

ing of the element is obviously "shieling, hill pasture," or so. The Irish form of the corresponding word is *airghe*, the Scottish *àirigh*. See my article in NAMN OCH BYGD 1956, pages 51 to 67, where the paper read at the Viking Congress appeared in full, this being a very brief summary only.

The location of the fall of Olaf Tryggvason

By Svend Ellehøj.

Why should we discuss the location of the defeat of the Norwegian king Olaf Tryggvason? Every child on this island knows, that Olaf fell in the year 1000 near the island Svold in a battle with the Danish king Svein Forkbeard, the Swedish king Olof Skotkonung, and the Norwegian Jarl Eric Haakonsson.

Every child on this island has read the description of the battle of Svold that was given by their great countryman *Snorri Sturluson* more than 700 years ago. They have followed Olaf on his voyage to Wendland in order to fetch the possessions of his wife, and they have followed him on his way back accompanied by Sigvaldi, the treacherous Jarl of Jomsborg. They have read the tale about the talk of the chiefs who were standing on the heights of the island, surrounded by their retainers, and they have felt the impression which the sight of king Olaf's own ship, the *Long Serpent*, made on the warriors. They have heard Olaf's contemptuous words about the Danes: "We are not afraid of those cowards; there is no courage in the Danes," and about the Swedes: "It were better for them to stay at home and lick their blood bowls than to attack the *Serpent* under your weapons," and his more appreciating words about Jarl Eric and his men: "From that troop we can expect a sharp onslaught; they are Norsemen, as we are." They have been delighted to see the Danish and the Swedish kings disgracefully withdraw from the battle. They have read about Einar Tambaraskelver and his broken bow, about the final victory of Jarl Eric, and about the uncertainty as regards the king's fate after the battle.

Why should we discuss the location of the defeat of Olaf Tryggvason? Could anybody know better than Snorri?

Fifty years ago most historians would have answered this question with 'no.' Snorri's description was followed everywhere, only a few details had been doubted. But in 1911 the Swedish historian *Lauritz Weibull* broke radically with the traditional conception and

maintained that the place of the battle was to be sought, not at Svold, but in the Sound, between Zealand and Scania, as it was told in the chronicle of Adam of Bremen, written about 1080.¹⁾

Weibull showed how the removal of the battle from the Sound to Svold had as effect a development of the tradition about the battle, and it was just this development that to him was the decisive proof of the reliability of the statements of Adam.

To most historians this was simply shocking, and the thesis of Weibull was immediately made subject to attacks by faithful defenders of the oldtime tradition. But Weibull did not share the fate of Olaf Tryggvason; in spite of the numerical superiority of the enemy Weibull succeeded in beating them all and kept the field.²⁾

Weibull did not pay much attention to the scaldic poems, but stressed that they did not give any information that was able to weaken the statement of Adam. Later another Swedish historian, *Ove Moberg*, has supported Weibull in regard to this.³⁾

The thesis of Weibull was gradually accepted by most historians, and when I three years ago published a paper concerning the last battle of Olaf Tryggvason I did not deal very thoroughly with the question of the location of the battle.⁴⁾ It is true that I was not able to accept the argumentation of Weibull concerning the evolution of the tradition — in my opinion it was not the removal of the place of the battle, but the desire to glorify Olaf Tryggvason, that was the decisive factor — but the statement of Adam of Bremen is the earliest information, known about this question, and I did not see any reason to reject his words as unreliable. That both Danish and Norwegian historical writers of the 12th century followed Adam on this point I took to be in favour of his trustworthiness.

Almost simultaneously with the publishing of my paper an article concerning the Svold-question by the Leipzig professor *Walter*

1) Lauritz Weibull, *Kritiska undersökningar i Nordens historia omkring år 1000*, 1911. Reprinted in *Nordisk historia* I, 1948.

2) Cf. Lauritz Weibull, *Historisk-kritisk metod och nordisk medeltidsforskning*, 1913. Reprinted in *Nordisk historia* I, 1948.

3) Ove Moberg, "Slaget vid Svolder eller slaget i Öresund," (Norsk) *Historisk Tidsskrift* 11. R. IV, 1953.

4) Svend Ellehøj, "Olaf Tryggesons fald og Venderne," (Dansk) *Historisk Tidsskrift* 11. R. IV, 1953.

Baetke appeared.¹⁾ Baetke takes an opposite view and vows to the unreliability of Adam's information and adheres to the former opinion of Svold as place of the battle. He points out that Adam of Bremen's knowledge about Norway is very poor and that his value as witness therefore must be estimated very low. This in so far is true.

Baetke further maintains that the statements of the scaldic poems must be considered decisive, and on this point too I agree with him. I can join the often cited words of Snorri in his preface to *Heimskringla*: "But the poems seem to me most trustworthy if they are correctly recited and wisely understood." The question remains if Baetke has wisely understood the poems. Let us hear his argumentation.

Baetke presents to us the Eric's-flokk of *Haldor ókristni* (the heathen) which must have been composed almost simultaneously with the events. In this poem it is said that Olaf Tryggvason approached the battle from the South and that Wendish ships were engaged in the fight. This in the opinion of Baetke excludes the Sound as place of the battle. According to the Sound-version Olaf is coming from the North and does not get through to Wendland.

In my opinion Baetke is only partly right on this point. It is true that the words of Haldor are inconsistent with Adam's description of the antecedents of the battle — Olaf certainly must have been on his return voyage from Wendland when he met the other Scandinavian kings — but this does not exclude that the battle took place in the Sound.

Baetke, however, has more to say about the verses of Haldor. According to his interpretation the 4th strophe tells us that the Danish and Swedish ships followed Jarl Eric southward to the fight. In this case the Sound actually would be excluded, because the starting point must have been the Danish waters. Haldor has earlier mentioned the mobilization of the ships of Scania.

On this point it will be necessary to go into details. The second part of the 4th strophe, which is here in question, runs as follows:

Dolgs kvóðu fram fylgja
fráns leggbita hönnum
sænska menn at sennu
sunnr ok danska runna.

1) Walter Baetke, "Das Svoldr-Problem," *Berichte über die Verhandlungen d. Sächs. Akad. d. Wiss. Philol.-hist. Kl. Bd. 98. Heft 6*, 1952.

'Sænska menn' means 'Swedish men.' 'Dolgs' and 'danska runna' must belong together. 'Dolg' means 'fight.' 'Runnr' is a tree, but poetically often used for 'man,' 'warrior.' 'The Danish trees of the fight' are 'the Danish warriors.' 'Kvóðu' means 'were said,' 'fram fylgja' means 'follow forward,' 'hónum' means 'him.' 'Sunnr' has a double meaning: 'in the South' or 'to the South, southward.' 'At sennu fráns leggbita' must belong together. 'Senna' means 'quarrel,' 'fránn' means 'sharp,' 'leggbita' is 'the legbiter, the one who bites the leg, the sword.' 'The quarrel of the sharp swords' is of course 'the fight,' and 'at sennu fráns leggbita' accordingly must mean 'in or to the fight.' Now we can translate it all: 'Swedish men and Danish warriors were said to follow him forward in (to) the fight in (to) the South.'

It will be seen that it is possible to follow Baetke in his interpretation of Haldor's strophe from a strictly philological point of view. It is possible to interpret Haldor's words as meaning that Swedish and Danish ships followed Eric southward to the fight. But they must not necessarily be so understood, and they have never been understood so before. Baetke stands alone with his interpretation, and I do not think that it is possible to accept it. The lines mentioned are only the second half of a strophe and should not be heard alone. In the first half we hear about the sharp swords and the golden spears on board the *Long Serpent*, the fight has already begone, Eric is attacking. But why then suddenly go back in time and tell about events antecedent to the battle? It seems to me that the most likely interpretation must be, that the Swedes and Danes followed Eric forward 'in the fight in the South.' This can not tell us anything about the place of the battle.

Baetke, however, claims to have at his side another scald, *Skuli Þorsteinsson*, like Haldor a contemporary of the events. "The Frisians' foe I followed and Sigvaldi," says Skuli, "there where the spears sang out (I got honour in my youth, now it is felt that I am getting older) when we bore the bloody swords south by the mouth of Svold in the fight with the warrior." In another strophe Skuli tells us that he made the sword red at Svold in order to gain gold.

In the sagas it is told that Skuli was among the retainers of Eric Haakonsson. From this statement Baetke draws the conclusion that the fight, which is mentioned by Skuli, must be a battle in which Eric was in command, as was the case in the last battle of

Olaf Tryggvason. That Skuli really took part in this battle is stated by *Odd Snorrason* in his saga about Olaf Tryggvason.

But to Weibull and Moberg it seems questionable, that Skuli should think of this fight in the strophes just cited. The battle mentioned by Skuli should not, according to Weibull, be identified with the fight with Olaf Tryggvason. It must be, Weibull maintains, a usual Viking-fight 'in order to gain gold.' Baetke does not agree with this. Fame and spoil were always the essential things for the following of the chief, he says. There can be little doubt, I think, that Weibull's argumentation is the best on this point, but it might be useful to turn instead to the general situation in the last battle of Olaf Tryggvason and try to find out if Skuli's words agree with this.

In order to learn something about this we must again turn to the Eric's-flokk of *Haldor ókristni*. We have heard already that Danes and Swedes sided with Eric, but Haldor states that Wendish ships too were engaged in the battle: "The Wend's men of war came from afar to the battle. The thinned sword-blade sang with iron mouths. There was the din of swords on the sea; the dear leader of the carls fought, many fled."

Haldor made his poem in honour of Eric, and it can not be doubted that 'the dear leader of the carls' must be identified with the Norwegian Jarl. But if this is true the Wendish ships must have been counted among the enemies of Eric. Haldor's style simply demands this. In every strophe Eric is seen, fighting bravely and successful against his enemy.

Baetke in another connection fully agrees with this interpretation of Haldor, but speaking about Skuli Þorsteinsson he seems to have forgotten it. But this should not be forgotten. Whether 'the Frisian's foe' in the poem of Skuli is to be identified with Eric (this is what Baetke says) or not, the fight mentioned cannot be the battle with Olaf Tryggvason, because in this battle Sigvaldi (if he was there at all) must have been on the side of Olaf, and as we heard Skuli was on the opposite side.

The battle 'south by the mouth of Svold,' where Skuli followed 'the Frisians' foe and Sigvaldi' must therefore relate to another fight of Skuli. Only very little has been preserved of Skuli's flokk. But the author of the *Egil's-saga*, probably Snorri himself, tells us, that Skuli was for a long time on Viking-expeditions and had seven fights. From which source can Egil's-saga possibly have this in-

formation if not from the poem of Skuli? This flokkur seems to have been not only a poem about the fight with Olaf Tryggvason, but a poem in which the scald, who was now getting older, memorized the achievements of his youth. One of these was the battle with Olaf Tryggvason (some words by Odd in his Olaf's-saga indicate that he knew some strophes of Skuli about this battle too, but they are now lost) another fight was the battle at the mouth of Svold.

Only one scaldic strophe is now left to support the conception of Svold as the place of Olaf Tryggvason's defeat, and this strophe is much later: it is the 25th strophe of the poem *Nórengskonungatal* (Norway's list of kings). It was written in the years between 1184 and 1197 and claims to tell about the Norwegian kings in the same way as *Sæmund the Wise* told. It is known now in full only from the Flateyjarbók, written in the second half of the 14th century. Sæmund died in 1133, and his book is the earliest historical work, which is known on this island. It is lost now, and *Nórengskonungatal* is the most important source of information about it.

In the 25th strophe of the poem it is said:

þar hefr öld
es Óláfr fell
Svǫlðrar vág . .
síðan kallat.

The place where Olaf fell has *síðan* been called the bay of Svold.

It is the word 'síðan' that is the problem in this connection. Ove Moberg understands it as meaning 'later' and finds it hereby indicated that the place Svold was unknown to Sæmund, and that only later authors — Odd maybe — gave this information.

Baetke declares himself unable to understand this. He does not interpret 'síðan' as meaning 'later,' but 'from that time on,' and he leads our attention to a parallel in the sagas, where the death of Tryggvi, the father of Olaf, is mentioned: "ok liggr hann þar sem síðan er kallat Tryggva-reyrr," i.e., "and he lies on the place that has, from that time on, been called Tryggva-reyrr." The words about the death of Tryggvi are very clear: the place has been named after him in memory of his death. But should we interpret the words of *Nórengskonungatal* according to this, they would mean: the place where Olaf fell has from that time on, i.e., in memory of his defeat, been called the bay of Svold. This, however, does not seem to make much sense, and it is not Baetke's opinion either

that the words are to be so understood. What the author meant to say was only, according to Baetke, that the place had been unknown to the Norwegians and Icelanders before the defeat of Olaf Tryggvason. It was this event that gave the name Svold significance to them.

It must be admitted, I think, that Baetke's interpretation is more likely than the interpretation of Moberg, but still it seems questionable to me. Other possibilities might be suggested, but I shall not follow this way further on, for I do not think that it will lead us to any certain conclusion.

It might be useful instead to examine the text of the Flateyjarbók more closely. Is it beyond doubt that the Flateyjarbók reproduces the original text of *Nórengskonungatal* in regard to the place of Olaf Tryggvason's defeat? I said before that *Nórengskonungatal* is preserved in full only in the Flateyjarbók, and so it is. But we have another version of the poem in a law-manuscript dating from almost the same time as the Flateyjarbók. It certainly is not so complete as the version in the Flateyjarbók, but speaking about the words 'Svǫlðrar vág' I think it might have some interest to see what this other text says. And here we read that Olaf Tryggvason 'fæll i sidra vaghæ,' which might mean that he 'fell in the wide (?) bay'.¹⁾

The words 'Svǫlðrar' and 'sidra' differ so much that it can hardly be permitted to regard the 'sidra' as a slip of the pen. On the other side it does not seem very likely that anyone would replace the precise information 'Svǫlðrar vág' with the very vague 'i sidra vaghæ.' The contrary seems to me much more likely. I think it therefore reasonable to believe that the law-manuscript represents the original words of the poem on this point, and that the Flateyjarbók represents an 'improved' edition.

The conclusion must then be, that the scaldic poems, *Nórengskonungatal* inclusive, do not give us any certain information at all about the place of the defeat of Olaf Tryggvason. We will have therefore to turn to the chronicles and the sagas.

¹⁾ In a private discussion after the lecture Jacob Benediktsson and Peter Foote uttered doubts as to my translation of 'síðr' as meaning 'wide.' I could only answer that I was not satisfied myself with this translation. The basic meaning of 'síðr' is 'long (and loose),' 'hanging down,' but obviously this could not be the meaning here. Leiv Heggstad in *Gamalnorsk ordbok*, relying on E. Kock (Arkiv f. nordisk filologi, bd. 37, p. 123), gives the translation 'vid, stor?' ('wide, great?'). This translation, however, must be regarded as uncertain. Another possibility is to regard the 'sidra' as a slip of the pen and correct it to 'sydra' ('souther'), which would give a good meaning.

Where did *Snorri* get the information that the famous battle took place near the island of Svold? This question is very easily answered: *Snorri* received his information from the saga about *Olaf Tryggvason*, written by the monk *Odd Snorrason* about 1190.

But from where did *Odd* then get his information? In the opinion of *Weibull* and *Moberg* it was from the poem of *Skuli Þorsteinsson* which I have already mentioned: "The Frisians' foe I followed and *Sigvaldi*, there where the spears sang out, when we bore the bloody swords south by the mouth of Svold in the fight with the warrior." But I can not follow this explication. *Odd* used the strophe of *Skuli*, not to locate the battle, but only to prove that *Sigvaldi* was there. Further it is impossible to understand how anybody from the words of *Skuli* could get the conception that Svold was an island. 'By the mouth of Svold' says *Skuli*. He must think of a river or maybe a fjord. But *Odd* states that the battle took place near the island of Svold. How did he get this information? Also this question can be answered with a reasonable degree of certainty: he got it from *Theodoricus*, a Norwegian monk who about 1180 wrote a latin chronicle about the kings of Norway.

Theodoricus states himself that no written source has been at his disposal and that his work is based specially on the scaldic poems, which the Icelanders had kept in memory. There is no reason to doubt his words.

It is *Theodoricus*, who as the first gives the famous name of the place of *Olaf Tryggvason's* defeat. "This war," he says, "took place near an island which is called *Suoln* and is situated near *Slavia* which we in our mother language call *Wendland*."

How did *Theodoricus* get his information? Not from *Skuli Þorsteinsson* of course — from the same reasons as mentioned before when the talk was about *Odd*. Further *Theodoricus* does not call the island 'Svöldr,' but 'Suoln.'

It seems impossible to point out any source that could give *Theodoricus* this name for the place of king *Olaf's* defeat — unless it is supposed that *Theodoricus* made himself guilty in misunderstanding of a scaldic poem. Nothing would be easier to explain. Scaldic poems are very easily misunderstood! Suppose *Theodoricus* made a mistake, could we then perhaps find out how he made his mistake? Could we point out a scaldic poem, which could be misunderstood in such a way that it could make *Theodoricus* believe that *Olaf Tryggvason* fell near an island called *Suoln*?

In my opinion this is possible. As a matter of fact it can be nothing more than a hypothesis, but it might still be of some interest. Allow me to present to you the 16th strophe of *Hallar-Stein's* poem 'Rekstefja,' composed probably some time in the 12th century. From other reasons it seems likely that *Theodoricus* has known this poem.

The first half of the 16th strophe of *Rekstefja*:

Raunskjótt ræsir hitti
rit vasa friðr at lita
sól rauð Svölnis éla
senn döglinga þrenna.

There is some difference among the specialists as to the interpretation of this strophe, but it is without importance to us here. Let us hear how *Gíslason* understands it:¹⁾

The king ('ræsir') found ('hitti') pretty soon ('raunskjótt') three ('þrenna') princes ('döglinga') together ('senn'). There was no peace to find ('vasa friðr at lita'). The sun ('sól') of *Woden's* showers ('Svölnis éla' — *Svölnir* is a name for *Woden*) made the shields red ('rauð rit'). 'Woden's showers' means 'the fight.' 'The sun of *Woden's* showers' ('sól Svölnis éla') is the sword that makes the shields red.

It is the term 'Svölnis éla,' in which I am specially interested. 'Él' means 'shower,' but it could also, in itself, mean 'fight,' and the words of *Rekstefja* would therefore be understandable also to the listener who did not know that 'Svölnir' was a name for *Woden*. A misunderstanding would be possible: 'Svölnis él' could be interpreted as 'the fight of *Svoln*.' I suggest that this was the misunderstanding which *Theodoricus* made. Of course it could only be a suggestion, but all problems are solved in this way, even the name 'Svoln.' The conception of 'Svoln' as an island could be reached by combination with the words of *Hallfred*, who in his *Erfidrápa* over *Olaf Tryggvason* tells us about 'the wide sound of the island.'

What was left to do now was only to transform the word 'Suoln' to 'Svöldr.' This was made by *Odd*, inspirated probably by the strophes of *Skuli Þorsteinsson*.

One thing more makes it likely, that *Theodoricus* on this point made himself guilty in a misunderstanding and gave an information that was not hitherto known. I mentioned before that *Adam of*

¹⁾ *Konráð Gíslason, Efterladte Skrifter I (1895), p. 241.*

Bremen (about 1080) located the battle to the Sound, and the Norwegian chronicle *Historia Norvegiæ*, which was probably written about 1170, or maybe some years earlier, followed Adam as to this, although the author was unable to recognize any other details given by Adam about Olaf Tryggvason. If the author had known any other tradition about the place he would hardly have followed Adam. But as he did so he probably did not know any other tradition.

Some years later, about 1190, another Norwegian chronicle, the so-called *Ágrip* (i.e. 'Summary') was written. The author of *Ágrip* seems to have known both *Historia Norvegiæ* and the chronicle of Theodoricus, but he followed *Historia Norvegiæ* as regards the place of Olaf Tryggvason's defeat. Even this author does not seem to have had any other information on this point than he could find in his written sources. And of these he preferred *Historia Norvegiæ*.

But *Odd*, writing about the same time as *Ágrip* was written, did not know *Historia Norvegiæ*, and he did not know *Ágrip*. He only knew Theodoricus and gladly accepted the information given by him. Probably he had no other information at all. From *Odd* the information went on to *Fagrskinna* and to *Snorri*.

It might seem strange, that a so important thing as the location of the defeat of the glorious king Olaf Tryggvason would be forgotten in Norway and Iceland, but it is the only explication I can find. The scalds did not mention it, and so it seems to have been forgotten. The place was too far away. No local tradition could keep it in memory in Norway or Iceland.

But in Denmark of course it might be remembered, and this seems to have been the case. It is true, that Adam of Bremen was badly informed about Norway, but his information about Denmark was much better, because he had the memory of the Danish king *Svein Estridsson* to rely on. The defeat of Olaf Tryggvason was not merely a Norwegian event, it was a Scandinavian event. It seems very likely that *Svein Estridsson* would know the place of the battle, which placed Norway in the hands of his own grandfather, so much more as this place was to be found near the king's own land. There is no reason to doubt the words of Adam telling us that Olaf Tryggvason was defeated in the Sound.

Why should we discuss the place of the fall of Olaf Tryggvason? Does it really have so much importance to know if it was in the Sound or at Svold? Maybe it has not. But we learn some other things

from that. We learn how easily things were forgotten in the tradition if no scald and no locality could help the memory. We learn to be most careful in using the sagas as historical sources if we can not point out their sources again. We learn something about the way in which the sagawriters worked. And all these things seem important to me.

But of course the children of this island will go on reading *Snorri's* description of the defeat of Olaf Tryggvason with all its marvellous details. And right they are. For there was never a greater historical writer in the Northern countries.

To the historian is left the problem to find out which parts of the sagas could be trusted as faithful tradition and which parts must be rejected as later combinations or even pure fiction. But this of course is a history for grown-ups. It is a small chapter of this history that I have tried to tell you today.

Furthermore influences and conditions of the new country, Iceland, had a great effect — they were a stern task-master.

One thing more, in the Icelandic laws can be distinguished three institutions for the care of the poor: the family, the "hreppr" or poor law district, and the church. I have no doubt that these three are named here in their correct order as regards age. The establishment of the hreppar seems to be the result of the breaking up of family ties in viking life. But those men who lost contact with their families felt the need of a stronger, narrower communion than that which the common law could give. The model for this co-operation between men of different families, such as we see it in these Icelandic hreppar, seems to me to be found in the crews of the viking ships, the viking bands and perhaps also in the institutions of the communities of the Western Isles. The tithes for the poor, set up at the end of the 11th century in Iceland, was established in accordance with the tenets of the church, and is the last of the three.

Finally let me remind you of the wide-spread nature of the viking settlements and the international spirit which existed at that time over the whole of North-Western Europe. This spirit remained with the Icelanders for a long time and was the main cause of the breadth of their horizon during the time of the republic and for long afterwards.

Hence it seems to me that I can see in Icelandic society in those days various aspects of the Viking Age, aspects especially chosen for their suitability in this new land. Clearly, also, it is the spirit of the colonist within the viking band and not that of the pirate which predominates. Later on these various aspects became intermingled and flourished in Iceland as long as the republic lasted, but although conditions have changed the influence of these aspects of life has continued throughout the centuries right down to the present day. The clearest outward sign of all this is the Alþing and Þingvellir.

Wherever the vikings came in days gone by they left traces and monuments which remind us of the connection between their day and ours. But nowhere, it seems to me, are the bonds stronger than here at Þingvellir; the civilisation which grew up with the Alþing as its centre was so noteworthy that it served as a model for Icelanders in times to come and is still to this day an important factor.

On Grágás — the oldest Icelandic code of law

By Ólafur Lárússon.

In the year 930 Iceland became a community founded on the rule of law. The Age of the Settlement was coming to an end, the country was populated and the colonists had found that they required an organized state authority which covered the whole of the country. They set up a national assembly with both legislative and judiciary powers, and the country received its first law. About the origin of this law it is said that a man by name of Úlfljóttur was sent to Norway to compile law for the new community. The law he brought home with him is said to have been patterned on the existing law for Gulathing. His proposals were accepted by the first Althing and thus the first Icelandic legal system had come into being. This body of law was named after its originator and called Úlfljótt's Law, which then formed the basis for the later development of Icelandic law.

This was long before our forefathers had learnt the art of writing, and Úlfljótt's Law was certainly never written down. We do not know its contents apart from some fragmentary accounts of a much later date. Neither do we know the law which was in force for Gulathing about 930, so we cannot infer the contents of Úlfljótt's Law from that quarter. But if we compare the Icelandic law of the Commonwealth period as it has come down to us, with the oldest Norwegian law we know, the Icelandic law appears to be so independent of the Norwegian one that a direct relationship between the two seems doubtful. And if the oldest Icelandic law was in fact patterned on existing Norwegian law it is quite certain that an extensive modification of Icelandic law took place, which took it further and further away from its Norwegian prototype.

As the law was not reduced to writing it had to be handed down from one generation to another by word of mouth. To ensure a reliable transmission a certain official, the *lögsögumaður* or Law-Speaker was entrusted with reciting the law of the land in public

at the Althing every year. The section of the law on the procedure for "Things" was to be recited every year, but the other sections in such a way that their recital should be completed in a period of three years, which was the Law-Speaker's term of office. We know the names of all the Law-Speakers from 930 until 1271, when the office was abolished. As a matter of course only men, who were extremely well versed in law were elected to this important and honoured office, and there are many indications to the effect that a good knowledge of the law was highly respected. We know many cases when one Law-Speaker after another belonged to the same family. The conclusion to be drawn is that certain families attached particular importance to the study of law.

In the year 1000 Christianity was introduced into Iceland. With the Church came the art of writing to this country, and the Icelanders gradually learned to write their own language. Some time between 1140 and 1180 an unknown grammarian wrote the so-called First Grammatical Treatise. He says there that he had fashioned an alphabet for his countrymen "to facilitate reading and writing, which has now become so common in this land, both laws and genealogies, translations of religious works, and the learned historical writings composed by Ari Þorgilsson." This shows that about the year 1150 it was common for Icelanders to read and write in their mother tongue, and among the subjects referred to as being written down law comes first. We are so fortunate as to have a perfectly reliable account of the writing down of the law. This information is to be found in the small book by Ari Þorgilsson, the father of historical writing in Iceland, called *Íslendingabók*, which contains a short outline of the history of the country from 874 down to 1120. The following extract is taken from Ari's book:

"The first summer Bergþór was Law-Speaker a new law was passed to the effect that our laws should be written down in a book the following winter at Hafliði Mátsson's farmstead in accordance with Hafliði's and other wise men's information and advice. They were to compile all such laws which were better than the old ones. Thereupon the laws were to be recited the following summer in the Lögrétta (at the Althing) and all those laws which were not rejected by the majority should come into force. The section on manslaughter (*Vígslóði*) was also written down as well as many other sections of the law and were recited by the clergy in the

Lögrétta the following summer. They were accepted unanimously, nobody speaking against them."

The Bergþór mentioned here was Bergþór Hrafnsson, who was the Law-Speaker from 1117—1123. Hafliði Mátsson was one of the most powerful chiefs of his time. He lived at a large farm in the North, at Breiðabólstaður in Vesturhóp, and the writing down of the law actually took place in his house. He died in 1130.

We have no reason to call this account in question. The writer probably held the position of *goði*, and he was possibly present at the Althing both these years and took part in the decisions reached there on these matters. One could also visualize him as a member of the law commission, even though he was modest enough not to mention his name.

According to Ari's account the result of the work of the commission was that the section of the law on manslaughter, which more or less corresponds to the criminal law of our time, was written down, and much else of the law (*margt annat í lögum*). Unfortunately he does not elaborate this point or what this much else covered. The book which came into being at Breiðabólstaður in the winter of 1117—1118 was named after the host of the commission and called *Hafliðaskrá*. Both Konrad Maurer and Vilhjálmur Finsen have expressed the view that *Hafliðaskrá* is not likely to have been very large, but I tend to agree with Finnur Jónsson who thinks it was possibly fairly comprehensive. Unfortunately the book was lost long ago and we do not know any manuscripts which could be a direct copy of it.

The writing down of the law was an important landmark in the history of Icelandic law. Its transmission became both easier and more accurate as it was now available in writing. But this recording of the law was perhaps not the first step in this direction. About the year 1095 the tithe was introduced by law. The tithe was introduced at the instigation of the influential bishop, Gizur Ísleifsson, and it is by no means unlikely that he ensured its prompt availability in writing.

It may be assumed that the writing down of the laws was continued during the immediate period after 1118, and that those sections of the law which had not been included in *Hafliðaskrá*, were recorded then. We do not, however, know this for certain. On the other hand we know that a few years later during the terms of

office of the bishops Þorlákur Runólfsson and Ketill Þorsteinsson, or in 1122 to 1133, the law relating to the Icelandic Church (Kristinn réttur) was compiled and presumably written down. About the year 1130 there were thus at least three separate works containing legal subject-matter, the law concerning the tithe, *Haflíðaskrá*, and Ecclesiastical Law. These works were thereupon copied. There were no doubt many who wished to possess such law books. The copyists sometimes took liberties with their texts as was the custom among Icelandic copyists in those days. Consequently the law manuscripts gradually became inconsistent, and then the question arose which text should be given preference. To solve this problem there is a clause in *Grágás* as it appears in *Konungsbók* (i.e. the King's Book) which runs as follows: "It has been decided that whatever there is in the manuscripts shall be the law of the land. But where the manuscripts do not agree those which are in the possession of the bishops will prevail. If these manuscripts do not agree the one will prevail which has more words on the point in question. But if both the manuscripts are equally full the manuscript which is at *Skálholt* will be given preference. Everything that is to be found in the manuscript which *Haflíði* had written will be valid, unless some changes have been made at a later date, but of other legal matter only that which does not conflict with *Haflíði's* manuscript will be in force as well as that which is not found in *Haflíði's* manuscript or is clearer."

This shows that at the time when this clause was passed *Haflíðaskrá* still existed and had still an active significance. Further there were several other law manuscripts, of which the two bishops had one each. I can well believe this clause is fairly old, probably not much younger than the middle of the 12th century.

These manuscripts and fragments have between them received the peculiar name of *Grágás*. *Grágás* is the bird name Grey Goose.

The general opinion has been that the name dates from the 17th century and that the antiquarian-minded Icelanders of that century believed it to be used here of an old Norwegian law book for *Trondheim* which *Snorri Sturluson* associates with King *Magnus*, the son of *St. Olav*. It has now been made clear that the manuscripts had already come by this name by the middle of the 16th century. In an inventory from the Episcopal See at *Skálholt* dating from 1548 one of the items is a law book called *Grágás*.

The name *Grágás* has been explained in many different ways.

But all this is pure guesswork and the origin of the name may still be said to be in the dark. But however this may be the name *Grágás* has, at least since the 16th century, been used of manuscripts of legal contents which have been preserved from the Commonwealth period, and this designation will most certainly be also used in the future.

The two main manuscripts which have been preserved are both to be found in Copenhagen libraries, one in the Old Royal Library No. 1157 fol., and the other in No. 334 fol. in the Arnamagnean Manuscript Collection in the University Library. The first is usually referred to as the King's Book or *Codex Regius*, but the other as *Staðarhól's Book* after a farm in the West of Iceland where *Árni Magnússon* got hold of the manuscript. Both these manuscripts are large folios and must have been treasures in their prime, as they are beautifully written and illuminated with multi-coloured initials. Both of them may be said to be in a very good condition. One or two leaves are missing from the King's Book however, but the lacunae can partly be supplemented with material from the *Staðarhól's Book*. It may be safely asserted that the King's Book cannot date prior to the year 1216, as it includes an amendment which is said to have been passed during Bishop *Magnus Gizurarson's* term of office, but he became bishop in that year. Some scholars have thought that the King's Book was written as late as 1326 or later. In some annals there are remarks to the effect that *Magnus's Mass* was legally adopted as a holiday that year, but the King's Book includes that day amongst the holidays laid down by law. From a palaeographic point of view it is highly improbable that the manuscript is of such a late date, and the explanation probably is that this holiday was left out of Bishop *Árni's Ecclesiastical Law* of 1275 but reintroduced in 1326. In the third place, a provision at the end of the section on manslaughter has been produced as evidence for the age of the manuscript according to which a slave was to receive half a compensation for offences if staying on an earl's farm, but a full compensation if staying on a farm belonging to the King. It has been thought that this provision must date from the years between 1258 and 1268 as this was the only period in the country's history in which it had an earl. But slavery had been abolished long before that time, no less than 100 years before, and so long a time after the abolition of slavery there was no occasion for introducing such a provision. We must also remember that the King's

authority was first fully recognized in the years 1262—64 and we may assume that the king had not acquired landed estates to any extent so soon, not at any rate of an order that might give rise to such legislation. The provision in question is no doubt derived from a foreign source which the scribe for one reason or other found proper to include in his manuscript.

There is no other internal evidence for the determination of the age of the manuscript. The only thing we can rely on is the palaeographic evidence. All those who know Icelandic manuscripts best agree on assigning it to the period between 1250 and 1260.

About the history of the manuscript we know very little. The first we know about its owners is that a little after 1500 it was in the possession of a sheriff in the North by name of Þorsteinn Finnbogason. He was the son of the lawyer Finnbogi Jónsson, who was in his time considered to be one of the greatest authorities on law in this country. Later it was owned by another sheriff, Páll Jónsson of Staðarhóll. His grandson was Bishop Brynjólfur Sveinsson, who sent the manuscript to the King. That is how this manuscript found its way to Copenhagen.

Earlier scholars confidently thought that the other manuscript, Staðarhól's Book, dated from the period after 1271, because the manuscript contains, besides Grágás, the law book which was introduced into this country in the years 1271—1273 and received the name Járnsíða or Ironside. But Vilhjálmur Finsen has pointed out that Ironside is written in another hand than Grágás. The owner of the Grágás manuscript presumably had the new law book copied, and then incorporated this new manuscript and his own copy of Grágás in one volume. The Grágás of Staðarhól's Book may therefore have been written before 1271. However, this manuscript presents problems similar to those of the King's Book, as we can only determine its age on palaeographic evidence, which can do no more than assign its date to the last decades of the 13th century.

About the owners of the Staðarhól's Book down to about 1500 we do not know anything. But from about 1500 onwards we can trace it from one owner to another. The first one we know of was Mrs. Hólmfríður Erlendsdóttir of Stóridalur. There had been chieftains and lawyers in her family on both sides. Mrs. Erlendsdóttir left her manuscript to Philippus Runólfsson, a member of the Althing, who later gave it to Mrs. Erlendsdóttir's nephew, Páll Vigfússon, the lawyer. After his death the manuscript passed to the

above-mentioned sheriff, Páll Jónsson. From his descendants the Reverend Páll Ketilsson acquired the book, and later gave it to his cousin, Árni Magnússon. Thus Páll Jónsson of Staðarhóll at one time owned both these manuscripts. We may count ourselves most fortunate that his farm did not burn down while both the manuscripts were to be found there. Our knowledge of the legal system of the Commonwealth period would be scanty, to say the least, if both these parchments had been lost.

In addition to these manuscripts there are some others of less importance. Both the King's Book and the Staðarhól's Book contain the old Ecclesiastical Law, but it also exists in separate forms in 6 other parchments from the 14th and 15th centuries. The reason for the existence of these manuscripts is no doubt that already in the early 14th century there was a dispute on the validity of Bishop Árni's Ecclesiastical Law of 1275, and the old Ecclesiastical Law was by many considered to be still in force. Of secular law there are also some fragments. In A. M. 347 fol., the so-called Belgsdal's Book, there are 30 chapters mainly on laws concerning family relationship and inheritance. Some of the provisions found there do not exist in other manuscripts. The so-called Þingeyra Book, A. M. 479, 4to, contains the section on drift-wood in a close agreement with Staðarhól's Book. Further it may be mentioned that in A. M. 315 fol. there are a few leaves of four separate lost manuscripts. Of these one, 315 D, has been dated about the year 1150, or perhaps a little later, and this fragment has therefore particular importance for the comparison of the main manuscripts. But unfortunately only two leaves of that manuscript have come down to us.

All the above-mentioned manuscripts are now kept in Danish libraries. In this country we have only a few later copies of the main manuscripts, copies which have no scientific importance.

The Ecclesiastical Law of Grágás was edited by Grimur Thorkelin in 1776 accompanied by a Latin translation. In 1829 the Arnamagnean Commission edited the Secular Law of Grágás, accompanied by a Latin translation. This edition is, however, a failure from a scientific point of view, as the editors arbitrarily mixed the texts of the two manuscripts. Later came Vilhjálmur Finsen's excellent and accurate editions. He edited the King's Book together with the most important fragments in 1852, the Staðarhól's Book in 1879, and the separate manuscripts of the Ecclesiastical Law and some other fragments in 1883. The King's Book has been published in

a Danish translation by Vilhjálmur Finsen (1870) and in a German translation by Andreas Heusler in the collective work *Germanenrechte*. A facsimile edition of both the manuscripts is included in *Corpus Codicum Islandicorum*.

Grágás, in particular the two main manuscripts, is our principal authority for the history of Old Icelandic law. The two manuscripts differ from one another on various points, however. The King's Book has some sections which are not to be found in Staðarhól's Book, for instance the one on procedures for "Things" or meetings, the sections on the Lögrétta, the Law-speaker, the so-called Baugatal, i.e. enumeration of rings or weregild, which concerns family penalties for manslaughter, etc. Staðarhól's Book has on the other hand many provisions which do not exist in the King's Book, and it is often more detailed than the King's Book. The order of the contents which they have in common differs on many occasions and the actual wording is also often not the same.

It is obvious that neither of these manuscripts is a direct copy of the other. The great difference between the manuscripts was considered by Konrad Maurer to prove that they constituted two independent collections which had reached a certain degree of agreement because they were both concerned with the same subject-matter. Vilhjálmur Finsen, on the other hand, was of the opinion that the manuscripts were recensions of more or less identical material, and that on the whole there was substantial agreement between them. On comparing the manuscripts Finnur Jónsson came to the conclusion that they might both partly derive from the same basic manuscript or from parallel copies of one, and I am prepared to accept this view. The question confronting us is then: What is this common basis? Before we attempt to answer that question, we might consider what kind of work Grágás really is.

On this question there is a wide disagreement between the two great authorities, Vilhjálmur Finsen and Konrad Maurer. Both quite agree that Grágás as it has come down to us, is not an official law-book, but a private work. Maurer has summarized his view on Grágás in the words that it is "ein aus ganz verschiedenartigen Materialien zusammengetragene Privatarbeit." Apart from real laws he thinks this material was the Speaker's recital of the laws, which he believes consisted primarily of an account of customary law, other customs, judge-made law and finally treatises on legal science. He thinks that actual legislation played a small part in the legal

practices of the Commonwealth, and that it was of a minor importance as a constituent part of the text of Grágás. On the whole Maurer attaches great importance to the customary law and legal science for the development of the legal system and for the contents of Grágás. Finsen, on the other hand, looks upon Grágás as a collection of the laws passed by the legislative body, the Lögrétta. In his view Grágás is admittedly not an official law book, as it is a private work, but that it cannot be described as private notes on various domains of law. He therefore looks upon Grágás as a private collection of laws.

There are admittedly a few things in Grágás which remind the reader of the Speaker's recital of the laws, and may be derived from it. The style assumes a personal colour in expressions like "we should," or "we ought to," and on a few occasions the first person singular is used, e. g. "as I shall now say" or "as I have said before." The expressions "here," and "here on the Thing" are used of the scene at the Althing, and there are time references to what is due to take place at a particular session of the Althing, e. g. "cases will be outlined today or tomorrow" or "judges will be appointed today." Here we still hear the Law-Speaker's voice when speaking to the assembled members of the "Thing." But this is exceptional and Grágás can in no way be described as a written recital of the laws, and it has fewer traces of oral handing down of the laws than some of the oldest Norse provincial laws.

Maurer's theory that the Law-Speaker in his recital of the laws gave account of customary law cannot be supported by anything in the text of Grágás. In the section on the Law-Speaker it is just mentioned that he should recite all "sections of law" (*lögpáttu*), which comes nearest to refer to actual law.

As for the importance of customary law in the legal system of the Commonwealth it seems obvious that the conditions for the formation of such law was not particularly favourable in the Icelandic community of that time. For a regulation to become accepted as customary law it must have been in practice for a long time and applied on many occasions. In a small community, as the Icelandic one was, and which was besides spread over a large area, these conditions were much less frequently present than in large and densely populated communities. Besides, the Icelandic community was comparatively young, and one might perhaps expect to find old customary law which had originated in Norway, but the great

difference between the Icelandic and Norwegian legal systems is a strong evidence against that possibility. Finally, if customary law played an important part one might have expected to find distinct particularism and many local customs, but there are only few traces of either in Grágás.

As for the importance of legal writings for the compilation of Grágás I will content myself with quoting Finsen's words: "We cannot find anything in the contents or the form of Grágás which indicates that we have before us a private work (i. e. treatises or glosses on law). We cannot see that there is anywhere a dogmatic attitude. There is no discussion on theoretical problems, no comparison of diverse views, no reasoning or argumentation. Although the exposition is detailed throughout, its fullness does not consist in an extensive treatment of certain problems, but simply in the enumeration of a great number of individual cases, which find a perfect explanation in the way in which the legislation was based on real life. We also constantly find the same categorical diction: he shall — a fact which deserves particular attention, as it is hardly very likely that amateur jurists wrote treatises or notes in the form of law."

These were Finsen's words, and I believe his arguments are quite conclusive. Grágás is no treatise on legal science or a collection of such treatises.

Grágás is a very comprehensive work. Andreas Heusler has referred to it as the giant amongst the Germanic law books of the Middle Ages. It is easy to compare the King's Book in Finsen's edition with the Danish Provincial Laws in Thorsen's edition, as they appear in the same format and are printed in identical type. The King's Book consists of 464 pages, but the largest set of Danish provincial laws, Erik Sjællandske's Law, of only 131 pages. If we now assume in agreement with Finsen that Grágás contains mainly actual laws, i. e. resolutions passed in the Lögrétta, it will be clear that the legislative activity must have been very active and prolific in the Commonwealth period.

Is it probable that such extensive legislation could take place?

When trying to answer this question we must first and foremost remember that according to the constitution of the Old Icelandic Commonwealth the legislative power was separated from the judiciary power. On the Althing there was a separate institution, the Lögrétta, which was invested with the legislative power, and whose

principal role was legislation. The purpose of the Lögrétta was according to Grágás to improve the law (réttá lög sín) and make new laws (gera nýmæli). "Réttá lög" apparently implies amendment of old laws, whereas "gera nýmæli" refers to the passing of laws on subjects about which no laws had existed before. Besides, the right to initiate legislation was arranged in a peculiar way. The initiative did not only come from the members of the Lögrétta. If there was a dispute on a point of law, whether it concerned the interpretation of existing law or what should be looked upon as right in cases to which no law applied, the disputants could refer their case to the Lögrétta and its verdict should from then onwards be valid as law. In this way anyone outside the Lögrétta was entitled to call for a legislation in the Lögrétta, and this easy way of securing the decisions of the Lögrétta must have led to extensive legislation concerning very limited subjects, or in other words to many casuistic provisions, and Grágás is indeed very rich in such casuistic provisions. We may assume that the decisions of the Lögrétta in matters of legislation depended on simple majority. All this was bound to lead to a very comprehensive legislation.

Grágás assumes in another way a special position amongst Old Norse laws. It is less popular and less primitive than the rest of them. It does not have as much alliteration in its provisions, and not so many proverbial aphorisms. Its style is matter-of-fact and at the same time clear and logical. It has a literary stamp which the other laws lack. Even though Iceland was a young settlement it is hardly probable that Icelandic laws had these literary traits from the first. It must be due to a later redaction of the law. But when did that redaction take place? In view of the fact that both our main manuscripts date from the second half of the 13th century we would perhaps be justified in assuming that this redaction took place some time during that century. The language of the manuscripts would point against such an assumption, however, which in many places bears the stamp of the 12th century, and another evidence against this assumption is provided by the above mentioned fragment, A. M. 315 D fol. Its text has the same stamp and the same style as characterizes the text of the two main manuscripts. The redaction may therefore have taken place before A. M. 315 D was written and if we can assign it to the middle of the 12th century only 30 years had passed since the Haflíðaskrá was written, and it is not likely that anything like a thorough revision could take place

during that short period. On the other hand such a redaction, which must have taken place here may have been carried out either at the same time as, or after, the law was written down, in other words either in 1117—1118 or later. Consequently I think we can hardly come to another conclusion than that it was the law commission of 1117 which revised the law. According to Ari Þorgilsson the task of the Commission did not only consist in writing down the law. They were also to draw up any such new laws which they found to be better than the old ones. They were in other words authorized to revise the law of the land in its entirety, and they have presumably availed themselves of this authorization. We may assume that the law in the form and style we know it in the King's Book and Staðarhól's Book was first to be found in Hafliðaskrá. The basic manuscript or original of our two main manuscripts is then no other than Hafliðaskrá itself. It was probably the basis of the existing texts and from these texts it should be possible by means of careful textual criticism to reconstruct the text of Hafliðaskrá.

I have already said that it is unlikely that the laws of the Commonwealth period had right from the beginning the modern stamp which characterizes Grágás. Unfortunately we know very little about the laws which were in force before Hafliðaskrá was written down. Some scholars have studied the legal subject-matter of the sagas and have come to the conclusion that it represents an older stage in the development of the laws than Grágás. The meager information we have about Úlfjót's Law indicates that it was rather primitive, which is only to be expected in any case. But this information is scanty and the value of the sagas as authorities for the history of the legal system is also somewhat questionable. But in Staðarhól's Book there are some provisions which are not to be found in other manuscripts and which have the appearance of great age, and may be said to be much more similar to the oldest Norse provincial laws than the rest of Staðarhól's Book. These old-looking provisions were in their time in force as the law of the land. They were handed down orally through the Law-Speaker's recitals of the laws. The Law Commission did not include them in Hafliðaskrá. Together with a great deal else of the old laws of the land they were omitted. But before they were forgotten they were however written down, and then later incorporated in the Staðarhól's Book, where they give us a little insight into the older Icelandic laws.

But in whatever light we see Grágás and whatever notions we have about its origin we will all agree that with it our forefathers erected an impressive monument in the sphere of law. It would have been interesting to know how Icelandic law would have developed on the basis of Grágás. But its development was interrupted. After the country had submitted to royal power in 1262—64 a new law book, Járnsíða or Ironside came in the years 1271—73, and with it principally Norwegian Laws were introduced. Ten years later a new law book came, called Jónsbók, which was to a greater extent than Ironside based on Grágás, and even today some of the provisions which Jónsbók had adopted from Grágás are in force as the law of the land. So tenacious of life have these old provisions proved to be.