leksikon*, XI, *Lögberg*.]

<sup>23</sup> [For further information on this see *Kulturhistorisk leksikon*, II, *Dagnavn*. On the Christian names of the days in Iceland cf. pp. 154-155 below.]

cluded that this law, which changed the opening date of the Althing from time to time, was not introduced during Thorkell Moon's term of office, even though his name was associated with its introduction; rather, this particular law must have originated in the period from 950 to 969 when Thórarinn Ragabróðir was lawspeaker. This special act of the Althing shows that the chronological system underwent a thorough scrutiny. The resulting change, it must be admitted, did not completely eliminate the existing discrepancies. Nonetheless, it led to the introduction of the so-called extension of summer (*sumarauki*), an intercalary week which has since remained a part of the Icelandic calendar. Some time in the 12th century, perhaps, when the Icelanders had become acquainted with the chronology of the Church, they brought their own calendar into line with it.<sup>24</sup>

One may now understand why it is not possible to determine the dates on which the Althing was convened during the early decades of its history. Ari the Learned claims that until the year 999 people used to come to the Althing on a Thursday, at the end of the 9th week of summer, but then it was decreed that the opening date should be moved forward one week to the Thursday marking the end of the 10th week of summer, which in terms of the calendar of the Church<sup>25</sup> was some time between the 18th and the 24th of June. This arrangement remained unchanged until 1271 when the Section on Assemblies (*Thingfararbálkr*) of the lawbook *Járnsíða* (Iron Side) took effect. It is noteworthy that the Gulathing Assembly in Norway also convened on Thursday — until the year 1164.<sup>26</sup>

The lawbook *Grágás* implies that the length of each annual session of the Althing was two weeks. There is some evidence, however, to show that in the 13th century the sessions grew shorter.

### *The Hallowing of the Althing and its Prorogation*

Each annual session of the Althing commenced with the hallowing of the assembly on the evening of its opening day, Thursday. This inaugural ceremony, as we have seen already, was performed by the chieftain who held the hereditary authority (*goðorð*) of Thorsteinn Ingólfsson and his descendants. This man bore the title *allsherjargoði*<sup>27</sup> (supreme chieftain), and his booth at Thingvöllur was known as the *allsherjarbúð* (quarters of the supreme chieftain). The custom had its roots in ancient Germanic tradition.<sup>28</sup> The supreme chieftain was to determine the precincts<sup>29</sup> of the Althing and no doubt to declare the area within them a

<sup>24</sup> *Alfræði íslensk*, II, pp. I-XXII.

<sup>25</sup> [Lat. "stylus vetus" i.e. the Julian calendar.]

<sup>26</sup> (Norsk) *Historisk Tidsskrift* (1924), p. 18.

<sup>27</sup> *Landn.* (1921), p. 145, [literally *allsherjargoði* means 'chieftain of all the people'.]

<sup>28</sup> Tacitus, *Germania*, Chapter XI.

<sup>29</sup> "Thórðar saga hreðu", *Vatnshyrna*, AM 564A.4° (a manuscript in the Arnamagnæan Institute, Copenhagen).

sanctuary. At any rate this area was often referred to as *thinghelgi* (the sanctuary of the assembly). It is not known just how the hallowing ceremony was performed, even though it would appear probable that during the heathen era it involved sacrificial feasts out in the open. Once the *thing* had been hallowed, everyone there was entitled to a double compensation for any offence against him. The boundaries of the Althing are not stated in our historical literature, but in his careful study of Thingvöllur, Matthías Thórðarson<sup>30</sup> concluded that they were as follows: the higher bank of Almannagjá on the western side; to the north, the so-called Castles; to the east, Flosagjá and the gorge extending from it into Thingvallavatn; to the south, Thingvallavatn. The real boundaries of Thingvöllur must then have encompassed an area of some 400,000 square meters.<sup>31</sup> All the booths were situated inside this area, and within these confines the entire business of the Althing was carried out.

In the heathen era it was customary for every free adult male to bear arms wherever he went. This was for protection against attacks and in case it should become necessary to take immediate revenge. Although the Church was strongly opposed to the custom of bearing arms and the taking of revenge, the bearing of arms remained a common practice in Iceland until after the Reformation, and even though acts of vengeance finally were severely curtailed, such acts were permitted by law throughout the Commonwealth Period. In heathen times it was apparently forbidden to bear arms in temples; later the same ban was extended to churches. In accordance with Old Germanic custom men came to the *thing* fully armed, and they would indicate agreement there by the 'wäpen-take' (*vápnatak*).<sup>32</sup> This custom lingered on during the early centuries of Icelandic history until, in 1154, according to an entry in *Konungsannáll*, the bearing of arms at the Althing was prohibited. Two years earlier, in 1152, the bearing of arms had been virtually banned in Norwegian market towns and there must have been a connection between these two events. Cardinal Nicholas Brekespeare (later Pope Hadrian IV) was no doubt instrumental in effecting the ban when he visited Norway in 1152 in order to make preparations for the founding of the Archbishopric of Niðarós. The ban against the bearing of arms at the Althing applied only to the Courts of Justice where the use of force always remained a definite threat. The ban appears to have been effective for quite some time, although in his *Íslendinga Saga* (The Saga of the Icelanders) Sturla Thórðarson says that about 1216 it became common for men to equip themselves with clubs before they attended the sessions of the courts.<sup>33</sup> This custom, however, was gradually abandoned, since

<sup>30</sup> [The Curator of the National Museum of Iceland 1908-1947.]

<sup>31</sup> *Árbók hins íslenska fornleifafélags* (1911), p. 5.

<sup>32</sup> [OE *wæpengetæk* 'touching of weapons'.]

<sup>33</sup> *St.*, I, p. 267.

the hostilities which prevailed throughout the Age of the Sturlungs<sup>34</sup> seem to have called for weapons more effective than clubs. However, our sources state specifically that in 1234 the people at the Althing obeyed Bishop Magnús Gizurarson's ban against the bearing of arms at court sessions.<sup>35</sup>

The last day of the Althing session was called *thinglausnadr* (prorogation day), and was also referred to as *vápnatak*, reflecting the ancient custom of either clashing weapons or beating them against shields, but this custom may have been abandoned after 1154.

Although it is not a matter of certainty, it would appear to have been the duty of the supreme chieftain rather than of the lawspeaker to make a formal announcement of the prorogation of the Althing.<sup>36</sup>

### *The Lawspeaker*<sup>37</sup>

For almost two centuries the laws of Iceland were preserved in memory, a function of the lawspeaker and the legislative court, but in the winter of 1117-18 their codification began. Besides knowing the laws, it was the duty of the lawspeaker to make them known to the public by proclaiming them officially in an appropriate manner. The office of the lawspeaker was created when the Althing was founded and it remained until 1271. During this period the lawspeaker was the nation's only public servant in Iceland. As a rule he proclaimed the laws at Lögberg. On certain occasions, however, he could perform this duty in the Court of Legislature, and after a church had been built at Thingvöllur the laws were proclaimed there when the weather did not permit outdoor meetings. The lawspeaker arrived at the Althing on the first Friday of its annual meeting, when he proclaimed the lawful procedures for the session to ensure that those who participated in the Althing knew how the business there was to be conducted. He proclaimed other sections of the code in three consecutive summers which constituted his term of office.

The recitation of the law code was a demanding task performed under the supervision of the Court of Legislature. If he deemed it necessary before he proclaimed the law code, the lawspeaker was free to consult five or more legal experts (*lögmenn*). It was his duty at the Althing and elsewhere to help those who asked his advice and to clarify for them problematic points in law. On the last day of the session, acquittals were announced, and after the introduction of Christianity the same occasion was used to promulgate important changes in the calendar. Both were repeated at midsummer assemblies (*leiðir*). Official announcements on the chronological system had the same function as the calendar today.

<sup>34</sup> [Cf. p. 133.]

<sup>35</sup> *St.*, I, p. 374; [on the bearing of arms in churches, cf. p. 168.]

<sup>36</sup> Cf. *Gr.*, III, pp. 687-689 (under *vápnatak*), pp. 705-706 (under *thinglausn*).

<sup>37</sup> [Cf. *Kulturhistorisk leksikon*, XI, *Lögsögumaðr*.]

The lawspeaker was the president of the Althing. When the assembly was in session, he chose the men who were to sit at Lögberg where he had a special seat reserved for himself — the lawspeaker's chair (lögsögumannsrúm). Except for the hallowing ceremony, the lawspeaker was in charge of all the affairs of the Althing. He led the procession from Lögberg when the courts convened to consider challenges and to hear the presentation of a case. He also decided where the courts should sit. One of his duties was to summon people by a bell to the courts,<sup>38</sup> a custom which must have been adopted in Christian times, because in the year 1000, according to Ari, the lawspeaker had to send word to individual booths to gather people to Lögberg. The lawspeaker presided over the meetings of the Court of Legislature where he had a vote and a seat on the middle platform. He was elected by the Legislature for a three-year term on the first Friday of the meeting of the Althing, at the time when his predecessor in office had announced the procedures for the newly begun session. If the lawspeaker died in office between annual meetings, another man from the same Quarter was requested to proclaim the procedures at the next session, whereupon a new lawspeaker would be elected. There are many instances in which a certain lawspeaker would be re-elected. This was legally permissible. For his services the lawspeaker received from the Legislature's treasury two hundred ells of homespun cloth per annum and a portion of the fines paid for various offences (sakeyrir).<sup>39</sup>

One can readily understand that the onerous and demanding duties of the lawspeaker made it imperative that an articulate man with administrative abilities and profound knowledge of both law and chronology be elected for that office. As a result, the lawspeakers came from the most prominent and highly cultured families in the country, but the historical sources do not indicate whether or not the lawspeaker was permitted to hold the office of a *goði*. If he owned a chieftancy, he may have been required to appoint someone else to represent it at the Althing.

When the laws were finally committed to vellum, it naturally became much easier to proclaim them; the traditional recitation may even have been gradually abandoned. One would expect it to have been very important for the lawspeaker to obtain the most reliable scrolls possible. But there is no evidence of any particular law book ever having been reserved for his use.

The *Thórðarbók* version of *Landnámabók*, following the *Melabók*, states that Úlfljótr was the first to teach law in Iceland.<sup>40</sup> Lawspeakers and other experts must have continued to offer this kind of instruction, since it was necessary to keep the public well informed about law not only

<sup>38</sup> *Grg.*, Ia, p. 45.

<sup>39</sup> Cf. *Grg.*, III, pp. 649-650 (under *lögsögumaðr*), pp. 666-667 (under *segja upp*).

<sup>40</sup> *Landn.* (1921), p. 146.

during the Commonwealth Period, but much later, i.e. until about 1720 when courts ceased to be nominated<sup>41</sup> in Iceland. It must have been more difficult for the general public to acquire a knowledge of the law when the recitation of the law code at the Althing ceased.

There is no mention of lawspeakers in Norway, and it is uncertain whether such a public office ever existed there.<sup>42</sup>

### *The Division of the Country into Quarters*

During Thórarinn Ragabróðir's term as lawspeaker (950-969) a major dispute arose between two prominent men, Thórðr Gellir at Hvammur in Dalir and Tungu-Oddr at Breiðabólstaður in Reykjadalur.<sup>43</sup> This conflict was brought on by Hænsa-Thórir and his companions who burnt Thorkell Blund-Ketilsson to death in the latter's home at Örnólfsdalur in Borgarfjörður. The ensuing lawsuit saw Thórðr Gellir in charge of the prosecution and Tungu-Oddr leading the defence. The Icelandic Annals mistakenly refer to this event as 'the burning of Blund-Ketil', and it is also doubtful whether one can rely on the date 962 which they have assigned to it. Ari the Learned states that at that time "it was law that actions for manslaughter must be raised at the assembly nearest to the scene of the killing, which facilitated matters for the prosecution". In accordance with this, the incendiaries of Örnólfsdalur were prosecuted at an assembly in Thingnes in Borgarfjörður, where it was convenient for Tungu-Oddr to make use of force. A battle ensued preventing the Thingnes Assembly from conducting its business in a lawful manner. The case was then referred to the Althing where Tungu-Oddr, after involving himself in a battle for the second time, sustained defeat. At this session Hænsa-Thórir was sentenced to outlawry and then put to death together with some of his accomplices. On this occasion Thórðr Gellir delivered a speech from Lögberg explaining that it was urgent to change the awkward rules which compelled a person to engage in a lawsuit at a remote district assembly far away from his home. On this occasion the Althing legislated a constitutional change which Ari the Learned has described in the following manner:

Then the country was divided into Quarters, making three assemblies in each Quarter, where individuals should take their cases to an assembly they shared. Only in the North Quarter were there four assemblies, because no other agreement could be reached; those living north of Eyjafjörður were not willing to attend the assembly there, those who lived west of Skagafjörður would not attend the assembly there.

<sup>41</sup> [Cf. p. 67.]

<sup>42</sup> Cf. (*Norsk Hist. Tidsskrift* (1924), p. 6. [The lawmen in Norway no doubt performed the same functions, cf. E. Hertzberg. *Grundtrækkene i den ældste norske proces* (Christiania, 1874), p. 156.]

<sup>43</sup> [In *Borgarfjarðarsýsla*.]

However, the number of judges and of members of the Court of Legislature<sup>44</sup> were to be the same from that Quarter as from any of the others. Afterwards the Quarter-Assemblies were established.

It is difficult to determine how radical a change this was, since very little is known about the constitution before the time of the Quarter division, though it is possible to make some conjectures about it. The very core of the new act was constituted by the change in the laws affecting prosecutions. It had been law “that an action for manslaughter must be raised at the assembly nearest to the scene of the killing”, but now “individuals should take their cases to an assembly they shared”, which meant that lawsuits could always be taken to the Althing — the assembly shared by all Icelanders. If the parties to a suit were from the same Quarter, but did not belong to the same district assembly (*várthing*), their case could be brought before a Quarter assembly or even the Althing, whichever was preferred. In the event that the contending parties shared the same district assembly, it fell to the prosecutor’s lot to decide whether the prosecution should take place at a district assembly, a Quarter assembly or at the Althing. Minor lawsuits, however, were to be raised at district assemblies.<sup>45</sup> This change was a considerable improvement, even though some people were left in a less advantageous position than others. Thus, all other things being equal, a participant who happened to live in the *Árnessthing*<sup>46</sup> in southern Iceland, only a short distance from Thingvöllur, had a definite advantage over an opponent from a different Quarter.

In Norway four provinces, Ryggafylki, Hörðafylki, Sygnafylki, and Firðafylki were each divided into Quarters, with each Quarter having its own assembly. It is reasonable to assume that the Quarter division in Iceland was modelled on Norwegian practice.<sup>47</sup> In Iceland the Quarter division represents the earliest instance in which geographic boundaries were used for administrative purposes. The names of the Quarters and their boundaries were as follows: The East Quarter, extending from Helkunduheiði and probably Skoravíkurbjarg at Langanes to the river Jökulsá at Sólheimasandur;<sup>48</sup> the Rangæings’ or South Quarter, comprising the area from Jökulsá to the river Hvítá in Borgarfjörður; the Breiðfirðings’ or West Quarter, extending from the river Hvítá to the river Hrútafjarðará, and the Eyfirðings’ or North Quarter from the river Hrútafjarðará to Helkunduheiði. The dividing line between the North

<sup>44</sup> [At the Althing.]

<sup>45</sup> *Grg.*, Ia, p. 99.

<sup>46</sup> [In Árnessýsla where the Althing was held.]

<sup>47</sup> *Cf. (Norsk) Hist. Tidsskrift* (1924), p. 21; [cf. also Gustav Indrebø, “Fjordung”, *Bergens museums Årbok* (1935).]

<sup>48</sup> [The northern boundary comes close to but does not quite coincide with the present boundary between Norður-Thingeyjarsýsla and Norður-Múlasýsla. There are two points extending northward from Langanes, and Skoravíkurbjarg is on the one farther to the west. Helkunduheiði is just south of Langanes. The river Jökulsá now forms the boundary between Vestur-Skaftafellssýsla and Rangárvallasýsla.]

and the East Quarters was not clear enough, and the Hammer of Thor<sup>49</sup> was therefore erected there to mark the boundary. The division into Quarters was based on reasonable principles, with the exception of the boundary line at the river Hvítá; this soon turned out to be impractical in that it divided the Borgarfjörður district into two regions. Some scholars have doubted that the river Hvítá ever constituted a Quarter boundary, even though all our historical sources agree that it did.<sup>50</sup>

A chieftain was not allowed to have supporters or liegemen (thingmenn) from outside his Quarter except by special permission of the Court of Legislature. However, a man could move house across Hrutafjörður into a new Quarter without being required to sever the bonds of allegiance with his chieftain.<sup>51</sup> It is tempting to speculate that this restriction of the power of chieftains had something to do with the territory and jurisdiction of Tungu-Oddr in Borgarfjörður; he may have obtained some of his liegemen from the West Quarter, i.e. the area west of the river Hvítá, while his own home was in the South Quarter east of the Hvítá.

The members of the Court of Legislature obviously tried to ensure equal representation at the Althing from the various Quarters. At the local level, however, this failed as the men of the North Quarter refused to be content with three assemblies, and as a result the number of district assemblies was increased from twelve to thirteen. Scholars are largely agreed that before the Quarter division was instituted Iceland was divided into twelve assembly districts, with three chieftains for each assembly, and that when the Quarter boundaries were decided, the Thingeyjarthing with its three chieftains was added in the North Quarter. This assumption is based on the following explanatory passage at the beginning of the section 'On Assembly Procedure' (thingskapatháttir) in *Grágás*: "But those were ancient and plenary chieftaincies when there were three assemblies in each Quarter, having three chieftains (goðar) each. At that time the original assemblies were still intact".<sup>52</sup> It has been assumed that this describes the constitution as it was before the Quarter-division, and that the premature mention of the unestablished Quarters must be explained as an oversight. But this passage in *Grágás* probably dates from the 13th century and cannot be relied upon except in giving the number of the 'ancient chieftaincies' as thirty-six. During the Commonwealth Period people would hardly have forgotten the correct number of these chieftaincies, as the chieftains representing them played a specific role both in the Court of Legislature and in making appointments to the judicial courts. It would appear to have been relatively easy to decide the

<sup>49</sup> *Dipl. Isl.*, XII, p. 3.

<sup>50</sup> Cf. *Árbók hins íslenska fornleifafélags* (1916), pp. 1-25; [cf. also p. 238.]

<sup>51</sup> *Grg.*, Ia, p. 141; II, p. 278.

<sup>52</sup> *Grg.*, Ia, p. 38. Cf. "They have the choice, if they so desire, of discontinuing a *thing* in order to combine two *things* into one, though these may previously have been separate assemblies". *Grg.*, Ia, p. 108.

Quarter boundaries to everyone's satisfaction if people at that time had become accustomed to twelve district assemblies for the entire country. On the other hand, it is easy to understand that the division of the country into Quarters would cause dissatisfaction if it were introduced before the number and distribution of district assemblies had been brought into line with a larger administrative pattern. At that time the inhabitants of both the Húnavatnsthing and the Thingeyjarthing<sup>53</sup> may have had their own district assemblies, one or even more for each district, and it would have been only natural for people from these areas to refuse to relinquish them. The location of some of the ancient sites of the district assemblies indicates that at one time the distribution of these assemblies did not follow any systematic arrangement.

The decision to establish Quarter assemblies was probably made when the Quarter division was introduced, and thus it may be assumed that the assemblies began the following spring. The word *afterwards* in Ari the Learned's previously quoted passage does not necessarily indicate that a longer period of time elapsed before the policy on Quarter assemblies was implemented. The Quarter assemblies were judiciary assemblies. They do not appear to have been held at regular intervals and were in all probability discontinued long before the end of the Commonwealth Period. The only reference to the Quarter assemblies in *Grágás*<sup>54</sup> implies that they were very seldom convened. They are not listed with the regular assemblies (skapthing). Most likely they were not held unless there was a special reason.

The Quarter assemblies were held at Lón in the East Quarter, at Ármannsfell in the South Quarter; in the West Quarter the assembly was held at Thórsnes,<sup>55</sup> but there is no mention made of a permanent site in the North Quarter, even though it appears to have been at the site of the district assembly in Hegranes in Skagafjörður.<sup>56</sup> At Lón and Ármannsfell there are no ruins to indicate the actual assembly sites. It is true that near the farmstead of Vík in the Lón district just beside the present highway, there is a hill named *Thingbrekka* (assembly hill) on the western slope of Lónsheiði. On the eastern slope, also beside the highway, there is another *Thingbrekka*. In ancient times both of these were no doubt resting places for people going to and returning from the Althing.<sup>57</sup>

<sup>53</sup> [the furthest west and the furthest east in the North Quarter.]

<sup>54</sup> *Grg.*, II, p. 356.

<sup>55</sup> *Dipl. Isl.*, XII, pp. 5, 8, 12.

<sup>56</sup> Ólafur Lárusson, *Landnámi í Skagafirði* (Reykjavík, 1940), pp. 152-153.

<sup>57</sup> Cf. *Arbók hins íslenska fornleifafélags* (1925-26), p. 12.

## *Chieftains — Their Power and Jurisdiction*

The government of the country was in the hands of men of authority who were called chieftains (*goðar*); the office of chieftain was called a chieftaincy (*goðorð*). Scholars have put forward conflicting theories on both the origin of the chieftaincies and the authority held by chieftains. Only the two most important of these will be outlined here. The most widely held opinion is that the authority of chieftains was derived from their ownership of temples as well as from their leading role at sacrificial feasts. Contrary to this claim, the German scholar Friedrich Boden has maintained that the Icelandic chieftains, like their counterparts among other Germanic nations, attained their positions of power through high birth and the backing of supporters.<sup>58</sup> The etymologies of *goði* and *goðorð* clearly indicate that, essentially, the first theory must be the correct one, since the noun *goði* originally denoted a man conducting sacrificial ceremonies; in the heathen era the chieftain or *goði* therefore served as a temple-priest. Indeed, this assumption derives support from many other sources, some of which will be further explored below. But while the ownership of temples and leadership at sacrificial feasts undoubtedly constituted the chief basis for the power of chieftains, their authority must have rested on other factors as well, such as aristocratic lineage and wealth.

No known forms of administration outside Iceland could have served as models for the Icelandic chieftaincies, although the word *goði* occurs in two runic inscriptions on the island of Fyn in Denmark. One of these dates back to the 9th century; the other is from about 900.<sup>59</sup> Moreover, *Landnámabók* refers to Thórhaddr the Old, temple-priest (*hofgoði*) from Moere in Norway, who became a settler in Stöðvarfjörður in Iceland. All these must have been prominent men who conducted sacrificial feasts, but it is a matter of speculation whether they had any secular authority similar to that of the chieftains in Iceland. Research into the origin of the authority of chieftains is hampered by the lack of information about the kind of individuals in Norway who were entrusted with such responsibilities as the keeping of temples and nominations to courts. Nor is it possible to determine just how extensive the Icelandic chieftains' authority was before the time of the Althing. The high-born individuals in command of ships who brought a number of people with them to Iceland where they claimed large areas as their settlements, or obtained possession of land by other means, must have tried to establish the same kind of authority in the new land as their forefathers had had in the old. But a rural society with a scattered pop-

<sup>58</sup> *Die isl. Regierungsgewalt in der freistaatlichen Zeit* (Breslau, 1905).

<sup>59</sup> L. Wimmer, *De danske Runemindesmærker*, II, pp. 346, 352, 369.

ulation in a country where the rugged natural environment makes communications difficult, is inimical to the development of power and tight social organization. The needs of the people in Iceland were different from those in Norway and other countries. The geographic position of Iceland made a military attack from abroad highly improbable. This explains why the law code of the Old Icelandic Commonwealth did not provide for a special section on defence, and why the constitution did not even take such matters into account. The Icelanders had no need of a king or an earl, since the main duty of these was providing leadership during armed conflicts between states. The same principle also applied to Shetland, the Faroes, and, later on, to Greenland. Most of the other Norse colonies had either a king or an earl. Both before and during the Age of Settlements in Iceland, war lords (*hersar*) were common in Norway, even though they were not known in the Norse colonies. The title *hersir*<sup>60</sup> must have implied certain powers peculiar to life in Norway. Most of the war lords belonged to prominent families.

As there was no need for military defence in Iceland, individual power for the most part centered on temples and assemblies. In the early days tenants did not yet constitute a source of power. *Landnámabók* shows that some pioneers, or their sons, built temples and that in later years their chieftaincies (*goðorð*) usually remained in the hands of their descendants. As a rule these temple builders were men of wealth and of noble lineage; indeed, the building of a stately temple must have meant a considerable outlay of wealth. Many of these pioneers were no doubt genuinely concerned with sacrificial feasts; others, while lacking such interest, may have built temples because of the prospect of power associated with such an undertaking. The temples were privately owned in the same way as the churches which replaced them. Donations of property were made to temples to ensure their proper maintenance, as is shown by the following passage from *Landnámabók*:

Jörundr the Priest, son of Hrafn the Foolish, settled west of Markarfljót at a place which is now called Svertingsstaðir, and built a large temple there. There was an unclaimed piece of land between the river Krossá and Jöldusteinn. Jörundr carried fire around it and dedicated it to the temple.<sup>61</sup>

This area is called *Goðaland*, 'the land of the gods', which no doubt indicates that it either must have been dedicated to the gods or designated as their property. The same source has it that in Jökuldalur in the east there was an unclaimed plot of land between the areas claimed by Thorsteinn Torfi and Hákon which they gave to the temple. This is now called Hofsteigur (temple-strip).<sup>62</sup> Also, Ari the Learned

<sup>60</sup> [Cf. *The Viking Achievement*, p. 129.]

<sup>61</sup> *Landn.* (1900), p. 236; cf. also pp. 107 and 218.

<sup>62</sup> *Landn.* (1900), p. 204; cf. also p. 88.

claims that Grímr Goatbeard gave the temples the fee he received for exploring Iceland. One may conclude that people would not have given property to the temples unless these institutions served an important social function.

The leading men who owned the temples and were in charge of them must have been the chief founders of the district assemblies and, later on, of the Althing. *Grágás* describes two kinds of chieftaincies, the ancient chieftaincies (forn goðorð),<sup>63</sup> and the new chieftaincies (ný goðorð).<sup>64</sup> The structure of the Quarter Courts, the Fifth Court and the Court of Legislature shows that the ancient chieftaincies must have been 36 in number. This matter must have been decided at the time of the founding of the Althing, since the number of chieftaincies was raised to thirty-nine when the Quarter division was instituted.

The number twelve, or the dozen, was the basic numerical unit for courts and other assemblies in Norway and in the Norse colonies, and it probably goes back to the earliest assemblies in Norway.<sup>65</sup> When the Althing was founded in Iceland, it was decided as a matter of course that the number of chieftaincies should have the numerical unit twelve as a basis, and three dozen may indeed have come closest to the number of men of rank who had laid claims to chieftaincies. The founders of the Althing would have been faced with great difficulties in the allotment of chieftaincies if the chieftaincies were fewer in number than the leaders wishing to claim them. In deciding this matter the pioneers of the Althing tried to ensure that the authority accompanying the chieftaincies was evenly distributed among the most prominent men in the country. In *Grágás* it is implied that two or more individuals could own a chieftaincy jointly, the term of management assigned to each owner being proportionate in length to the share he owned. However, there was a minimum tenure extending over the period of three regular assemblies.<sup>66</sup> If the law code which Úlfljótr brought to Iceland contained a similar provision, it should have been possible to grant a share in a chieftaincy to almost every man who wished one. Both *Landnámabók* and the Sagas contain accounts of many chieftains, or men of rank, who could hardly have owned more than a part of a chieftaincy. The chieftaincy of Hrafn Sveinbjarnarson and that of the Thórsnesings are examples of the kind of joint ownership of chieftaincies which existed until the end of the 12th century. However, it is not necessary to assume that these chieftaincies were originally divided in this manner. On certain occasions the apportionment of inherited property may have brought about a division of

<sup>63</sup> *Grg.*, Ia, pp. 38, 77, 211; cf. also *Viga-Glúms saga*, Chapter 1.

<sup>64</sup> *Grg.*, Ia, p. 77.

<sup>65</sup> Cf. A. Bugge, *Vesterlandenes indflydelse paa Nordboerne i vikingetiden* (Kristiania, 1905), pp. 133-134; (*Norsk*) *Hist. Tidsskrift*, 1924, p. 13.

<sup>66</sup> *Grg.*, Ia, pp. 38, 43, 141. [1 year; cf. p. 60.]

chieftaincies; under other circumstances such an allotment may have led to the amalgamation of individual shares.

The story of Grímr Goatbeard's donations to temples indicates that the founders of the Althing wished to strengthen the pagan religion. This they could achieve both by making financial contributions to the temples and by granting those who were responsible for their management exclusive rights to govern the country. Apparently both these methods were used. Several historical records contain an interesting account dating from the latter part of the 12th century or the first half of the 13th century. It concerns the law code of the heathens, and its most original version, found in the *Hauksbók* redaction of *Landnámabók* and the Story of Thorsteinn Oxfoot,<sup>67</sup> runs as follows:

A temple-ring weighing two ounces or more<sup>68</sup> (or: worth two ounces or more) should be kept upon the altar of every major temple (*höfuðhof*). Every chieftain (or: temple-priest) should wear the temple-ring on his arm in attendance at any of the regular assemblies which were convened under his leadership. First, however, he should immerse the ring in the blood of the bull offered as sacrifice by the chieftain himself. Anyone transacting legal business before a court should first take an oath on the temple-ring, and, having called two or more witnesses, he should declaim the following words: "I call upon you to testify", he should say, "that I take an oath by the ring — a lawful oath. So help me Freyr and Njord, and the Almighty God (in all probability Thor)<sup>69</sup> as I proceed to prosecute or to defend this case and to bear testimony, give verdicts or pronounce judgements, as truthfully and as much in accordance with the law as my knowledge permits me. Also, I shall discharge such legitimate business as comes within the scope of my office as long as I am present at this assembly". When the country was divided into Quarters, there were to be three assemblies to each Quarter and three major temples (*höfuðhof*) in each assembly district. There guardians of the temples were selected according to their wisdom and sense of justice. At assemblies they were to make appointments to courts and direct lawsuits. Because of their position, these men were called *guðar* (i.e. *goðar*). Each man was to pay a temple-toll in the same way as we now pay tithes to our churches.<sup>70</sup>

This passage is akin to the previously mentioned explanatory note at the beginning of the chapter in *Grágás* on the Procedures of Assemblies in that the author does not mention the disproportionate number of assemblies in the North Quarter. In addition, he apparently implies that the Quarter division was introduced when the Althing was founded. One must discount as exaggeration the statement that temple-priests were

<sup>67</sup> Cf. Jón Jóhannesson, *Gerðir Landnámabókar*, pp. 32-35, 159-162, 212.

<sup>68</sup> It was called *stallahringr*.

<sup>69</sup> [Further on this cf. pp. 118-119.]

<sup>70</sup> *Landn.* (1900), p. 96.



selected according to their wisdom and sense of justice. Wealth and social status were undoubtedly of greater importance; also, preference must have been given to those who had already attained positions of power. Occasionally, all these qualifications may have combined to determine the selection of a temple-priest. However, the passage in *Hauksbók* undoubtedly contains some very old ideas. The part about the oaths shows that no one would have been in a position to place legal matters before the courts unless he confessed his belief in the heathen gods; in other words, only those who believed in the pagan gods were able to enjoy full legal rights, even though an apparent freedom of religion prevailed. The separation of state and religion simply was not feasible, so that it is easy to understand why the Christian influences that reached Iceland during the settlement period all but faded away when the Althing was established. Even the sons of the Christian chieftains built temples and offered sacrifice in order that they might retain their power. When, finally, Christianity was legislated in Iceland, a change in customs naturally followed. Oaths by temple-rings and invocations of the heathen gods were no longer required. It became customary to take oaths by the sign of the Cross or by a sacred book, while invocations were addressed to the Holy Trinity. The chieftains gave up their role as priests or keepers of temples and assumed purely secular power, though they retained the title of *goði*.

The idea of major temples and temple-tolls was probably derived from the law code introduced by Úlfljótr. The following passage from *Eyrbyggja Saga* contains the most precise account of the temple-tolls:

All men were required to pay tolls to the temple and it was their duty to take part in all expeditions with the temple-priest *just as liegemen now must accompany their chieftains*. For his part the temple-priest had to maintain the temple at his own expense, so that it did not deteriorate, and hold the sacrificial feasts in it.<sup>71</sup>

This suggests that the liegemen of a *goði* were originally those who paid tolls to his temple. Even without the testimony of historical records, this would be the most natural explanation of the original ties between the two ranks.

It is quite obvious that a *höfuðhof* (major temple) was to be a part of each of the old chieftaincies, but it is not certain whether this arrangement also included the three chieftaincies which were added at the time of the Quarter division. The term 'major temple' implies the existence of minor temples, and even though one might dismiss some of the information on this matter as unreliable, there would nonetheless be sufficient evidence remaining from sagas and such farm names as *Hof*,<sup>72</sup> *Hofstaðir*

<sup>71</sup> *Íslensk fornrit*. IV, p. 9

<sup>72</sup> ['temple:']

to indicate that temples in Iceland far exceeded the number of thirty-six.<sup>73</sup> Nothing is known about the legal status of minor temples. Some of them may have been built during the Age of Settlements, ceasing to function when the Althing was founded and the temple system put into effect. A limited number of temples may have been privately owned. It is possible, too, that plans for the establishment of major temples were never fully carried out, or were even disregarded when private temples were erected in remote districts — particularly in areas where a chieftaincy was owned by two or more individuals.

*Vápnfirðinga Saga* mentions a certain Steinvör, a temple-priestess in charge of a major temple who collected temple-tolls.<sup>74</sup> There are references to priestesses or temple-priestesses in other historical sources. This has led scholars to doubt that the keepers of temples were automatically granted authority in secular affairs. Rather, they contend that during this early period it would not have been in keeping with popular thinking to place women in positions of secular power. It may indeed be inferred from *Grágás* that women were not allowed to manage or represent a chieftaincy.<sup>75</sup> However, nothing seems to have hindered women from owning chieftaincies, and the most natural interpretation of the comments offered in *Grágás* on this matter is simply that women owning chieftaincies were required to delegate their authority to a liegeman from their own district. On the other hand, it is quite conceivable that women were permitted to discharge duties as priestesses and keepers of temples if the story about Steinvör in *Vápnfirðinga Saga* has any foundation in fact.

As was stated, it was decided when the Althing was founded that the number of chieftaincies should be thirty-six. When the country was divided into Quarters, three new chieftaincies were created, as the people of the North Quarter insisted on having a fourth district assembly. Thus, all the new chieftaincies belonged to the North Quarter where they were formed from certain parts of older chieftaincies. In *Bandamanna Saga* the chieftaincy of Oddr Ófeigsson of Melur in Miðfjörður is spoken of as a 'new chieftaincy',<sup>76</sup> even though the author of the saga apparently does not know just when it was founded. The author of *Njáls Saga* considers himself more knowledgeable on this point when he maintains that the new chieftaincies were formed when the Fifth Court was added to the judicial section of the Althing. This event, he claims, took place in the heathen era, and he names three chieftaincies: the *Melmannagoðorð* in Miðfjörður, the *Laufæsingagoðorð* in Eyjafjörður, and the chieftaincy in the Rangárthing owned by Höskuldr Hvítanessgoði.<sup>77</sup> The last has a

<sup>73</sup> Ólafur Briem, *Heiðinn siður á Íslandi*, p. 187.

<sup>74</sup> *Íslenzk fornrit*, XI, p. 33.

<sup>75</sup> *Grg.*, Ia, p. 142.

<sup>76</sup> *Íslenzk fornrit*, VII, pp. 300-301.

<sup>77</sup> *Íslenzk fornrit*, XII, pp. 241-247.

questionable foundation in reality, and *Njáls Saga* seems to have substituted it for the third chieftaincy added in the North Quarter on which there is no information. What *Njáls Saga* has to say about the other two chieftaincies is undoubtedly historically accurate. Even though the authors of *Bandamanna Saga* and *Njáls Saga* did not know the true origin of these chieftaincies, they must have known which of them were referred to as 'ancient' and which of them were classified as 'new chieftaincies', since their respective spheres of influence within the administrative system varied until the end of the Commonwealth Period. The Melmannagoðorð was, of course, the chieftaincy which in *Bandamanna Saga* is ascribed to Oddr Ófeigsson. One is therefore justified in rejecting the widely held theory that the new chieftaincies founded at the time of the Quarter division were all in the north-eastern part of Iceland.

*Grágás* contains an explicit description of the functions of chieftains.<sup>78</sup> Their command of chieftaincies gave them authority over other men (mannaforráð); in the 13th century this kind of authority was often referred to as power (ríki). Farmers and landowners, whether or not the latter owned any livestock, had to declare their allegiance to a certain chieftain at one of the three regular assemblies, i.e. at a district assembly, a midsummer assembly,<sup>79</sup> or at the Althing, with the chieftain's approval. Farmers were allowed to transfer their allegiance from one chieftain to another. However, such an action could be taken only once a year. Members of a household were to attend the same assembly as their master, and tenant-farmers were to share an assembly with their landlords.<sup>80</sup> The alliance between a chieftain and those of his liegemen who were farmers or landowners was based on a completely free and personal contract. The liegemen of a chieftain might therefore be dispersed over areas that were likewise occupied by the liegemen of some of his fellow chieftains. Thus, the chieftaincies had no geographic boundaries prescribed by law, except the Quarter boundaries. However, the temples may have helped to preserve the integrity of the chieftaincies even though there was no compelling reason why the people affiliated with a specific temple had to come from a district any more geographically limited than those who shared a certain district assembly. The ancient law code often employs the term *thriðjungsmadr* (a liegeman by association or a liegeman from the same district) instead of *thingmadr* (liegeman). Indeed, these two terms sometimes differ in meaning. If, for instance, A and B were the joint owners of a chieftaincy, C was by association the liegeman of A,<sup>81</sup> if he (i.e. C) was the liegeman of B. Conversely, if C was

<sup>78</sup> *Grg.* III, pp. 617-618. (under goði).

<sup>79</sup> [at a *várthing* or *leið*.]

<sup>80</sup> [Cf. p. 348.]

<sup>81</sup> [a *thriðjungsmadr* of A, i.e. 'a liegeman from the same district as A'.]

A's liegeman, he was B's *thriðjungsmadr* (liegeman by Association).

It was the duty of all farmers and landowners either to attend the district assemblies themselves, or to send their representatives to discharge whatever legal business there might be. While in attendance at a district assembly, each chieftain was at liberty to make the request from the assembly hill that every ninth farmer of those within his jurisdiction on whom the thing-tax<sup>82</sup> was levied should accompany him to the annual meeting of the Althing. Everyone was obliged to pay thing-tax if he owned one cow or its unmortgaged equivalent, or a net or boat for every member of his household, including the necessary hired help. The ownership of a beast of burden, either an ox or a horse, together with the necessary implements of husbandry, was an additional requirement. Farmers who worked their land alone had to own property to the value of two cows for each household servant.

The farmers themselves decided which representatives should accompany the chieftain, and the representatives provided their own horses and their own food for the journey. But the chieftain had to provide his men with living quarters during the session of the Althing, and pay them a fee to defray travel expenses. This fee was referred to as *thingfararkaup*. (thing-tax)<sup>83</sup> The same term was used for payments made by farmers who owned the minimum amount of property specified above, but did not accompany their chieftain to the Althing. During major disputes a chieftain might request a greater number of taxpayers to attend the Althing with him than the law required. The amount of the thing-tax was a matter for negotiation between chieftain and liegeman, the distance to the Althing being the deciding factor. Payers of the thing-tax enjoyed more extensive rights and had greater responsibilities than others.<sup>84</sup> In Norway it appears that those who were chosen to participate in assemblies were expected to collect the thing-tax from other farmers themselves.<sup>85</sup> Among the duties of a chieftain was that of supporting his liegemen in lawsuits. In turn a liegeman was to give his chieftain all the support which the law required of him and to perform all the duties assigned to him at assemblies by his chieftain.

Insofar as circumstances allowed, chieftaincies were treated as private property. Thus they could form a part of an estate passed on to lawful heirs. They could be sold or given away as gifts or as dowries. At courts of confiscation<sup>86</sup> the value of chieftaincies was assessed, but tithes were not levied on them as on other property. The Tithe Law defined a chieftaincy as "power rather than wealth". In the event a chieftain

<sup>82</sup> [Cf. p. 60.]

<sup>83</sup> [Literally 'assembly attendance dues'.]

<sup>84</sup> *Grg.*, III, pp. 701-703 (under *thingfararkaup*).

<sup>85</sup> (*Norsk*) *Historisk Tidsskrift* (1924), p. 19, footnote.

<sup>86</sup> [Cf. *Kulturhistorisk leksikon*, IV, art. *Féránsdómur*.]

received a sentence of either the greater<sup>87</sup> or the lesser<sup>88</sup> outlawry, or forfeited his chieftaincy through negligence or mismanagement, his liegemen would become the owners of his chieftaincy and divide it among themselves; however, such a situation hardly ever arose. There is nothing to indicate that chieftains were ever elected to office. If a chieftain was prevented from attending to his duties, or if a chieftaincy was owned either by a woman or by a man of less than sixteen years of age, its management was to be entrusted to a liegeman from the owner's assembly district. However, a boy between twelve and sixteen years of age could be granted special permission by the liegemen of his district to manage or represent a chieftaincy. Management of jointly owned chieftaincies has been discussed above.<sup>89</sup>

The chieftains had many and varied duties. They had to be present at the Althing before sunset on the first day of its annual meeting. Then they took their seats in the Court of Legislature, appointed members to the Courts of Justice and convened a special body of twelve arbitrators (the chieftain was a member of this body himself) called *tylfstarkviðr*.<sup>90</sup> Further, the chieftains appointed juries at district assemblies, convened midsummer assemblies (*leiðir*) and held courts of confiscation. (*féránsdómar*).<sup>91</sup> In their own districts the chieftains were supposed to be the guardians of the peace, and to keep watch over various activities around them.

During the heathen era the chieftains derived some revenue from temple-tolls, but it is not known whether they received any remuneration for collecting the thing-tax. They occasionally had some small income from other sources. Thus, the office of a chieftain does not appear to have been a lucrative position, considering the many expenses involved. Historical records contain many references to chieftains in the 11th and the 12th centuries who were in straitened circumstances. It has thus been suggested that these men were faced with diminished income when payments of temple-tolls were suspended. However, this explanation should be accepted with caution. In the 12th century many important farmers began to derive revenue from churches. They exploited this source of income to an increasing extent in the 13th century, but at that time many of them found it necessary to maintain large retinues, which was a costly undertaking, and therefore their liegemen often made private contributions to defray the expenses.<sup>92</sup>

Before the law all the chieftains were equal in power, so that none of

<sup>87</sup> [The legal term for such a sentence was *skóggangr* and it implied full outlawry, the most severe penalty under the existing law. Cf. *Kulturhistorisk leksikon*, IV, art. *Fredlqshed*.]

<sup>88</sup> [Restricted outlawry (*fjörbaugsgarðr*) usually requiring a three-year stay outside Iceland.]

<sup>89</sup> [Cf. pp. 60-61.]

<sup>90</sup> [Literally 'dozen-oath'.]

<sup>91</sup> [Cf. p. 61.]

<sup>92</sup> *St.*, II, pp. 69, 122, 196, 200.

them could claim authority over any other chieftain. To a certain extent the Icelandic Commonwealth may be likened to a union of many states (i.e. chieftaincies) where the administration of law and justice embraced the entire union but in which executive power was altogether lacking.

### *The Court of Legislature*<sup>93</sup>

Our earliest information about the Court of Legislature, the most important institution of the Althing, dates back to the time of the Quarter division. At that time thirty-nine chieftains held seats there. But in order to keep the power of the North Quarter proportional to the others,<sup>94</sup> it was decreed that in each of the three remaining Quarters chieftains sharing the same district assembly should bring with them to the Court of Legislature one man who would be granted a seat there with a position equal in influence to that of a chieftain. These additional appointees were nine in number, which raised the total membership of the court to forty-eight. Then, each of the forty-eight members was to select from the ranks of his own liegemen two men to sit with him in the court as his counsellors. This seems to imply that the nine supplementary members must have owned shares in chieftaincies; otherwise they could not have had any liegemen. Perhaps the supplementary member was provided with counsellors by a chieftain who belonged to the same assembly district. The lawspeaker held a seat in the Court of Legislature from its beginning; later on, after the founding of the two episcopal sees in Iceland, the two bishops were granted seats there, but without the privilege of appointing counsellors. Thus, the total membership reached the maximum number of one hundred and forty-seven.

It is not known for certain whether the Court of Legislature had become an independent institution before the time of the Quarter division. However, what is known about its composition after the introduction of the Quarter division would indicate that in an earlier period there was a separate judicial body composed of the chieftains who managed the thirty-six 'ancient chieftaincies', two counsellors for each chieftain, and the lawspeaker. The total membership would then have been one hundred and nine. There is every reason to believe that the appointment of two counsellors for each chieftain dates further back in Icelandic history than the Quarter division which, in fact, did not enhance democratic government in the country.

Meetings of the Court of Legislature were held outdoors. In *Grágás* it is stated that the court should always observe the long-standing tradition of holding its meetings at its present location. Accounts dating from

<sup>93</sup> Cf. the relevant sections in *Grágás* (*Grg.* Ia, pp. 211-217; *Grg.* III, pp. 647-649).

<sup>94</sup> [The North Quarter had one assembly and three chieftaincies more than the others; cf. pp. 49-50.]

the 13th century suggest that its location was then on the plains either to the north or the east of the river Öxará. But the wording in *Grágás* seems to imply that it used to be held at a different place in earlier times.

At a meeting place of the Court of Legislature there were three circular benches or platforms in concentric arrangement. Each platform was to provide ample space for the seating of four dozen men. The middle platform was occupied by the chieftains, the supplementary members, the lawspeaker, and, later on, the two Icelandic bishops, while the two remaining platforms provided seats for the counsellors. Thus, each chieftain and supplementary member would have one of his counsellors sitting in front of him, and the other right behind him. Only the occupants of the middle platform possessed what was referred to as 'the right of full participation'<sup>95</sup> in the affairs of the Court of Legislature.

According to *Grágás* the functions of the Court of Legislature were as follows:

(a) In the court men were to 'make right their laws'; some scholars have taken this to refer to making changes in the existing laws. Yet the above statement most likely describes the role which the Court of Legislature played in interpreting the laws and in determining their correct application. This was a very important task indeed, since it was only natural that differing interpretations would arise, particularly during the period in which the laws were either memorized or incompletely recorded on scrolls. This was the original function of the Court of Legislature, and it seems to have given rise to its name, *Lögrétta*. Legislative courts (*lögréttur*) are known to have existed at Norwegian assemblies, but shared only this one function with the Icelandic Legislature. But the Norwegian legislative courts were different in composition and served also as a court of appeal.<sup>96</sup> It is likely that the Norwegian model for the earliest Court of Legislature in Iceland provided only for the interpretation of the laws, and that apart from this the legislative courts in each country later evolved along different lines.

Our historical records show how legal disputes were dealt with after the law code had been recorded. In the presence of witnesses all the chieftains and the lawspeaker were challenged to go to the Court of Legislature where they would arbitrate the question at hand. There the contending parties would have an opportunity to state their opinion. All the members of the court were to be present, but only those occupying the middle platform, forty-eight in number, had a vote. All questions were settled by a majority vote; in an even division, the lawspeaker had the deciding vote. Great importance was attached to resolving cases of this kind as is shown by the penalty of lesser outlawry for any member of

<sup>95</sup> [seta til fulls.]

<sup>96</sup> Cf. Absalon Taranger, (*Norsk Historisk Tidsskrift* (1924), pp. 23-25, 29-35.

the middle platform who abstained from voting on them. Such resolutions passed by the Court of Legislature were proclaimed at *Lögberg* (the Law Rock) and were regarded as legal enactments, even though they were not the equivalent of judicial court pronouncements.

(b) The Court of Legislature was to 'make new laws' (*gera nýmæli*). This refers to the passing of new laws and also to the emendation of existing laws. *Grágás* does not state the method by which changes in law were effected, but in all probability the same procedure was employed as for the resolution of legal disputes. This seems to be borne out by Ari the Learned's account of the codification of the laws in 1117-1118. The method used in the granting of exemptions seems to be ruled out, as the law texts show that the adoption of new laws was a straightforward procedure. To counterbalance this, it was specified that every new enactment should be subject to a probationary period of three years before it might be declared by the Court of Legislature to be permanent law.<sup>97</sup>

(c) The Court of Legislature granted permits (*leyfi*), i.e. exemptions from the law. Such exemptions might be granted by a group of forty-eight members of the court. These men, chosen at random from the three benches, would hold their meetings at the middle platform. The exemption must receive the affirmative vote of each of the forty-eight members present; however, anyone present at the Althing, even though he was not a member of the Court of Legislature, could lay such an exemption under an interdict; his injunction would prevent the exemption from being granted. In this way it was possible to guarantee that a particular exemption would not infringe upon the rights of individuals.<sup>98</sup> In present day societies exemptions from the law are ordinarily the responsibility of the executive branch of government.

(d) The Court of Legislature elected the lawspeaker, supervised the proclamation of the laws and decided when the judicial courts should convene.

(e) Finally, the Court of Legislature may be said to have acted for the nation in foreign affairs as, for instance, in the case of the treaty with St. Ólafr of Norway and the one with King Hákon the Old.

There are references to the Treasury of the Legislature (*lögréttufé*), which was in fact the State Treasury. This fund was the depository of fees paid for special marriage licenses and perhaps other kinds of dispensations, even though these are not mentioned. Nothing is known about the custodianship of the Treasury. Nor is it possible to determine what became of it when Iceland came under the Norwegian crown. The wages of the lawspeaker were paid out of the Treasury.<sup>99</sup>

<sup>97</sup> Cf. *Grg.*, III, pp. 655-656; *Dipl. Isl.*, I. p. 260.

<sup>98</sup> Cf. *Grg.*, III, pp. 640-641 (under *lof*).

<sup>99</sup> *Grg.*, III, p. 649 (under *lögréttufé*).

It was one of the most remarkable features of early Icelandic law that the legislative and judicial powers were so clearly kept apart.

### *The Quarter Courts*<sup>100</sup>

According to Ari the Learned *Hænsa-Thórir* was sentenced to outlawry at the *Althing*.<sup>101</sup> This indicates that there must have been a court for judicial purposes there before the country was divided into Quarters. Unfortunately, as in the case of the Court of Legislature, nothing is known about the composition of this early judicial body. Nonetheless, one may surmise that in accordance with ancient Norse traditions its judges must have been especially appointed for each session of the court; this old custom of making temporary appointments persisted down to the 18th century, until which time permanent judges were unknown in Iceland. This court probably consisted of thirty-six judges, each of whom was appointed by one of the chieftains. It seems to have been an ancient Norse custom that the highest judicial institution should be composed of three dozen judges.

According to *Grágás* four Quarter Courts were held at the *Althing*. They must have been established before the 'Fifth Court' (*fimmtar-dómr*), and it may be concluded that they were founded when the Quarter division was instituted or shortly afterwards, even though Ari the Learned fails to mention it. As is implied in the name Quarter Courts, each of these four institutions served its respective Quarter of the country. In keeping with their roles they were referred to as the Court of the South Quarter or the Court of the *Rangæings* (*Sunnlendingadómr* or *Rangæingadómr*), the Court of the West Quarter or the Court of the *Breiðfirðings* (*Vestfirðingadómr*, *Breiðfirðingadómr*), the Court of the North Quarter (*Norðlendingadómr*), and the Court of the East Quarter (*Austfirðingadómr*). The names of the Quarters have been mentioned previously.<sup>102</sup>

*Grágás* does not contain an explicit statement of the number of judges assigned to each Quarter Court, and scholars have not agreed whether the law code implies the number nine or thirty-six. However, *Njáls Saga* significantly gives the latter number, and one must assume that this saga was written early enough for its author to have been well-informed on this point.<sup>103</sup> The owner of each of the 'ancient and plenary' chieftaincies appointed a member to every court, and it seems likely that the order in which these assignments were made was determined by the

<sup>100</sup> *Grg.*, III, pp. 607-608 (under *sjórðungsdómar*).

<sup>101</sup> [Cf. *Íslensk fornrit*, I, "Íslendingabók", p. 12.]

<sup>102</sup> [Cf. pp. 50-51.]

<sup>103</sup> *Íslensk fornrit*, XII, p. 243; Páll Melsted, *Nýjar athuganir við nokkrar ritgjörðir um Althingismálið* (Reykjavík, 1845), pp. 108-110; [Konrad Maurer, *Die Quellenzeugnisse über das erste Landrecht und über die Ordnung der Bezirksverfassung des isländischen Freistaates* (München, 1869), pp. 80-81, 100-101.]

casting of lots. This method served to ensure the highest degree of impartiality on the part of the judges and made them less subject to the influence of the chieftains. The three 'new chieftains' from the North Quarter did not appoint judges to the Quarter Courts.

Judges to the Quarter Courts were appointed on the first Friday of the annual meeting of the Althing after the assembly procedures had been declared. *Grágás* mentions a certain rock-cleft, now forgotten, where appointments of judges were made. Each chieftain was to appoint as judge a man from his own assembly district or riding, unless the members of the Court of Legislature gave him permission to do otherwise. The general qualifications for a judge were that he should be male and at least 12 years old. Even though men did not reach the age of majority until they were sixteen, this rule did not apply to judges or litigants. It was stipulated that a judge must be mentally mature and fully responsible for his 'words and oaths'; he should be a free man, and have a fixed domicile. In the event that he was not a native speaker of the 'Danish tongue' (i.e. the language the Scandinavians had in common),<sup>104</sup> a judge should have been resident in Iceland for at least three years before he was eligible; finally, the parties to a lawsuit were naturally disqualified from court appointments.

On the following day, Saturday, the courts convened at *Lögberg*, where individual judges were to be challenged. Such challenges could be made until the hour when the sun came into line with the cliffs on the western bank of *Almannagjá* and the lawspeaker's stand at *Lögberg*. As we have already seen, the lawspeaker announced the setting up of courts by ringing a bell, whereupon he would lead the procession of chieftains, representatives of chieftains, and their judges to a location chosen by him for the sitting of each court. This walk from *Lögberg*, called *Lögbergsganga*, appears to have been a formal procession.<sup>105</sup> Apparently the courts held most of their meetings somewhere north or east of *Öxará*. Sometimes the defendants would use force to prevent the courts from completing their deliberations at the chosen place. It is said, for instance, that at the Althing in 999,<sup>106</sup> when Hjalti Skeggjason was sentenced to outlawry for blasphemy, the court had to be held on the bridge of *Öxará*, with armed men to defend it at either end. This bridge was located only a short distance west of the present farmhouse at Thingvöllur. In a similar way Thorgils Oddason was convicted in 1120 by a court which had to be convened near *Byrgisbúð* upon an out-cropping of lava rock called *Spöngin*.<sup>107</sup>

The session of the courts dealing with the qualifications of the judges

<sup>104</sup> [The Latin designation was *vox danica*.]

<sup>105</sup> Cf. *Íslensk fornrit*, II, p. 274.

<sup>106</sup> [Cf. p. 130.]

<sup>107</sup> [On *Spöngin* see p. 43, footnote no. 21.]

began each year on a Saturday and lasted through the night until the sun rose over Thingvöllur on Sunday morning. Either of the litigants could disqualify any member of the court who was related to the other litigant by blood, marriage or spiritual ties. He could also dismiss a judge against whom he had an unsettled lawsuit involving manslaughter. It was the duty of the chieftains to nominate replacements for disqualified judges.

The courts were to convene to hear charges on a certain day agreed upon by the members of the Court of Legislature and at the same time of day as the preceding session dealing with the disqualification of judges. On this occasion the judges were once again accompanied by the lawspeaker, the chieftains, and the litigants. Each of the parties to the suit had the right to bring with him a maximum of ten supporters, but as is shown by the sagas, this rule was frequently violated. As soon as six or more of the appointed members had entered a court, and if there was more than one case to be dealt with, the order of hearing would be decided by the casting of lots, whereupon both the prosecution and the defence would begin their proceedings. It is probable that all meetings of the courts were held at night (after midnight) and on succeeding nights until all the cases placed before them had been dealt with.

The Quarter Courts could give verdicts in all matters as courts of first instance except in cases punishable by a fine of only three ounces of silver. As a rule, such cases were heard at district assemblies if the litigants belonged to the same assembly district. Then, all cases from district assemblies where the juries were deadlocked could be referred to the Althing, where the Quarter Courts would serve as courts of appeal. A case would be tried in the court representing the Quarter to which the defendant belonged.

In the Commonwealth Period all litigation was an involved matter, and great importance was attached to correctness of procedure. Deviations from this procedure usually ended in a mistrial. However, one must bear in mind that the emphasis on procedure served the purpose of ensuring a measure of objectivity in judicial affairs. As in our present-day society, a lawsuit had to be preceded by a summons. Then a notice of the case would be served at Lögberg, or at an 'assembly hill' (thingbrekka), if the case was to be dealt with at a district assembly. Occasionally a notice of a case would serve as the equivalent of a summons.

A special 'jury of neighbours' (búakviðr)<sup>108</sup> served the important function of deciding whether there was a case to answer. The members of this jury were nominated by the prosecutor and consisted of farmers who lived closest to the place where the offence which occasioned the lawsuit had been committed, and who owned enough property to be required to

<sup>108</sup> [The Icel. term *búakviðr* is derived from *búi* (neighbour) and the verb *kveða* (to say, declare); literally it therefore means 'neighbours' utterance', cf. Foote and Wilson, *The Viking Achievement*, 376; *Grg.*, III, pp. 631-635 (under *kviðr*); *búi* = farmer, cf. *Kulturhistorisk leksikon*, IX, art. *Kviðr*.]

pay the thing-tax. The defendant had the right to exclude from the jury any member who did not have these qualifications, and he could also disqualify on grounds of relationship by blood or marriage or by spiritual ties, that is, on the same grounds as applied in the Quarter Courts. Major lawsuits required nine members on the jury of neighbours, but less significant ones required only five. If the defendant had a lawful defence he could ask a special jury (*bjargkviðr*) to give an opinion on his submission. This jury consisted of five members chosen from the nine-member jury of neighbours or of the entire membership if it had only five members. In certain important lawsuits a chieftain from the defendant's assembly district would, on the request of a plaintiff, appoint what was called 'a jury of twelve' or a 'chieftain's jury' (*tyltarkviðr*, *goðakviðr*)<sup>109</sup> in which the chieftain himself participated as the twelfth member. Witnesses stated what they had heard or seen, while the members of the jury stated whether or not, according to their own knowledge of the case, the defendant was innocent or guilty. Therefore, the statements of the jury and the witnesses served the same function. However, the latter were rarely called to give evidence in a lawsuit.<sup>110</sup> The decisions of a jury were reached by majority vote; in the event of a tie the side supported by the chieftain had the deciding vote. Throughout the Commonwealth Period juries were the usual means of presenting evidence in legal proceedings, but such juries were abolished when the law code of *Járn-síða*<sup>111</sup> was adopted. It is noteworthy that in Old Norwegian laws juries (*kviðir*) are hardly mentioned. Litigants were never allowed to offer sworn statements in evidence.

When both the prosecution and the defence had completed the presentation of their cases one of the judges was to recapitulate the argument of the prosecution and another that of the defense, whereupon the sentence would be passed. The laws provided for specific penalties for every type of offence, and the court would only give a verdict of 'guilty as charged' or 'not guilty'. If the judges did not agree on a verdict, they were required to 'dismiss' (*véfengja*) the case, provided that the dissenting minority consisted of a minimum of six judges. Otherwise a verdict would be regarded as unanimous. In cases of dismissal or deadlock one faction of the jury would deliver a verdict of acquittal, while the other would give a verdict of guilty. The Quarter Courts were not competent to deal with such 'dismissal cases' (*véfangsmál*), and therefore the litigants had to refer them to the Fifth Court.<sup>112</sup>

It is not possible to determine what procedures were followed in the Quarter Courts before the Fifth Court was instituted. They were

<sup>109</sup> [Cf. p. 66, footnote no. 108.]

<sup>110</sup> Cf. *Grg.*, III, pp. 696-698 (under *vætti*).

<sup>111</sup> [A code of laws accepted by the Icelanders in 1271-73.]

<sup>112</sup> Cf. *Grg.*, III, pp. 691-693 (under *véfang*).

probably similar to those described above, even though they would inevitably fail to produce a decision. Old Norwegian law also permits two opposite judgements or verdicts, and it also implies that even in the Legislature, which served as the highest court in Norway, all judgements must be unanimous in order to be valid.<sup>113</sup> It may be inferred from this that certain cases could not be resolved in the Norwegian judicial assemblies, which makes it probable that the same situation prevailed in Iceland before the introduction of the Fifth Court. It has been suggested that in this early period duels must have been used to resolve difficult court cases;<sup>114</sup> duels evidently were abolished by law about the time when the Fifth Court was instituted. However, this thesis has been challenged<sup>115</sup> as it has no support in Old Icelandic historical literature. Moreover, it appears that duels were fought to resolve all kinds of disputes irrespective of circumstances.

### *Skapti the Lawspeaker and the Fifth Court*<sup>116</sup>

Skapti, the son of Chieftain Thóroddr from Hjalli in the Ölfus district, was lawspeaker for twenty-seven summers (1004-1030), longer than any other man. He inherited his father's chieftaincy, and some of Iceland's most influential men were related to him by marriage. His sister, Thórdís, was the wife of Gizurr the White, and his son, Thorsteinn Holmunnr,<sup>117</sup> married Jódís, the daughter of Guðmundr the Powerful of Möðruvellir. His reputation as a legislator earned him the nickname Law-Skapti (Lög-Skapti). In fact, his contributions seem to have marked the beginning of a new epoch in the history of the Icelandic nation. However, his career as an administrator coincided with the rising influence of Christianity in Iceland to the extent that one finds it impossible to distinguish between the two. In his *Íslendingabók* Ari has this to say about Skapti:

He established the law of the Fifth Court, and also brought about a law forbidding a slayer to announce a killing committed by anyone but himself; until then there had been the same law here on that point as in Norway. In his day many chieftains and powerful men were fined or exiled for manslaughter or assaults by the exercise of his authority and the forceful discharge of his office.

Some scholars have made the mistake of assuming that the phrase *að setja lög* ('to set laws', translated above as 'bring about a law') had the same meaning in *Íslendingabók* and in some other Old Icelandic sources

<sup>113</sup> Cf. Absalon Taranger, (*Norsk*) *Historisk Tidsskrift* (1924), pp. 32-35.

<sup>114</sup> K. Maurer, *Upphaf allsherjarriks á Íslandi* Reykjavík, 1882, pp. 176-185.

<sup>115</sup> V. Finsen, *Om den oprindelige Ordning af nogle af den islandske Fristats Institutioner* (København, 1888), pp. 116-131.

<sup>116</sup> Cf. *Grg.*, III, p. 605 (under *fiimtardómur*).

<sup>117</sup> [holmunnr, 'hollow mouth'.]

as it does in Modern Icelandic. If this were the case Ari's use of the phrase would be misleading as the legislative power did not rest with any one individual, but with the Court of Legislature at the Althing (*Lög-rétta*). In Old Icelandic the expression *að setja lög* had a meaning similar to the Modern Icelandic *að semja lög* (i.e. to compose articles of law) and *að eiga frumkvæði að lögum* (i.e. to suggest the introduction of a certain law).<sup>118</sup> Ari obviously considered the law on declarations of homicides quite important; his interest in this item of legislation is perfectly understandable, since the earlier legal custom represented a very primitive kind of justice. It appears that chieftains and other important people who had committed manslaughter would announce that some inferior man had committed the deed in order that they themselves would escape being outlawed and ostracized. Our sources do not contain information about specific individuals of power and influence who received sentences of outlawry as a result of Skapti Thóroddsson's authority and the new law on the declarations of homicides. The omission of such accounts in the Sagas of Icelanders, many of which are set during Skapti Thóroddsson's term of office, is one of the features which have weakened our faith in the historicity of the saga literature. Ari the Learned's statement implies that both the Act prescribing the establishment of a Fifth Court, and the law on the declaration of homicides, were introduced when Skapti was lawspeaker. Bearing in mind that the account found in *Njáls Saga* of the establishment of the Fifth Court and the motivation behind it is open to question, one cannot hope here to achieve greater precision in dating these two important events.

The judges of the Fifth Court were to be appointed at the same time as their colleagues in the Quarter Courts; the authorized spokesmen for the thirty-six chieftains representing 'the ancient chieftaincies', were to appoint one judge each, three dozen judges in all, but those in charge of the so-called 'new chieftaincies' were to nominate the fourth dozen in order that each Quarter might be represented by a dozen judges. Thus, the Fifth Court consisted of forty-eight appointed or nominated judges; but, as in both the Quarter Courts and the courts convened at district assemblies, only a group of thirty-six judges in the Fifth Court were permitted to render judgements or pass sentences. This reduction in the membership of the Fifth Court was brought about by allowing both the plaintiff and the defendant each to have six judges excluded from it. If the defendant did not do so, the plaintiff would have to challenge twelve members of the court, otherwise the trial would be invalid.

*Grágás* does not account for the origin of the 'new chieftaincies' or state their number, but it implies that there must have been twelve of

<sup>118</sup> Cf. *Landn.* (1900), p. 95.

these chieftaincies, i.e. three for each Quarter. Scholars have advanced hypotheses concerning the origin of the new chieftaincies, of which Barði Guðmundsson's suggestion seems to be the most plausible.<sup>119</sup> As has been mentioned earlier, three chieftaincies, all in the North Quarter, were added when the Quarter division was introduced. These must then have come to be identified as 'new chieftaincies', because later on the original chieftaincies, i.e. those that existed before the time of the Quarter division, came to be referred to as 'ancient chieftaincies' (forn goðorð). The chieftains representing the new chieftaincies did not have the authority to appoint judges at the Althing, even though they, like all the other chieftains, were assigned seats on the middle platform of the Court of Legislature. At this time three additional members from each of the three remaining Quarters were assigned seats on the middle platform of the Court of Legislature, in order to ensure equal representation from all the Quarters. Barði Guðmundsson has suggested that eventually these nine additional members also came to be known as 'new chieftains', even though they did not have any liegemen. In *Grágás* these new members are in fact listed with chieftains. Before long the new chieftains from the North Quarter appear to have become dissatisfied with not being able to appoint members to the courts in the same way as the majority of their colleagues. Their position was improved somewhat when they were granted the right to appoint judges to the Fifth Court. However, in order to prevent disparity in power between the North Quarter and the other Quarters, it was deemed necessary also to grant the nine new chieftains from outside the North Quarter the right to appoint judges for the Fifth Court. This view of the constitutional changes discussed above is preferable to the speculation of some scholars that the 'new chieftains' were a group of rebels dissatisfied with the prevailing system of government. The difficulty remains, however, of bringing the above theory into harmony with the section of the law code which stipulates that every chieftain should nominate his own liegeman to the Fifth Court. It appears that the supplementary members did not have any liegemen at all. It is equally difficult to explain the section of the law which grants the right to each member of the middle platform to select his two counsellors from among his liegemen or from men of his own district (thriðj-ungsmenn). This statement includes the twelve supplementary members (new chieftains). It is conceivable, however, that in the above instances the 'new chieftains' were allowed to accept counsellors that other chieftains appointed for them, unless the new chieftains themselves owned shares in some established chieftaincies.

Sessions of the Fifth Court were held in the Court of Legislature,

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<sup>119</sup> *Skírnir*, 111 (1937), pp. 56-83.

and it may be suspected that this meeting place points to an earlier period when it was still a part of the legislative courts serving as the highest court of the land in much the same way as in Norway. Early references mentioning a 'judgement circle' allude either to the platforms of the Court of Legislature, or to the seating arrangement of judges.<sup>120</sup>

*Grágás* implies that the name *fimmtardómr* denotes 'the fifth court', and no better explanation of its meaning has been offered. Two kinds of cases were brought before the Fifth Court:

(a) In cases of dismissal (*véfangsmál*) from the Quarter Courts the Fifth Court would act as a court of appeal and hand down a final judgement. Cases of dismissal came first on the agenda of the Fifth Court, and it seems logical to conclude that they were the principal reason for its founding. A case of dismissal only required a ratification of one of the two opposing judgements from the Quarter Court.

(b) In some instances the Fifth Court had the two-fold function of serving as both a primary and a final court. Cases thus heard arose mainly from charges of malfeasance in the Quarter Courts: false testimony, bribery, as well as charges of unlawful sheltering of outlaws, the harbouring of debtors in bondage, and the sheltering of slaves and priests who had run away from their masters.

The notice of a charge or offense given at Lögberg was the equivalent of a summons to the Fifth Court, where a simple majority of votes would uphold a judgement. But in the case of a deadlocked vote (18:18), a verdict of 'guilty as charged' had to be handed down, except in cases of dismissal from the Quarter Courts, where an even vote in the Fifth Court would call for extremely involved procedures. The main rule was that the judges should decide by the casting of lots which of the opposing judgements from the Quarter Courts should prevail. But in the event that the vote in the Quarter Court was also a deadlock, the following rules obtained:

(a) When both sides of the court in a dismissal case had acted within the law, the one reflecting a lesser degree of technical precision received annulment.

(b) If, in arriving at its verdict, one faction followed a correct procedure, while the other ran afoul of the prescribed rules, the judgement of the former prevailed, even though the latter might be felt to have rendered the more correct judgement during the earlier part of the trial.

(c) If neither faction of the Quarter Court was found to have observed correct procedures in the preparation of the dismissal case, the Fifth Court would annul the verdict which showed greater procedural

<sup>120</sup> Cf. *Grög.*, III, p. 595 (under *dómrhringr*); *Árbók hins íslenska fornleifafélags* (1884-1885), p. 15; [cf. also *Kulturhistorisk leksikon*, III, art. *Dómrhringr*.]

flaws. Otherwise the legally more anomalous judgement would be dismissed.<sup>121</sup>

It is noteworthy that the Icelanders adhered to the basic unit of twelve in both the Quarter Courts and the Fifth Court, even though they adopted a system of uneven numbers for the juries (kviðdómar).

After the founding of the Fifth Court no major changes were made in the Icelandic constitution for the remainder of the Commonwealth Period, except that the two bishops of Iceland were granted a seat on the middle platform of the Court of Legislature. However, the foundations of the secular administration gradually deteriorated as the power of the Church increased.

### *District and Midsummer Assemblies*<sup>122</sup>

It has already been suggested that the local assemblies could hardly have been fully organized until the country was divided into Quarters, and the little that is known about them before this time is derived from some fortuitous references.

According to *Grágás* the district assemblies (várthing) always had to be held at the same place, though there is evidence of an assembly site being moved or of two assemblies being held at the same 'assembly plain' provided the chieftains agreed and the Court of Legislature granted special permission. *Grágás* shows that towards the end of the Commonwealth Period the system of local assemblies had broken down, and they may indeed have been held irregularly from the beginning. The sagas mention instances of individual chieftains convening special assemblies for their own liegemen. If these sources are accepted as correct, these special assemblies would have been completely unlawful.

All district assemblies had to be identified by name; as a rule they were named after the places where they were held. The following sections are an account of the regular district assemblies,<sup>123</sup> as well as of other comparable assemblies of which there are some visible traces in the form of ruins. In some instances such ruins may be the vestiges of assemblies established before the district assemblies were fully organized, or alternatively they may mark the sites of the midsummer assemblies (leiðir).

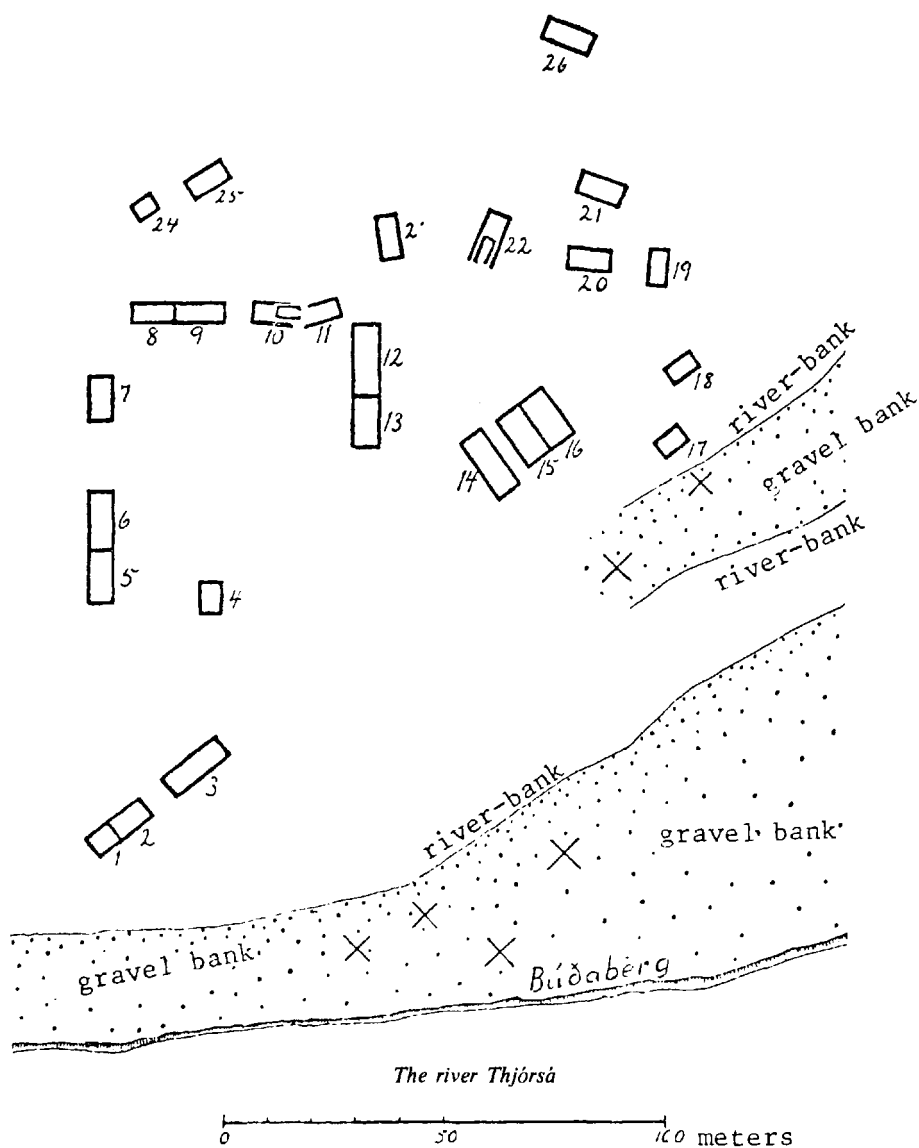
#### *(a) District assemblies in the South Quarter:*

1. 'The Rangæings' Assembly', which *Njáls Saga* refers to as the *Thingskálathing*, was held on the Rangárvellir at Thingskálar, only a short distance from the river Ytri-Rangá. Traces of the ruins of halls or booths can still be seen on the site, even though a farmhouse was built

<sup>121</sup> Cf. Einar Arnórsson, *Réttarsaga althingis*, pp. 98-101: *Álit nefndar er skipuð var til rannsóknar á hvort Ísland muni eiga réttarkröfu til Grænlands* (Reykjavík, 1952), pp. 69-70.

<sup>122</sup> Cf. *Grg.*, III, p. 689 (under *várthing*), p. 638 (under *leið*).

<sup>123</sup> Cf. Kálund, *Bíðrag til historisk-topografisk Beskrivelse af Island*.



*Ruins of assembly booths by Búðafoss in Thjórsá. The places marked with X indicate heaps of stones, apparently the shapeless ruins of old buildings. (Sketch by Guðmundur Kjartansson).*

there in 1811. *Njáls Saga* also mentions an assembly in Hvítanes which was to have served one of the new chieftaincies; however, the location of this assembly is unknown and the entire matter of its existence is open to question. On the other hand, there are remnants of ancient assembly booths (thingbúðir) at Thingholt (assembly knoll) in the Land district just opposite the site of the Árneshing. But historical records make no mention of an assembly there.

2. The Árneshing was held on the river Thjórsá at Árnes, a site which is now an islet. The name of the assembly indicates that in earlier times the islet was a point jutting into the river. No remains of assembly booths have been detected at this site, but a short distance north of the islet, near Búðafoss,<sup>124</sup> there are distinct vestiges of booths. It appears that the people of the Árneshing selected this location for their assembly when the earlier site at Árnes became an island in the river. If one surmises that from its inception the assembly at Árnes represented only the Árneshing, the assembly site on the very fringe of the assembly district was very badly chosen. It is likely that people from both the Árneshing district and the Rangárhing or from sectors of both districts were represented at least for some time at the same assembly. Later the inhabitants of the Rangárhing appear to have moved their assembly to Thingholt, and again from there to Thingskálur, while either Árnes or Búðafoss remained the meeting place for the Árneshing assembly.

In addition to the above locations, remains of assembly booths have been discovered in the area of Laugatorfa, between Helludalur and Neðridalur in Biskupstungur.<sup>125</sup> These may be vestiges of buildings once connected with a midsummer assembly. It has been noted that according to the Icelandic Annals, a meeting of the Court of Legislature was held at Haukadalur in 1178. This would appear to have been a special meeting designed to deal with matters of some urgency, but this information is not sufficient to explain the origin of the fairly extensive ruins at Laugatorfa.

3. As previously mentioned, the Kjalarneshing, which in due course became a regular district assembly, was older than the Althing itself. *Kjalnesinga Saga* maintains that it was held "south by the seashore on Kjalarnes" and that remains of the assembly booths could still be seen at the time when the saga was written; these ruins can no longer be detected. Only a short distance to the west of the river Mógilsá and beside the sea there is a place called Leiðvöllur.<sup>126</sup> Perhaps this was the site of the Kjalarneshing since, in most instances, midsummer assemblies were held at the same locations as the district assemblies. Thingnes, which is a

<sup>124</sup> [lit. 'the waterfall by the booths'.]

<sup>125</sup> *Árbók hins íslenska fornleifafélags* (1908), p. 38.

<sup>126</sup> ['midsummer assembly plain'.]

point extending from the south into the lake Elliðavatn, must once have been the site of a regular gathering, for signs of ancient ruins of booths can still be detected there; it is difficult to decide whether this was a meeting place for midsummer assemblies, or whether the Kjalarnessting was held there for some period of time.

(b) *District Assemblies in the West Quarter:*

1. As has been said earlier, Thingnes on the southern bank of the river Hvítá had become the site of an assembly before the country was divided into Quarters. This location of the assembly strongly supports the contention that the district assemblies had not been arranged systematically before the Quarter division (see also the preceding account of the location of the Árneshing). When the Quarter division was instituted, the site at Thingnes fell within the boundaries of the South Quarter and, as a result of this, a new site was selected for the assembly further inland on the river Gljúfurá near the farm of Grisartunga. Besides remains of ancient booths that have been found there, the name Thinghóll (assembly hill) is significant evidence. Both *Egils Saga* and *Gunnlaugs Saga* refer to an assembly in this area, suggesting that it was held 'by Mount Valfell' (undir Valfelli).<sup>127</sup> Later this assembly was moved to Stafholtsey near the confluence of the rivers Thverá and Hvítá, whereupon it came to be referred to as the Thverárthing, and that is where the assembly was held until the end of the Commonwealth Period.

Stafholtsey seems to have become the site of the Thverárthing about the middle of the 12th century.<sup>128</sup> Some time later, probably in the 13th century, two of the chieftaincies within the jurisdiction of the Kjalarnessting were transferred to the Thverárthing. Perhaps this transfer was made after Snorri Sturluson obtained possession of the Reykhyltings' chieftaincy and half the Lundarmanna chieftaincy, but both these chieftaincies had become a part of the Kjalarnessting when the arrangement of district assemblies was permanently fixed. Snorri probably regarded this transfer as a sensible move, since he would otherwise have remained the owner of chieftaincies on both sides of the Quarter boundary at Hvítá. After this transfer had been effected, the hallowing of the Thverárthing assembly became the permanent duty of the representative of the Reykhyltings' chieftaincy. This expansion of the Thverárthing explains why the district between the two rivers Hvítá and Botnsá in Hvalfjörður came to be identified as "the Thverárthing south of Hvítá", while the original area of this assembly was known as "the Thverárthing north or west of Hvítá". Failure to understand these designations has led some scholars to conclude that Botnsá in Hvalfjörður constituted the boundary between the South and the West

<sup>127</sup> *Skirnir*, 91 (1917), pp. 319-321, 416-419.

<sup>128</sup> *Dipl. Isl.*, I, p. 180.

Quarters. Nevertheless, our historical sources clearly indicate that it was Hvítá, not Botnsá, which formed this boundary line.<sup>129</sup> It is conceivable that after the expansion of the Thverárthing the Kjalarnessting was moved to a site beside the lake Elliðavatn.

2. Earlier in the present work<sup>130</sup> the Thórsnessting was referred to as the assembly of Thórólfr Mosterbeard. This assembly was originally held near the farm Jónsnes in the Thórsnessting district.<sup>131</sup> Soon, however, another meeting place was selected for it. According to *Eyrbyggja Saga* it was “further inland on the ness (i.e. further inland on Thórsnes) where it is still held” (i.e. at the time of the writing of the saga).<sup>132</sup> Remains of assembly booths can still be seen on the site, even though the farmhouses of Thingvellir<sup>133</sup> were built there after the close of the Commonwealth Period. *Eyrbyggja Saga* also uses the name Thingskálanes<sup>134</sup> for a location now called Sauranes, but the historical reasons for the former name are not known. *Eyrbyggja Saga* maintains that shortly after the year 1000 the men of Rauðamelur withdrew their chieftaincy from the Thórsnessting and founded a new assembly in Straumfjörður which was to function for a long time to come. It is quite obvious that the founding of the Straumfjarðarthing had no legal basis, but comparable deviations from the established pattern may have occurred in other parts of the country.

3. The Thorskafjarðarthing assembly was held at the head of Thorskafjörður where there are still ruins of old booths. Historical records show that this assembly was functioning both late in the 10th century and in the year 1241. Our sources also mention two other assemblies in the area of Vestfirðir, both of which were in Dýrafjörður. One of these was called the Hválseyrarthing or the Valseyrarthing, as it had alternate meeting places at Hválseyri and Valseyri. Both these locations were on the northern side of Dýrafjörður, only a short distance from its head.<sup>135</sup> The other was called the Thingeyrarthing or the Dýrafjarðarthing with a meeting place at Thingeyri on the south side of Dýrafjörður. These assemblies probably served only a part of the Vestfirðir area.

(c) *District Assemblies in the North Quarter:*

1. The Húnavatnsthing was held at Thingeyrar by the lake Húnavatn. No ruins from that time have been found, and historical writings make no mention of the assembly after the monastery was founded there in 1133.

2. The Hegranessting had its meetings on a site near the farm Garður

<sup>129</sup> [Cf. p. 51, footnote no. 50.]

<sup>130</sup> [Cf. p. 35.]

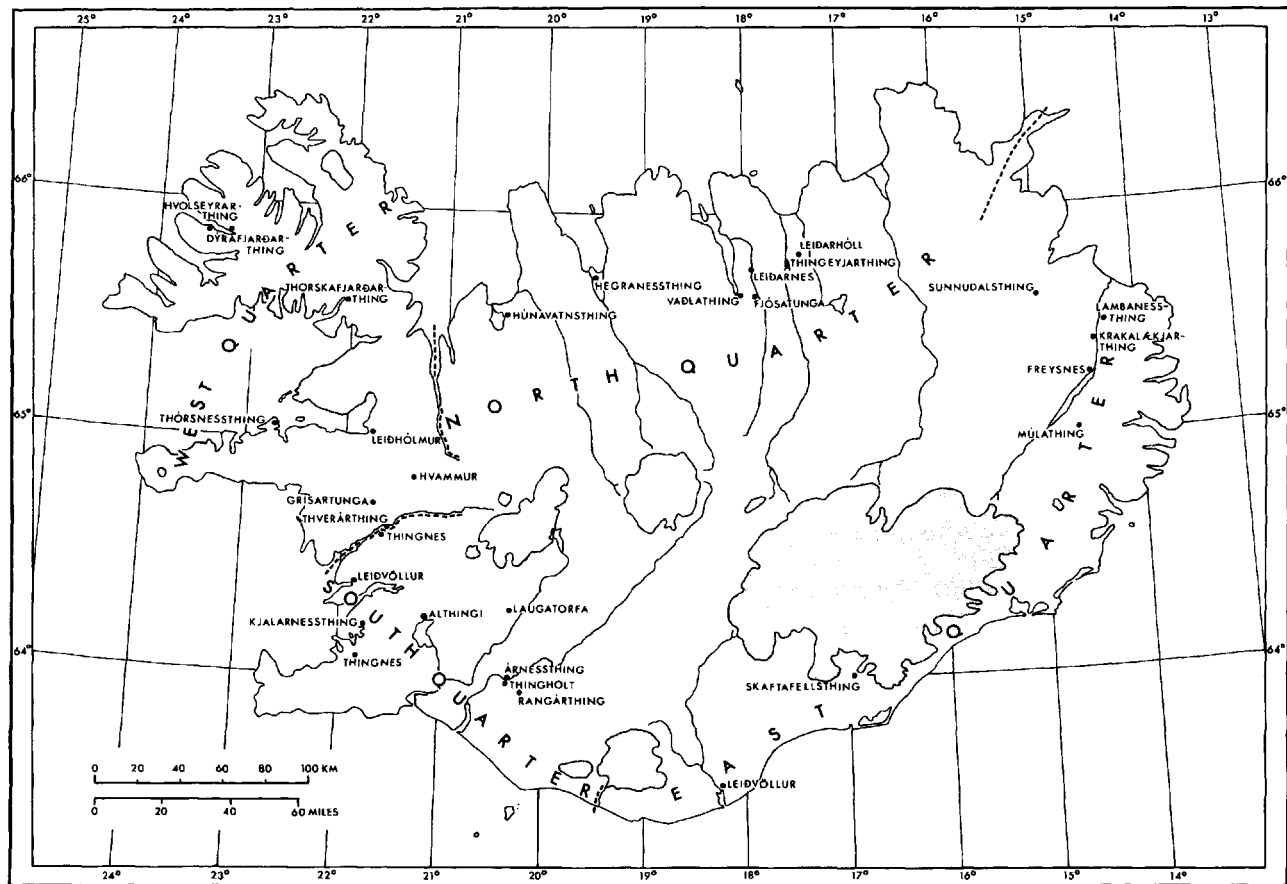
<sup>131</sup> Ólafur Lárússon, *Bygð og saga*, pp. 199-229.

<sup>132</sup> *Íslensk fornrit*, IV, p. 18; *Landn.* (1900), p. 153.

<sup>133</sup> [a farm in the area.]

<sup>134</sup> [‘assembly halls’ ness’.]

<sup>135</sup> “Gísla saga Súrssonar”, *Íslensk fornrit*, VI, p. 18.



in Hegranes in Skagafjörður. The ruins of assembly booths can still be made out on the site.

3. The Vöðlathing or Vaðlathing was held near the farm Litla-Eyjarland in Eyjafjörður, and there are still traces of assembly booths on this site. Historical writings have it that the chieftain Guðmundr Dýri at Bakki in Öxnadalur had the Vöðlathing abolished about the year 1190. "Then it was no longer to be called an assembly for prosecution, as it seemed to him that the Vöðlathing had become a forum for major disputes, as was the case with general assemblies".<sup>136</sup> Nothing is said about meetings of the Vöðlathing after the year 1190, even though the wording of the source just quoted does not preclude that 'an assembly on standard prices and payments of debts'<sup>137</sup> continued to be held at the site near Litla-Eyjarland for quite some time after the abolition of the 'prosecution assembly'<sup>138</sup> there. This division of district assemblies based on their two-fold function is discussed further at a later point.

4. The Thingeyjarthing which *Reykðæla Saga* refers to by its more ancient name of Eyjarthing was held at Thingey in the river Skjálfandafljót. Not far from the farm Fjósatunga in Fnjóskadalur there are also quite extensive remains of booths and place names indicating that assemblies were held there.

(d) *District Assemblies in the East Quarter:*

1. Even though no ruins can be found at its location, the Múlathing was held at Thingmúli in Skriðudalur. Perhaps the manse at Thingmúli was built on the ruins, obliterating all the visible signs of the assembly. The earliest reference to it is to be found in *Droplaugarsona Saga*. For a long time Thingmúli served as a joint meeting place for the two northernmost assembly districts in the East Quarter, which no doubt meant that two different assemblies were held on the same 'assembly plain' (thingvöllur). The original location of these two district assemblies before they were moved to Thingmúli is not known, but in this part of Iceland local assemblies are known to have been held at different places. Our sources indicate, for example, that because of disputes the Sunnudalsting, with its meeting place somewhere in Sunnudalur in Vopnafjörður, had to be terminated in 987; however, there are no visible signs indicating the exact location of this assembly which may in fact have represented a single chieftaincy. *Droplaugarsona Saga* also makes mention of the *Krakalækjarthing* which was held on the west bank of the river Lagarfljót near Krakalækur, where there are still easily detectable ruins of old assembly booths. The same saga further refers to the Lambanessting which must have been held in Vatnsskógur in the assembly district of

<sup>136</sup> *St.*, I, p. 170.

<sup>137</sup> [*skuldathing.*]

<sup>138</sup> [*sóknarthing.*]

Hjaltastaðir.<sup>139</sup> Extensive ruins can still be detected in this area.<sup>140</sup> Finally, there are substantial ruins of assembly booths at Freysnes on the western bank of Lagarfljót across from Egilsstaðir; doubtless an assembly was held there, even though historical sources make no mention of one.<sup>141</sup>

2. The Skaftafellsting was held at Skaftafell in Öraefi but there are no ruins showing its location. In some instances the district assemblies were held on the sites of midsummer assemblies.

The three chieftains who belonged to the same local assembly were called *samthingsgoðar* (chieftains of the same assembly); it was the duty of one of these to hallow the assembly.

District assemblies met in two separate sessions: *sóknarthing* and *skuldathing*.<sup>142</sup> The *sóknarthing* met first; it dealt with judicial matters and issued various promulgations. The court comprised thirty-six men, each of the three chieftains naming twelve. These men sat in a circle. Announcements were made from the *thingbrekka* (assembly hill) which corresponded to Lögberg at the Althing in that it was at the very centre of the assembly. The district assemblies had no legislative power, but they were competent to make various decisions affecting the assembly district they represented, as long as they acted within the law.

The *skuldathing* was held after the *sóknarthing* and usually at the same place, though in some cases they appear to have been held at separate locations as is borne out by the place name *Skuldathingsey* (lit. debt-moot island) in the river Skjálfandafljót. At these assemblies debts were paid; also it seems to have been customary to hold markets there as one would expect, since the prevailing currency consisted mostly of marketable goods. Against this background one is able to explain a reference to the trading of grain at the Thórsnessting,<sup>143</sup> and the place name *Kaupangur* (lit. market place) near the site of the Vöðlathing. Business meetings of this kind were held to fix standard prices for the entire assembly district; these prices were to apply also to whatever trading might take place while the assembly was in session. Such price levels varied not only from one assembly district to the next, but also differed from the standard levels decided by the Althing. Prices of goods were calculated on the basis of *thinglagsaurar* (standardized ounces)<sup>144</sup> which differed from the *lögaurar* (law ounces) — six ells of homespun cloth equalling one ounce. Only one ancient price list from about 1200<sup>145</sup> has been preserved. This document bears the title 'On the Fixing of Prices in

<sup>139</sup> [Hjaltastaðathinghá.]

<sup>140</sup> *Árbók hins íslenska fornleifafélags* (1924), pp. 34-41.

<sup>141</sup> *Árbók hins íslenska fornleifafélags* (1896), pp. 26-27.

<sup>142</sup> ['prosecution assembly' and 'assembly for the payment of debts'.]

<sup>143</sup> *St.*, I, p. 27.

<sup>144</sup> Cf. *Grg.*, III, p. 705 (under *thinglag*).

<sup>145</sup> *Grg.*, Ib, pp. 246-248; *Dipl. Isl.*, I, pp. 315-317.

the Árneshing'. It appears likely that the so-called *Búalög* originated at business assemblies of the above description.<sup>146</sup>

The duration of the district assemblies varied from four to seven days, and they were not to be convened until the beginning of the fifth week of summer (i.e. on May 7 at the earliest). A prosecution assembly (*sóknarthing*) had to be concluded not later than six weeks after the beginning of summer (i.e. on May 27 at the latest). No rules have been preserved which would indicate when the meeting for the payment of debts and other business transactions (*skuldathing*) was to be prorogued. The district assemblies ceased to function as regular assemblies when Iceland came under foreign rule.

The District Courts, the Quarter Courts and the Fifth Court constituted the three levels of the public judicial system in Iceland from the time of the establishment of the Fifth Court; however, the internal structure of this system and the way in which the higher courts complemented lower judicial assemblies differed markedly from present-day jurisdiction. In addition to the public judiciary, private courts or juries are known to have existed in Iceland.

*Leiðir* or *leiðmót*, (midsummer assemblies) or *haustthing* (fall assemblies) as they were sometimes called, were among the so-called *skapthing* (regular assemblies). Chieftains sharing the same district assembly also had to share the same midsummer assembly, and the two were to be held at the same place. But since it was in the power of the Court of Legislature to grant exemptions from both these rules, it became quite customary to hold midsummer assemblies at locations different from those of the district assemblies. By the same token, individual chieftains are known to have held their own private midsummer assemblies in order to free their liegemen from journeys to distant points. The existence of special and even private locations for midsummer assemblies is borne out by a number of names, such as the *Hvammssleið* (Hvamm Assembly) called after Hvammur in Norðurárdalur, the *Ljósveitingaleið* (Ljósveitnings' Assembly), the *Reykðællaleið* (Reykðælings' Assembly) and the *Thverárleið* (Thverár Assembly) in Eyjafjörður, the exact location of which is not known. The same kind of testimony may be adduced from place names apparently dating from the Commonwealth Period. Thus we have *Leiðvöllur* (midsummer assembly plain) in the Leirár district, *Leiðarhólmur* (midsummer assembly isle) in Miðdalir, *Leiðarnes* (midsummer assembly point) in Fnjóskadalur, where the Ljósveitnings' Assembly was held, *Leiðarhóll* (midsummer assembly hill) in Reykjadalur, the site of the Reykðælings' Assembly, and another *Leiðvöllur* (cf. above) in the Meðalland area. At some of

<sup>146</sup> *Búalög* (Reykjavík, 1916-1933) (publication not completed). [*búalög*: a list of prices of goods for sale among the farmers.]

these places there are extensive ruins of assembly booths. On the other hand, as stated above, it was quite customary to hold the midsummer assemblies at the sites of the district assemblies.

Midsummer assemblies served as connecting links between the Althing and those who did not attend its annual sessions. They were convened on a Sunday some time between the 15th and the 19th week of summer and were to last for not less than one day and not more than two nights. Here the chieftain who hallowed the assembly was to proclaim new laws and announce vital items of the calendar, unless he and his fellow chieftains had made some other arrangement. Many other matters were dealt with at midsummer assemblies, but these gatherings never served in either a judicial or legislative capacity. Nothing is known about a possible model that might have given rise to them, but the term *leið* (lit. a journey) implies a meeting held during the homeward journey of those who had attended the Althing. Perhaps these assemblies were introduced in compliance with Úlfjót's Law.<sup>147</sup> They continued to be held at irregular intervals until the 17th century; there are even instances of midsummer assemblies having been held as late as the first half of the 18th century.

### 'Hreppar' and Guilds

One of the most remarkable sections of the Old Icelandic law code provided for the division of the entire country into communal units or municipalities called *hreppar*.<sup>148</sup> Unless the Court of Legislature permitted a smaller number, each of these units had to have a minimum of twenty residents, each of them owning sufficient property to be required to pay the thing-tax.<sup>149</sup> The *hreppar* had geographic boundaries and, as far as can be determined, they were completely independent of the authority of chieftains. Figures showing the total number of *hreppar* in Iceland during the Commonwealth Period are not available, but in 1703 they amounted to 162, and there are several reasons to believe that from the Middle Ages to the present time this number has remained quite constant.

The essential function of a *hreppr* was to provide relief for the poor as well as to prevent people from reaching the stage of such poverty. This had to be done in accordance with certain rules laid down by the law. Care of the poor was primarily the responsibility of relatives, sometimes to the degree of fourth cousins. In some instances, however, the responsibility of providing maintenance lay beyond the circle of kinship<sup>150</sup>; also,

<sup>147</sup> [Cf. p. 38.]

<sup>148</sup> [sing. *hreppr*, plur. *hreppar*.]

<sup>149</sup> [Cf. p. 61.]

<sup>150</sup> *Grg.*, III, pp. 611-612 (under *framfærsla*).

in order to obtain subsistence, some people had to sacrifice their personal freedom.<sup>151</sup> In the event that no individual could be held legally responsible for the care of a pauper, and if the pauper was unable to obtain help by submitting to bondage, the necessary relief had to come from the people of his *hreppr* or those of his assembly district, his Quarter, or even the entire country. In this regard, however, the *hreppr* would be the most likely source of help. An indigent could claim relief from a *hreppr* district if he had no relatives closer than second cousins living there. Every farmer of the district prosperous enough to have to pay the thing-tax was to provide care in direct proportion to the amount of his property. Thus, the person receiving help may well have had to move from one home to another in order to obtain *manneldi* (maintenance).

After the conversion of the country to Christianity, the *hreppr* gradually built up various sources of revenue which could be used to support *thurfamenn* (the needy), but the needy apparently included all those who did not qualify as payers of the thing-tax. This category then included heads of households in the district who could not provide for their families unaided. The *thurfamannatiund* (tithe for the needy) served as a source of revenue here. It was legislated with other kinds of tithes in 1097. Also, this community fund included donations of food supplies, along with some minor payments from violators of the Sabbath. The extent of food donations was decided by a law which made it incumbent on every farmer to give needy persons in his *hreppr* three *náttverði* (evening meals) for every member of his household who was required to observe Lent.<sup>152</sup> It was considered reasonable that needy persons should receive some of the food supplies which farmers would accumulate because of the prolonged periods of fasting by their households.

Various precautionary measures were designed to protect the sources of revenue in each *hreppr* against unwarranted claims for support. Any farmer or crofter (*búðsetumaðr*)<sup>153</sup> who wished to move from one *hreppr* to another, would have to obtain special permission from members of his new community. This permission had to be granted unless the applicant was known to be irresponsible or on the verge of destitution. Every man who was not the head of a household was to acquire domicile in the home of one of the farmers in the community. Prospective members of a *hreppr* would change their abode during the so-called *fardagar* (Removal Days), i.e. the first four days in the seventh week of summer.<sup>154</sup>

Those who accepted alms and who begged from door to door for more than a fortnight were designated as vagabonds. If such men were

<sup>151</sup> *Gr.*, III, pp. 673-675 (under *skuld*).

<sup>152</sup> *Grg.*, III, p. 651 (under *matgjafir*).

<sup>153</sup> [Cf. pp. 348-349.]

<sup>154</sup> [Cf. p. 355.]

found to be in unimpaired health, their conduct was a serious enough offence to warrant depriving them of all their civil rights.

The residents of a *hreppr* maintained a rather remarkable system of insurance: they were held jointly responsible for compensating individuals in their community for two kinds of loss or damage. In the first place, a farmer was entitled to compensation if he lost one-fourth of his herd of cattle from murrain. In the same way insurance would be paid to a man whose *skáli* (hall), *eldhús* (kitchen), or *búr* (larder) had been destroyed by fire. He would also receive compensation for the loss of a church or a chapel (*bænhús*) if either of these was a part of his property. Various articles in either farmhouses or houses of worship were also insured. If a certain man owned both a kitchen and a hall, he had to decide which of these should be covered by the insurance which he himself and other members of his district provided. If there was enough money in the insurance fund, the compensation for each building could amount to half its estimated value. But no farmer was ever to contribute more than one *sex álna eyrir* (six-ell ounce) for every hundred (i.e. 120) six-ell ounces of estimated value, so that his contribution would not exceed  $\frac{1}{2}$  of one per cent of the assessed price of the property in question. The same individual could not lawfully claim insurance for more than three consecutive accidents.<sup>155</sup> Compensation of this kind was designed to prevent those who sustained major losses from becoming paupers themselves. Its origin was therefore the same as that of relief payments to *thurfamenn* (the needy).

Early historical sources contain no references to many of the administrative functions that in later centuries were the business of the *hreppar* and their administrators (*hreppstjórar*). There is, for instance, no mention of fox hunting, the rounding up of livestock from the common mountain pastures, the building of roads and bridges, and the operation of ferries. However, some of these tasks may already have come under the district administration in early times. Originally, pasture lands were not the property of *hreppar*, but were owned by one or more individuals. Later on there were instances in which pasture lands became the property of church establishments.

The inhabitants of a *hreppr* conducted their own community affairs. They held three regular meetings at fixed times of the year. The first meeting took place during Lent (*einmánaðarsamkoma*);<sup>156</sup> the second meeting was held in the spring after the annual meetings of district assemblies; the third meeting was convened in the fall, in the twenty-third week of summer at the earliest, and not later than the first Sunday of

<sup>155</sup> *Grg.*, II, pp. 260-261.

<sup>156</sup> [*einmánaður* was the last month of winter in the Icelandic calendar, i.e. thirty days beginning with the Thursday which falls between the 9th and 15th of March.]

winter.<sup>157</sup> These meetings were called *samkomur*. Additional meetings were held as the need arose and were announced by the dispatching of a special signal in the form of a cross. This signal had to reach every home in the *hreppr* and was carried along the officially recognized message route (*rétta boðleið*).

At the spring meetings the farmers of the *hreppr* elected their district council, apparently for the period of a year. The members of the council were called *sóknarmenn* (prosecutors) as it was their duty to prosecute individuals whose conduct of the affairs of the community was found to be at variance with its rules and regulations. Quite early the prosecutors' came to be referred to as *hreppstjórar* (district administrators). This name was to prevail for a long time.<sup>158</sup>

Each *hreppr* was to have five prosecutors,<sup>159</sup> a number that remained unchanged for many centuries. They were to receive a portion of the fines that accrued from cases successfully prosecuted. Except for this, they were not remunerated or granted any special privileges for their term in public office. Unless the people of the *hreppr* (i.e. the farmers or their representatives) decided otherwise, the prosecutors were to be selected from the ranks of the freeholders. Prosecutors were charged with the responsibility of apportioning tithes and food donations and other gifts to the poor.<sup>160</sup> At fall<sup>161</sup> conventions they would decide the extent to which each farmer was to provide maintenance for indigents. In some instances they managed the so-called 'Christ farms' or 'glebe lands' which people donated for their own salvation and to support the poor.<sup>162</sup>

There has been much speculation about the age and origin of these communal units or *hreppar*, but it has proved virtually impossible to come to any definite conclusion.<sup>163</sup> During the Commonwealth Period affairs of public interest in these communities centered primarily upon the maintenance of paupers. It would therefore be logical to conclude that this need for public support gave rise to the original district division. There is reliable evidence that the *hreppar* were already in existence at the time of the introduction of the Tithe Law in 1097. In fact, this law charges the *hreppar* with the responsibility of apportioning the *thurfa-mannatiund* (tithe for the needy). This would not have been done if the *hreppar* had not already existed at that time as administrative units in charge of relief measures. Thus the existence of *hreppar* is implied in the Tithe Law, and it is safe to assume that without them the Icelanders

<sup>157</sup> [winter began about the end of October.]

<sup>158</sup> In the Tithe Law these men do not have a specific designation.

<sup>159</sup> K. Maurer, *Island* (München, 1874), p. 308.

<sup>160</sup> [Cf. p. 84.]

<sup>161</sup> Cf. *Grg.*, III, pp. 624-625 (under *hreppr*).

<sup>162</sup> *Dipl. Isl.*, I, pp. 199, 200.

<sup>163</sup> Skúli Þórðarson, "Uppruni hreppanna", *Sveitarstjórnarmál*, 2 (1942); cf. also Lárus H. Blöndal, "Skipun framfærslu og sveitarstjórnarmála á þjóðveldisöld", *Sveitarstjórnarmál*, 8 (1948).

would have followed the example of other nations in letting the Church administer the 'tithe for the needy'.

Furthermore, it is stated in the Old Icelandic law code that a *hreppr* may be broken up into smaller units "to facilitate the distribution of food donations and the apportionment of tithes", even though there might be fewer than twenty thing-tax payers to a unit.<sup>164</sup> This clause implies that the *hreppar* must be older than the laws on food donations and tithes. It is interesting to speculate whether the division into *hreppar*, and their role in administering relief, originated in Christian or pagan times. A confirmation of a pre-Christian origin would indeed shed valuable light on the way of thinking among the heathen Icelanders. However, no conclusion can be reached on this matter. The noun *hreppr* (repp) occurs in both Norwegian and Swedish dialects, but apparently without any suggestion of an administrative role. In the Age of Settlements this noun must have been brought to Iceland where, at the time of the introduction of districts which independently managed the affairs of the poor, it somehow came to denote an administrative unit. The oldest names of Icelandic *hreppar* mentioned in historical records are found in *Land-námabók*. These are *Gnúpverjahreppr* and *Hrunamannahreppr*. These two together are given the place-name *Hreppar*. *Land* (area) and *Hérað* (district), etc.,<sup>165</sup> may be mentioned as comparable place names. *Land-námabók* also mentions *Hraungerðingahreppr* and *Kaldnesingahreppr*, both of which are in the region of Flói. These names must have been derived from the meeting places of the corresponding *hreppar*, which were *Gnúpur*, *Hruni*, *Hraungerði* and *Kaldaðarnes*. *Hraungerði* was a pioneer farm from the Age of Settlements; the other three were established at a later date. Early in the history of the country, churches were built at all these places, making them important centres in their respective districts. One would perhaps be justified in concluding from this that the division into *hreppar* was not introduced until after the close of the Age of Settlements.<sup>166</sup>

In an appendix to *Skarðsárþók* the winter of 975-976 is said to have been the most severe in the history of Iceland.

Then people resorted to the eating of crows and foxes, and many other things unfit for human consumption were eaten. In some places elderly people and paupers were put to death or pushed over the edges of cliffs. Many people starved to death. Others became outlaws and tried to support themselves on thievery, for which they were convicted and executed. Then outlaws were killed by outlaws because on the advice of

<sup>164</sup> *Grg.*, Ib, p. 171.

<sup>165</sup> K. Maurer, *op. cit.*, p. 321.

<sup>166</sup> Cf. Hans Kuhn, *Árbók hins íslenska fornleifafélags* (1943-1948), pp. 74-79.

Eyjólfur Valgerðarson, it was decided by law that any outlaw would be pardoned who killed three others of his kind.<sup>167</sup>

This famine appears to have occurred in many countries. It is mentioned in Norway, and the Anglo Saxon annals report that in 976 a great famine fell upon the English nation. Some historians have taken the account of *Skarðsárþók* about the slaying of paupers and elderly persons to imply human sacrifices offered in the hope of improving the prevailing conditions,<sup>168</sup> but even if this may have been the case, it is unlikely that any laws on maintenance were then in existence. However, sources other than *Skarðsárþók*, in an apparent reference to this famine, point out that some people protested the intolerable killing of human beings.<sup>169</sup> Perhaps the *hreppar* and the provision of relief for the poor were legislated only a short time afterwards, i.e. in the last quarter of the 10th century.

The maintenance of indigents must have become a matter of serious concern by the year 1000 when the Christian faith was lawfully established. The Icelanders demanded, as a condition for the adoption of the new faith, that the exposure of infants and the eating of horseflesh continue to be sanctioned by law. When both of these practices were abolished a few years later, the economic condition of the people deteriorated and the rate of population growth increased. At this time the Church made its views known; spiritual leaders considered it essential, for the sake of eternal salvation, to offer support to the poor. Thus, most of the relief measures undertaken by the *hreppar* communities originated with the Church.

Rules regarding community insurance or mutual assistance in case of loss or damage are rarely included in medieval law codes; on the other hand, they were quite often a part of the regulations of the medieval guilds, which in this regard must have provided the model for community insurance in the Icelandic *hreppar*. One Old Icelandic source seems to bear out this relationship between the *hreppar* and the guilds. *Sturlu Saga* mentions a meeting held at Hvammur in the Hvamm district in 1148. In *Króksfjarðarþók*, one of the two basic manuscripts of the saga, this meeting is called a *hreppsfundr* (meeting of a *hreppr*), whereas the other version of the saga (in the manuscript known as *Reykjarfjarðarþók*)<sup>170</sup> refers in its corresponding account to a *gildisfundr* (meeting of a guild). In the Middle Ages guilds were common among most of the Germanic peoples. They were religious brotherhoods designed to promote the common interests of their members, and they came into being at a time when the family as a social unit seems to have been disintegrating, and when it was not uncommon to find the government of a country in a

<sup>167</sup> Cf. Jón Jóhannesson, *Gerðir Landnámabókar*, p. 16; *Grg.* Ia, p. 187, II, p. 399.

<sup>168</sup> Ólafur Briem, *Heiðinn síður á Íslandi*, pp. 166-168.

<sup>169</sup> Cf. "Reykðæla saga", *Íslensk fornrit*, X, pp. 169-170.

<sup>170</sup> *St.*, I, p. 66.

state of impotence. The guilds differed from one another and changed with the passage of time, but regular feasts at certain dates of the year, on which occasions the guildsmen pooled their resources of food and drink, were a common feature of all of them. This tradition is supposed to have given rise to the name *gildi* (etymologically akin to *gjalda*, 'pay'), which later came to denote a banquet or a feast. The history of the guilds can be traced back to the heathen era. To give an example, 10th century poets used the word *gildi* as a component in compound metaphors (kennings) denoting the 'poetic mead' of Norse Mythology. In this context *gildi* had the meaning 'potation'. There are indeed many indications that the word *gildi* was originally associated with sacrificial feasts and other heathen customs.

Aside from the mention of the meeting of guildsmen at Hvammur our historical records contain but two references to guilds in Iceland. One of these was the Ólafr's Guild, held at Reykhólar; the other account mentions a meeting of guildsmen at Thingeyrar in 1181. The *Saga of Thorgils and Haflíði* describes a meeting of the Ólafr's Guild held in 1119, at which gathering there were many guildsmen. The opening ceremonies included toasts to the two patrons of the guild, Christ and St. Ólafr, while other holy men were honoured in the same fashion. This custom is traceable to sacrificial gatherings of heathens where a toast was proposed to pagan deities. The Ólafr's Guild meeting was held on St. Ólafr's Day (29th of July) each summer, and according to the account of 1119 it provided an occasion for "good entertainment and many kinds of games, dancing and wrestling matches, as well as recitations of stories". At the particular guild meeting mentioned in our source, three stories were told. This story-telling leads one to suspect that the guilds may have played a more important part in shaping Old Icelandic literature than can now be determined with certainty. It often proved difficult to get the grain and malt for the festive ale. This lack of provision, together with opposition from the clergy to the heathen undertones of the guilds, seems to have ended their sway in Iceland. Some functions of the guilds, however, were taken over by the *hreppar*.<sup>171</sup>

### *The Codification of the Secular Law*

As has been explained earlier,<sup>172</sup> the first law code of the Icelanders, Úlfjót's Law, was modelled on the Norwegian Gulathing Law. Nevertheless, there is a marked difference between the Icelandic laws and the oldest preserved version of the Gulathing Law. Some of these differences must go back to the original codes of the two countries, but

<sup>171</sup> Cf. O. A. Johnsen, *Gildevæsenet i Norge i middelalderen*, (Norsk) *Historisk Tidsskrift* (1924), pp. 73-101.

<sup>172</sup> [Cf. p. 38.]

others have arisen from the divergent trends of social evolution. The most important changes in the Icelandic law code were made after the legislation of Christianity in the year 1000. The change in religion made it necessary that various clauses relating to pagan traditions be eliminated, and new laws were introduced to satisfy the social needs of the Christian Church. Although new laws often replaced old ones, the Icelandic law code must have been expanded considerably throughout the 11th century in order to meet the growing demands of a steadily maturing society. One can easily imagine that, having acquired the necessary literary skills, the Icelanders soon considered putting their laws down in writing. In this the Norwegians preceded the Icelanders, who no doubt were inspired to follow the Norwegian example. Although it is open to question, some scholars have suggested that the Tithe Law was written down in 1097 when it was originally introduced. Shortly afterwards, the codification of the secular law began, as is supported by the following account from *Íslendingabók*:

The first summer in which Bergthórr recited the laws, the innovation was made that our laws should be written in a book at Haflíði Másson's the following winter according to his dictation and counsel, and that of Bergthórr and of other wise men who were chosen for the task. They were to make new provisions in the law wherever they considered that such would make better laws than the old ones. The laws were to be recited the next summer in the *Lögrétta* (the Court of Legislature), and all those were to be enacted which the majority of the people then did not oppose. And so it came about that the Manslaughter Section and many other portions of the law were written down and read aloud by clerics in the *Lögrétta* the following summer. And all were well pleased with it, and no one spoke against it.

This passage contains all the information there is to be had about this important event. Bergthórr Hrafnsson was lawspeaker from 1117 to 1122, and Haflíði Másson (d.1130) farmed at Breiðabólstaður in Vesturhóp. The latter was the son-in-law of Teitr Ísleifsson of Haukadalur, Ari the Learned's foster father. Haflíði is said to have been "both prescient and benevolent as well as an outstanding leader".<sup>173</sup> One would therefore consider it very likely that it was on Haflíði's initiative that the law code was written down. It is, for example, noteworthy that *Grágás* refers to the document in question as the scroll "which Haflíði caused to be made".<sup>174</sup> The codification of the laws must have meant their revision at the same time, as it must have been obvious to people that it was no short-term measure to commit the laws to vellum. No doubt the task of writing the laws was carried out by men of clerical

<sup>173</sup> *St.*, 1, p. 12.

<sup>174</sup> *Gr.*, 1a, p. 213.

background to the dictation of knowledgeable lawmen, and Ari himself may have been one of these clerics, even though he does not mention himself. Lawspeaker Berghórr in all probability could neither read nor write, which would explain why he did not read out the newly recorded laws in the Court of Legislature. The new laws were probably read out in this body, since it was necessary to obtain its formal consent. This was a special procedure which differed from the normal proclamation of laws at Lögberg.

The scroll made under the supervision of Haflíði has long been lost. In later times, it has occasionally been called the *Haflíðaskrá* (Haflíði's Scroll). The *Vígslóði* (Manslaughter Section) must have appeared at the beginning of it. As a result, it was singled out for mention by Ari. On the other hand, nothing is known about the remaining parts of the scroll, or what is implied in Ari's reference to "many other points of the law". Haflíði's Scroll was undoubtedly legislated without delay. There are no accounts of any further attempts to revise and record the secular laws for subsequent approval by the Court of Legislature, but *Kristinna laga tháttir* (Church Law Section), was composed and recorded some time between 1122 and 1132.

Soon after the first laws had been written down, individual people could get copies of Haflíði's Scroll, the Church Law, and such other articles of law as lawmen had written down for their own convenience. As they produced their copies, the scribes would at various points purposely leave out articles which had been declared invalid and insert new ordinances. Some would change the wording of the laws and even the order of contents. Because of this, a number of law scrolls differing in content came into being and created a problem which had to be solved. It would have been logical to charge the lawspeaker with the responsibility of having all changes in the law code properly recorded under the supervision of the Court of Legislature in order to eliminate any reason for doubt. However, this course was apparently not followed. Instead, complicated rules were introduced in the latter half of the 12th century to determine the relative value of law scrolls. The rules were as follows:

It is still to be the case that those laws that have been entered upon scrolls shall have validity in our land. In the event of discrepancies between individual scrolls, the ones owned by the bishops shall be given preference. Now if their scrolls do not agree, then preference shall be given to the one which contains the more extensive paragraphs regarding the case under dispute. But if the relevant passages in the two are found to be of equal length, but nonetheless different in content, the scroll of the episcopal See of Skálaholt shall prevail. Everything contained in the scroll which *Haflíði* caused to be made shall prevail, unless

the law has been changed from the original. Of scrolls made under the supervision of other lawmen those sections shall be valid that do not run counter to *Haflíði's Scroll*, but everything in such scrolls which is fuller or more lucidly stated than in *Haflíði's Scroll* shall be taken as valid law.

In the event that the collation of the law scrolls did not solve the problem at hand, the Court of Legislature would be asked to settle the matter.<sup>175</sup>

The methods of determining the validity of individual law scrolls imply that there were other lawmen besides Haflíði who dictated laws for codification, although their scrolls had less value than his. It seems, therefore, that these additional scrolls were not approved by the Court of Legislature, but served mostly as mnemonic aids, even though, all other sources failing, they could be used to substantiate certain points. There are law scrolls still extant in complete or fragmentary form which date back to the Commonwealth Period. The laws recorded therein are collectively referred to as *Grágás* (Grey Goose), a name of uncertain origin. The earliest uses of this name date back to the year 1548,<sup>176</sup> and it may originally have been used for one of the manuscripts of the Commonwealth laws. Also, there is a possibility that this name was originally transferred by mistake from a manuscript of the Norwegian Frostathing Law to the Icelandic code. This Norwegian manuscript, in existence about 1190, was called *Grágás*.

The most important of the extant manuscripts of the Old Icelandic laws (*Grágás*) are two vellum codices: *Konungsbók* (Codex Regius), in the Royal Library in Copenhagen (1157 fol.),<sup>177</sup> and *Staðarhólsbók* (The Book of Staðarhóll), in the Arnamagnean Collection in Copenhagen (AM 334, fol.).<sup>178</sup> Scholars have disagreed about the dates of these manuscripts, but they seem to have been written some time during the period 1250 to 1270.<sup>179</sup> Both books are divided into sections and chapters, but otherwise they differ both in wording and in content. In *Staðarhólsbók* the following sections are missing: *thingskapatháttir* (procedures of assemblies), *baugatal* (section on the law determining wergild), *lögsögumannstháttir* (section on the lawspeaker), *lögrettutháttir* (section on the Court of Legislature), and *rannsóknartháttir* (a section on searches and enquiries). On the other hand, most of the sections contained in both these lawbooks are fuller in *Staðarhólsbók* than in *Konungsbók*. Two fragments of manuscripts of an earlier date than *Konungsbók* and *Staðarhólsbók* have been preserved. These are AM

<sup>175</sup> *Grg.*, Ia, p. 213.

<sup>176</sup> Páll Eggert Ólason, *Menn og menntir*, IV, p. 236; *Grg.*, III, p. 411.

<sup>177</sup> [number and abbreviation denote entries in the catalogues of the Royal Library of Copenhagen.]

<sup>178</sup> [an entry in a catalogue of manuscripts in the Arnamagnean Institute in Copenhagen.]

<sup>179</sup> [According to the most recent research, the code of Church Law in Codex Regius was recorded at the beginning of the 14th century; cf. also *Kulturhistorisk leksikon*, V, art. *Grágás*.]

315, fol. D, containing the beginning of the *landbrigðabálkr* (section on the escheatage of land), most likely written in the latter part of the 12th century, and AM 315, fol. C, in all probability from the period 1200-1230. The latter contains a small part of a 'section on searches and enquiries'.

The law manuscripts were private law books. The main portion of them consisted of laws passed by the Althing, and the chief emphasis was upon content rather than upon the wording of individual passages or the arrangement of the contents. In addition to purely legal matter, they contain various items of interest unrelated to law, even including accounts from abroad. For some reason the scribes wished to retain this extraneous information, and other law codes, now lost, also seem to have included such items. This inclusion of non-legal matter has brought about dissension among scholars regarding the precise nature of the law codes, and this makes it difficult to determine the source of *Grágás*. The manuscripts are not entirely reliable, for even when their date is known we cannot be sure that certain clauses were not included which had been abolished before the codification of the laws. However, there cannot have been many instances of this. Further, one may even assume that a few of the laws in the ancient scrolls had already lost their currency when the recording of Icelandic laws was first begun. Some of the articles in *Grágás* were undoubtedly derived from *Úlfjót's Law*, even though it would be difficult to single out specific instances except by comparing in detail Icelandic and Norwegian law codes. However, a comparative method of this kind would have to be applied with scholarly caution.

The differences between the various law scrolls must have caused tremendous confusion among the people about the law of the land. No one could determine what the precise law should be in any given situation. Earlier it was pointed out that the Court of Legislature was empowered to settle disputes over the validity of certain laws. Such appeals caused delays and inconvenience. As the 13th century wore on, the Icelandic law code was badly in need of revision. However, the Old Icelandic Commonwealth did not last long enough to accomplish this task.<sup>180</sup>

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<sup>180</sup> Cf. Ólafur Lárusson, "Grágás", *Tidsskrift for rettsvitenskap* (1953), pp. 465-479.