

The Many Factors of Law: Faith, Baptism and Burial in *Gulaþingslög*,
Frostaþingslög, *Västgöta Lag* and *Grágás*

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Master of Arts Thesis
Viking and Medieval Norse Studies

Department of Linguistics and Scandinavian Studies
UNIVERSITET I OSLO

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HÁSKÓLI ÍSLANDS

Spring 2023
30 Credits

The Many Factors of Law: Faith, Baptism and Burial in *Gulapingsløg, Frostapingsløg, Västgöta Lag* and *Grágás*

Master of Arts Thesis in Viking and Medieval Norse Studies

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<http://www.duo.uio.no/>

Printer: Reprosentralen, Universitetet i Oslo

Summary

The culture and customs of early Middle Ages Scandinavia and Iceland have been a subject of investigation for many years. Each of the countries had somewhat similar roots, and each developed codes of law designed to bind and regulate the community. However, comprehensive studies of these codes are not abundant. In order to better understand how these earlier societies functioned, even a small comparison might further an understanding of law within societies transitioning from pagan to Christian. No parallel comparison of law exists so far, and given the amount of material it is understandable. This thesis attempts to begin such a comparison, using sections of church law from *Gulaping Law*, and *Frostaping Law* in Norway, *Västgöta Law* in Sweden, and *Grágás* in Iceland. It is hoped that this comparison will help to expand understanding of each of these societies through their expression of law.

Acknowledgements

The writing of this thesis is the culmination of a giant step into a completely new world. As a musician and retired ordained clergy, entering the Viking and Norse Medieval Studies degree programme at Háskolí Íslands in Iceland, in the middle of a pandemic, was a leap of faith. The year at Universitetet i Oslo in Norway was a further leap. Writing a thesis - something I have never done - was yet another leap. It has been an incredible learning to return to university at the age of 74, in two different countries. I would like to thank Prof. Haraldur Bernharðsson at Háskolí Íslands for encouraging my application to this programme, and for his excellent teaching. Thanks to Prof. Margaret Cormack whose class stimulated my interest in this topic, and who took extra and personal time to make suggestions for going forward. Many thanks to my adviser, Prof. Anders Winroth, who writes far better than I ever will, and who appears to have endless patience. When Prof. Winroth agreed to be the adviser in this thesis venture, I was so excited I got on the wrong train going home from the university! Thanks must also be given to the many staff and faculty in both places who facilitated the moving and studies, and even now are assisting the finishing of this work.

I wish to thank my colleagues, and friends Ceilidh Burdick and Michelle Rosas, for their listening support, moral support and helpful suggestions.

Most important, however, abundant thanks are given to my husband of 52 years, who has encouraged and supported this experiment, both psychologically and financially, and who lived this two years alone in Toronto while I studied. "If you don't do this, you will always regret it." he said, and he was right. I will not ever regret having done this.

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Chapter 1. Introduction

“The law is a body of abstract rules of justice that bind a community together. In premodern societies, the law was believed to be fixed by an authority higher than any human legislator, either by a divine authority, by immemorial customs, or by nature.”¹

“At lögum skal land vårt byggja en eigi at ulögum øyða.”^{2,3}
“With law shall the land be built, and not made desolate by lawlessness.”

1.1 History

Scandinavian law existed prior to the introduction of writing, and prior to additions from European law. Oral law existed before written law, and likely formed the core of subsequent written law. The very earliest manuscripts of law in the Scandinavian countries come from around the thirteenth century, and are the oldest sources available for some understanding of the social, administrative, ecclesiastical, economic structure and dynamics of the history of Scandinavia, and for the most part were among the oldest vernacular Old Norse texts. Stefan Brink notes that the most important sources for understanding medieval society are the Scandinavian provincial laws, and that the older laws can be traced in the earliest law manuscripts and documents from the thirteenth century, as they began to be written down.⁴

1.2 The Laws

When research into this thesis began, it quickly became apparent that there was little if any written material comparing each of the codes of church law side by side, so that similarities and differences could be evaluated. Extensive scholarship exists on the history of every set of laws, of the developments of monarchy and their influence, of the church and politics, geography and ethnicities, of each of the codes of law themselves, but there is as yet no fully comprehensive comparison, probably for the simple reason that it is an enormous amount of material. For example, Fraser Miller has done a superb comparison of outlawry in *Gulapingslag* and *Grágás*; Christine Ekholst has written of punishment and outlawry in Swedish law; Stefan Brink has done significant work in law, society and landscapes; Laurence Larson has written about problems involving application of the law in the geography of Norway; Anders Winroth has written on baptism and marriage law; Anne Irene Riisøy has done a comparison of burial practices and

¹Francis Fukuyama, *The Origins of Political Order*. (London: Profile Press, 2012), 245-6.

²Ota translation, 2022.

³Laurence M. Larson, *The Earliest Norwegian Laws, Being the Gulathing Law and the Frostaping Law*. (New York: Columbia University Press, 1935), 224. “Our land shall be built up by law, and let it not be laid waste by lawless behaviour.”

⁴*Ibid*, 438.

outlawry; Bertil Nilsson has done extensive work on burial and burial rights in each of the codes of law. These are but a handful of examples in a much broader historiography, each addressing parts of the whole. None of the countries we know today existed when the laws were created and written down, but were a number of smaller provinces, each with a code of law which grew out of the history, culture and location of those people. Social structure, role of the church and monarchy, the influence of canon law, and the geographical setting are all factors which affect the articulation of the law.

Each code states what is considered most important by that particular group of people, reflecting history, culture, and geography, either by statement or by inference. Three of the four codes can be divided into sections which roughly parallel each other, and some things appear in one but not in the others. *Västgöta* is different enough that it will be treated somewhat separately, with comparison where appropriate.

1.3 Methodology

In this thesis, three sections each from *Gulaping Law* and *Frostaping Law* in Norway, *Västgöta Law* in Sweden, and *Grágás* in Iceland will be compared in written form, supported by appendices which show the texts side by side. For purposes of simplicity and consistency, they will be referred to simply as *Gulaping*, *Frostaping*, *Västgöta*, and *Grágás*. The method was to set up a parallel version of each part of the law, in order to see similarities and differences in each law code, and then elaborate in writing as well. Given the amount of material, only the older versions of the texts will be referenced. The three sections are: opening statements, baptism law and burial law. (Appendices I, II and III.)

1.4 Dating and Manuscripts

In Norway, the older laws were in force till 1267 CE, when younger law codes replaced them, and these in turn were replaced by the *Landslov* of King Magnus Lagabøte in 1274 CE. The original texts may have been written in the middle of the eleventh century, although it is possible that some were even as early as the tenth century. In Sweden, the *Older Västgöta Law* dates from circa 1280 CE, but there also exists a fragment from the first half of the thirteenth century. It is the earliest Swedish example of vernacular literacy in Latin script.⁵ A younger revised manuscript version dates from the middle of the fourteenth century. In Iceland, two partial versions of an earlier text exist: *Konungsbók* dated circa 1260 CE and *Staðarhólsbók* dated circa 1280 CE.⁶ The earlier text dates to approximately 1117-18 CE, but is preserved in

⁵Thomas Lindqvist, *The Västgöta Laws*. (London:Routledge, 2021), 12.

⁶*Konungsbók* (Copenhagen, Royal Library, GKS 11 fol) approx. 1260. *Staðarhólsbók* (Reykjavik, Arne Magnusson Institute for Icelandic Studies, AM 334 fol) approx. 1280.

these two versions from the mid-to-late thirteenth century, and is larger than similar collections in the Nordic countries.⁷ Each of these presents different information, sometimes complementary and sometimes contradictory, and which may be a result of how the laws were interpreted by different individuals. *Staðarhólsbók* does not contain the Christian Laws section found in *Konungsbók*, so only this latter will be used for thesis purposes.

“Only two texts, the *Upplands Laws* and *Södermann Laws* respectively, are provided with confirmation letters, which means that we can determine exact years for the editing.”⁸ These two sets of law aside, only rough estimates can be made about the chronological age of the others: *Gulapíng* is considered to be the oldest, followed by *Frostapíng*, then *Grágás*, with *Västgöta* being the youngest.⁹ All of the laws must be seen as sources for the time in which they were written, even if information sometimes is conflicting. The assumption is always that the laws were relevant and in force at the time of their compilation. Where ideas conflicted, the laws were compromises which reflected the power structures active in their production: thus large parts of the laws cannot be considered to have been obsolete at the time of editing.¹⁰ Each law must be viewed as a whole containing an older core part. This precludes any temptation to redact in order to ‘sift out’ any layers of pre-Christian Germanic law.¹¹ In all examination this ‘core’ part is assumed, most likely based in oral law, with layers of newer law as cultures and interpretations changed. At the same time, everything, even the contradictory parts, is to be assumed to have been in force. In some cases international material has been added, and can be dated independently of the Scandinavian laws. This is particularly relevant for dating the incorporation of the canon law of the church. Since dating of canon law can be established clearly, it can also provide an approximate date for editing of the older laws. Nor are the manuscripts preserved to today always reproductions of originals. Additions may have been made later than the period which the law itself might indicate. Given the various possible methods for dating - historical, paleographic, or linguistic - there is a consistent time gap, perhaps a century or more, with regard to the manuscripts. Plus, dating cannot be done on linguistic grounds alone, since older linguistic forms may continue to be used even in younger manuscripts.

1.5 Structure of the Thesis

⁷Andrew Dennis, Peter Foote, Richard Perkins, *Laws of Early Iceland Grágás I*, (Winnipeg:University of Manitoba Press,1980), Foreword,vi.

⁸Bertil Nilsson, *De Sepulturis Graavratten i Corpus Iuris Canonici*, (Stockholm: Almqvist & Wiksell International,1989), 1.1.2.2. Ota translation.

⁹*Frostapíng* is the oldest court. Written *Gulapíng Law* predates *Frostapíng Law*.

¹⁰Nilsson, *De Sepulturis*, 1.1.2.2.

¹¹Ibid.

Chapter 2 will examine briefly the history of the laws by identifying their geographical areas, their culture and language. Chapter 3 will address identities, how they may manifest in the articulation of the law, and how previous law and usage may have affected them. In this chapter the opening statements of law/faith in each of the four codes will be used to see if a sense of identity can be perceived. The chapter will include outlawry, noting penalties for violation of the law, and the effects of the penalties. Chapter 4 will examine the Sacrament of Baptism, identifying inclusions and influence of canon law, differences and similarities. Chapter 5 will compare the process and rites of burial, noting whether or not canon law has any bearing. Chapter 6 will attempt to bring together the various threads, to determine what conclusions, if any, can be reached.

Chapter 2 Culture and Geography

While Norway, Sweden and Iceland are ‘named’, they are not the countries and borders which we know today. *Gulapting*, *Frostapting* and *Västgöta* represent provinces within larger areas; they were later united as countries around the thirteenth century, and the various codes were incorporated into one in each of those countries. Iceland is somewhat different in that it was entirely an island of immigrants, and became a country by consensus vote. Each of the codes of law addressed some similar issues, but their articulation differed; in each code some things were considered important enough to be included in their laws, whereas other codes did not mention them. Local geography of each had a bearing on each individual code of law, reflecting the area represented in the law.

2.1 Purpose and Role of Law

The codes of law were designed to regulate social and legal relationships within the established hierarchy. Each set of laws began with a specific section regarding the church, including baptism, burial, marriage and inheritance, building of churches and burial grounds, and the role of the church and the priests. Each code identified fines for breaches of the law, whether secular or ecclesiastical, up to and including full outlawry and banishment. The king had some authority to affect law in *Gulapting*, and wrote an introduction to *Frostapting*¹²: older sets of laws exist, but of these four only *Gulapting* notes the decrees of Kings Olav and Magnus¹³: but *Borgarping* and *Eidsivapting* appear to have an ‘Olafstext’, which together with *Gulapting* would indicate that they took the same form as they did prior to 1150 CE. In Sweden the king had some

¹²See footnote 21.

¹³Olav Haraldsson, Magnus Erlingsson

authority, but his influence appeared to be less than in the two Norwegian provinces. Iceland was not subject to a king, so the law includes no mention of king. In each assembly the purpose of law was to regulate relations among whatever social distinctions were made; the king and his officers, chieftains and landholders, the clergy and the church, and the peasantry. In some areas the laws were a social contract between the people, the church and the king.¹⁴ Various interests and solutions to conflicts were addressed, particularly individual and personal rights, and appropriate compensations were defined.

Although the power of the king was considerable, in the earliest assemblies the greater authority was found within the *lögþing* or *lawcourt*. The name of the *þing* represented two things: law for the areas named, and the law of the province. The *lögþing* met always at the same site, and had three functions: to create and pass laws as needed, to serve as a court, and as a place for resolution of issues common to everyone within that area, which might not be solved in lower assemblies. These issues might be military, church, business, land and rent, or involve the king.

Simensen notes¹⁵ that the development of the laws *may* have been a large-scale attempt to impose social organisation on the west Norwegian farming community, and that some sections may represent a social contract among the three parties: the people, the king, and the church. The law provides a framework and mechanisms for negotiation and resolution of disputes. Personal rights and duties are defined; procedures for resolving conflicts are specified. Fines and compensation are established according to the crime or offence, and the social status of the persons raising the conflict.¹⁶

2.2 King and Church

Primary landowners were the king and the church: the former through inheritance, land confiscated from enemies, fines and levies; the latter through land rent, fines for church law violations, and bequests to the church. Because of the ownership of land, both wielded considerable authority. Royalty also had private chapels. The law specified how churches were to be built. Cathedrals were the churches of the bishops or archbishops. In Norway each 'shire' or *fylke* within a province had a church. In Sweden each village had a church.

The priests, whether from the rural community or not, had strong moral influence within their parishes, and in enforcing church law regarding holy days.¹⁷ Clergy paid no taxes and were

¹⁴Erik Simensen, *The Older Gulathing Law*, (London, Routledge Taylor and Francis Group, 2021), i.

¹⁵Ibid, *Older Gulathing Law*, 8.

¹⁶*Older Gulathing Law*. 130 chapters are part of the *Landslov*, the Law of the Realm.

¹⁷Ibid, *Older Gulathing Law*, 5.

exempt from military service. Many worked in royal administrations, and as advisers to the king. As priests they were part of an international organisation, thus having a dual loyalty to the laws of the province and the church. So clergy had an arena outside the church where their intellectual and political talents were used to support the king, maintain his authority, and strengthen his influence.

2.3 Norway

During the Middle Ages there were four major provinces, each with their assemblies or ‘þings’ and codes of law. As well as *Guláþing* and *Frostáþing*, there was the most southern area of *Borgarþing*, centred in what is now Sarpsborg. It included Bohuslän on the southeastern border with Sweden, the areas surrounding Oslofjord east and west, and eventually Grenland and Telemark. North of *Borgarþing* was *Eidsiváþing*, which also bordered Swedish areas, with the centre in Eidsvoll, representing the ‘catchment’ location for the area around Lake Mjøsa in Hedmark county.

2.3.1 Guláþing

The province of *Guláþing* encompassed part of south-western Norway, what is now East and West Agder, Hordaland, Rogaland, Sogn og Fjordane, and Sunnmøre. The centre was at Gulen, just north of Bergen. The text of *Guláþing* is completely preserved, but is actually comprised of two different legal texts, with the older and younger parts noted by the name of the King who decreed them. *Older Guláþing Law* is attributed to King Ólafr Haraldsson and is known as the Olaf Text.¹⁸ Additions and changes made by King Magnus Erlingsson are considered the younger text, so that contradictory ‘parallel provisions’ exist in several places.¹⁹ This text was probably added in an older edit during the later eleventh century, with a final edit at the time of Magnus’ revised and unified law 1164-1174 CE.²⁰

Guláþing may predate 930 CE in its oral form. It is noted in *Íslendingabók*, (*Book of Icelanders*), as well as the *Konungasögur* (Kings’ Sagas), and *Egil’s saga Skallagrímssonar*, suggesting that King Hákon the Good extended the province, changing it from a general assembly for all free men, to an assembly with delegates from the smaller districts, and reducing the number of householders attending from 375 to 246.²¹ The site was near Gulen in Sogn, possibly at Eivindvik, then Guløy, and eventually Bergen by the beginning of the fourteenth century. Towns as we think of them were scarce, with Bergen being the closest significant centre

¹⁸ c.995 CE -1030 CE Olav den Heilige (Olaf the Holy), canonised 1031 CE.

¹⁹ Nilsson, *De Sepulturis*, The Nordic Sources.1.1.2.2 P. 4 Ota translation.

²⁰ Ibid.

²¹ Simensen, *Gulathing Law*, 7.

of trade, crafts, merchants and religion. While the distance from Gulen to Bergen is about 70 km, it could have been inaccessible to those farmers along the coast, even by boat if weather was inclement.

Gulen is surrounded by deep fjords, with steep mountains and islands along the coastal areas. The area economy was mostly based in farming and fishing, with a small population of relatively self-sufficient households. The farms were located at the base of mountains on the edge of the fjords and coastline, where there was barely arable land. Because of proximity to the coast, fishing was important. Distances between farms were significant: in the mountainous high pasture, temporary huts formed the 'summer farm'. Each household literally moved up into the high mountain pastures for the summer. Third 'farm' locations, partway up the mountain, were temporary spring and fall 'stopping points' consisting of small areas of pasture and very basic stone huts. The rural area of Gulen was connected to a local church and a *þing* site, but was still often a considerable distance away. Some farms possibly formed a 'collective', in the case that a community might be closer together. The social structure was hierarchical: king, earls, bishops, and last those given land by the king: these last served as advisers and officers in the naval levy.²² The largest group were farming families: freeholders, householders, and tenants to whom the householders leased the land. Priests were considered upper class, but in outlying areas they became more integrated into the peasant society; even so, they still had considerable influence over the daily lives of parishioners.

2.3.2 Frostaping

This province encompassed Trøndelag, Romsdal and Nordmøre, and is considered Norway's oldest court, which met at the assembly site at *Þinghaugen*. The centre was at Frosta, on a peninsula in the Trondheimsfjord, about 20 km northeast of Nidaross, now Trondheim. *Frostaping* is better preserved than the others, but the earlier laws only preserved what pertained to the church: the version which has come down to us is dated approximately 1260 CE during the reign of Håkon Håkonsson. It is known as the *Codex Resenianus*, named for historian Peder Hansen Resen, who gave the surviving manuscript to the University of Copenhagen; the manuscript was later destroyed in the fire at the Copenhagen Library in 1728 CE. It is reproduced in print using a different manuscript, from the early fourteenth century, and includes fragments of law of diverse ages: most of the dateable parts fall into mid-to-late twelfth century. The sections dealing with church law may be from an older text known as *Gullfjoðr* by

²² Simensen, *Gulathing Law*, 4.

Archbishop Eystein, who tried to bring Norwegian law into line with Gratian's canon law.²³

The area is predominantly temperate marine west coast climate: that is, a minimally humid continental climate, suggesting that the social and farming structure was quite different from that in Gulen. Distances between farms, and to larger centres, were shorter and more easily navigated, arable land more easily accessible and more productive.

It is suggested that King Håkon the Good introduced the *Frostaping Law* around 950-960 CE.²⁴ The *Ding* at Frosta was the highest judicial authority over the eight districts in the Trøndelag region. Every summer, 485 delegates met to create laws and regulations, and enforce and judge by the same laws.

Problems in the early days of Norway grew out of the kind of available land and how it was settled. Depending on the area, there was a significant poverty of resources. In more remote places, wine was literally unavailable, and thus Holy Communion was sometimes only bread; in some places even bread was unknown. In June, 1308 Bishop Arne of Bergen sent raisins, or 'vinberium' (wine berries) to Bishop Tord of Greenland, for the making of communion wine.²⁵ These shortages and restrictions would likely have been common in most places in Norway.

Conditions in the Gulen area were such that some farmers might live near each other, maybe in a tiny hamlet. More likely the farms were quite distant from each other, and from church and priest. The oldest of the laws, *Gulaping*, notes that long distances, difficult terrain, and travel from island farms were an issue for parishioners bringing a child for baptism, or transporting a deceased family member for burial. It is fairly clear that a priest might not be readily available, thus laity and women were given permission to perform emergency baptisms.²⁶

2.4 Sweden

Seven entirely preserved provincial codes of law survive intact from Sweden, as well as the church code from an otherwise lost set of laws. The manuscript of the *Older Västgöta Law* dates to the 1280's, or more than a hundred years after the Norwegian and Icelandic laws. Codes of law existed prior to compilation in writing, but the dating of written law in this case does not go further back.²⁷ As well as the original law material there is a compilation of different canonical laws from different ages, and possibly the law was added in its preserved form

²³Larson, *The Earliest Norwegian Laws*, 28.

²⁴*Håkon the Good's Saga*, Ch. 11. Håkon as Law-Giver, who wrote an introduction to the set of laws, but not the laws themselves.

²⁵*Regesta Norvegica*, 1898.

²⁶See Chapter 4, baptism.

²⁷The premise is always that oral law existed prior to written, and was incorporated into written codes.

sometime near the beginning of the thirteenth century.

The *Västgöta Laws* were the oldest of the Swedish provincial codes.²⁸ There were two versions: one from the first half of the thirteenth century, and a second revised version from the middle of the fourteenth century. The first version, in the vernacular Latin script, includes annotations and proposals made during the negotiations among the church, the kingdom, and the province. The earliest complete text dates from the 1280's²⁹, although there are some fragments of an older version dated 1250 CE. This text represented legal customary traditions of the province, and rules regarding rights of the church.³⁰ The *Older Västgöta Law* is the oldest of these, known from one manuscript, which includes other texts of legal and historical value. Evidence of origins in an oral legal culture is seen in the older laws, through references to things which had been said previously. However, there is one caution here: while the law codes contain a considerable body of knowledge of Swedish medieval society, “they have been contested as historical sources”.³¹ and “the thinking behind the legislation remains very uncertain.”³²

Each province in Sweden consisted of a number of districts, with the larger districts being divided again into fourths. Each district had a *ping*: the ‘fourths’ might also have had an assembly. There may also have been an older division of the province into eight areas called ‘*bos*’, manors for royalty and collection points for taxes by the king’s administrators. In the thirteenth century an administrative structure centred on castles arose: church and lay administrators held military strongholds, such as the castle at Läckö, controlled by the Bishop.

Västergötland, including the area of Dal and the Nordmark district of western Värmland, bordered both Denmark and Norway.³³ The province lay between Tiveden and the river known as Göta Älv: the south, east and north were mostly uninhabited, hilly and covered with deep forest, the centre and west area were flatlands. Tiveden was a border to the province of Svealand, and the river was partly the border to Norway. Lake Vättern separates Västergötland from the province of Östergötland, so Västergötland was an inland province. The plains area was a centre of agriculture with fertile land, significant trade of surplus crops, and the raising of animals. In the eleventh century to mid-thirteenth century, Västergötland became a centre of the growing Christian monarchy.

Codes of law reflect the social context in which they arise. The *Västgöta Law* specifies a

²⁸The *Västgöta Laws*, *Östgöta Law* and *Småland Law* together make up the *Göta Laws*.

²⁹Lindkvist, *Västgöta*, 12.

³⁰Ibid, 12.

³¹Ekholst, 2014,7???.

³²Ibid.

³³Ibid, 2.

Christian society with three orders in the system.³⁴ First were bishops and educated men, clergy, and the king; the religious orders represented prayer, the king alone represented the warriors. Second were householders, peasants and workers. Third, those who were transient, whether or not they were free or slaves, though these latter two seemed to be on the margins of this structure.³⁵ The king had no authority to create law; rather the law was created by the householders, the dominant sector of the population in this society. These were farmers and tenants who leased the land from the owners, and in some cases both had the same legal status. Laws were designed to protect people, settle conflicts, and specify individual duties and rights.

Västergötland was a mainly agrarian society where animal husbandry was a large part of the economy, thus property and property relations were of great importance to the householders. The householders lived in villages with farms or plots surrounding the village. Each village consisted of at least six households: the farms, property, and tenants who lived on the property. A 'household' consisted of family, free wage earners, and servants. The parish priest lived in the village and was provided with a house, bake house and barn. The village held land in common, with specific rules for its use: householders held a share, and had use of forest and common land. The *þing* was the venue for courts, verdicts and legal decisions. A larger district assembly³⁶ was led by the 'district principal', had no trained professional judges, and no laws regarding appointment of the principal. The aristocracy took a vocal role in the assemblies, and one assumes that their voices held some authority, but the primary lawmakers were the householders. As well, there was a *landsping* of the entire province, the assembly of all the *Götar*, chaired by the 'lawman'.

2.5 Iceland

The oldest law book in Iceland is called *Grágás*.³⁷ This is the first Christian law of Iceland, and is found in two main manuscripts: *Konungsbók*, considered the oldest dating from 1250 CE in the thirteenth century, and *Stadarhólsbók* which dates from the latter part of the thirteenth century. These two manuscripts have significant differences: *Konungsbók* contains more complete material and is the main source for the translation. *Stadarhólsbók* contains both similar and different material. It is believed that they originate in the same source but are two private collections. While *Grágás* was likely written down in 1117-1118 CE, the earliest fragments date from 1150 CE. Thus *Grágás* likely presents the law applicable from the twelfth

³⁴Ibid, 14.

³⁵Ibid.

³⁶*Hæraþsping*. The *herað*, or *herath*, was a district division.

³⁷Translates as 'greylag goose'. The origin of the name is unknown.

century onwards. The Christian Laws Section was compiled and approved between 1122 and 1133 CE.³⁸

In the tenth century, Iceland was settled by people of Norwegian stock. There was no indigenous community in Iceland, although there was possibly a settlement by a Celtic religious group. However, aside from some references in literature there is no proof there was such as settlement. By about 920 CE the settlers from Norway had developed into a community: the earliest record of an *Alþing* or General Assembly dates from 930 CE; the *Alþing* met yearly and was presided over by an elected lawspeaker. One story, from *Islendingabók*, is that a Norwegian named Ulfrjótr arrived around this time, and brought partial copies of laws from *Gulapíng* with him. There is some evidence of this in *Landnámabók*, *Ulfrjóts Law*. Some scholars do not believe it is an accurate tale, others believe it is authentic.³⁹ A second story is that around 999/1000 CE, two Icelandic Christian chieftains living in Norway, Gizurr the White and Hjalti Skeggjason, went to Iceland with the permission of King Olaf Tryggvason to ensure the conversion to Christianity; otherwise Iceland would be invaded and forced to convert. At the *Alþing* this message was presented by Gizurr and Hjalti, prompting disagreement between the pagan majority and the Christian minority: Þorgeir Þorkelsson, the pagan lawspeaker, was asked to make a decision. Þorgeir decided that Iceland must have only one law, and that Christianity should be the official religion. Norway and Denmark had suffered significant violence between pagan and Christian, and Iceland did not need such violence, nor did they wish the king to invade.

Iceland was in some locations a harsh place, reminiscent of the western coast of Norway with mountains, fjords, glaciers, and valleys which were farmed. Winter in Iceland, even in the southern region, can be difficult. Iceland was and is extremely active volcanically; the Reykjanes peninsula is the flattest area of Iceland, mainly lava base with minimal agriculture, and also the most volcanically active area. The arable land is in valleys, and most likely best around Sudurland, the Icelandic South Coast. The rest is rough mountainous and glacial regions, with a tiny and widely spread population. Distance and difficulty of travel were reflected in the law, which quite specifically spelled out in explicit detail every contingency imaginable in getting a child baptised or a person buried. There were two cathedrals in the early days of Christianity: the diocese at Skálholt was established first, in 1056 CE in the more southern part of the island, and

³⁸Dennis et al, *Grágás*, Introduction, 5.

³⁹Stefan Brink, Law, Society and Landscape in Early Scandinavia, in *Comparative Law and Anthropology*, James A.R. Nafziger, ed. (Gloucester: Edward Elgar Publishing Ltd., 2017) 325.

the diocese of Hólar, established in 1106 CE, was in the more northern regions. These two remained the episcopal sees until 1785 CE. In 1104 CE Skálholt became part of the ‘ecclesiastical province’ of Lund in Denmark, and in 1153 CE became part of the ‘ecclesiastical province’ of Nidaross in Trondheim. Eventually smaller churches were erected around the country, but in the early days there were few priests until the schools were established and training for ministry took place in Iceland: prior to this candidates for ministry went to the European continent for education.

Chapter 3 Identities and Law

Christianity came to the Scandinavian countries often through forced conversion and threat of death. Both Norway and Denmark experienced ongoing violence and animosity between Christian and pagan. Individuals and communities forced to move or convert struggled with living out ‘how we were before’ and ‘how we are now’. In the case of Norway, the result was emigration to Iceland: in turn, threat of invasion from Norway caused conversion in Iceland. The stories of this conversion, found in Icelandic literature, contributed to an Icelandic identity which characterised itself as Christian, but which was distinctly ‘different from’ the others in the diaspora. In Sweden the conversion came later, seemingly more slowly and peacefully. Each area was affected differently in the process of conversion.

3.1 Diaspora and identity

There are “complex personal, political, religious, cultural and linguistic networks that developed as a result of what is usually termed the ‘Viking expansion’, or the ‘Viking migrations’, termed the ‘Viking diaspora’.⁴⁰ The usage of the word ‘diaspora’ highlights that Viking ‘expansions’ and ‘migrations’ were not one-way, but were multi-directional, developing contacts and networks in a geographical world linked by the Old Norse language.⁴¹ In each location, immigrants’ identities gradually changed, but the changes were neither time-constrained nor identical. Multiple identities/ethnicities were already present even before the ‘diaspora’. In the sixth century the author Jordanes identified twenty-eight population groups the Scandinavian countries, each contributing to local identities.⁴²

Identity also has many layers; individuals may have seen themselves as part of a

⁴⁰Jesch, *The Viking Diaspora*, (Routledge:Taylor and Francis, 2015), 2.

⁴¹Ibid, 3.

⁴²Claire Downham, *Viking Ethnicities: A Historiographic Overview*, (University of Liverpool, 2012), 2.

community, family, retinue or region.^{43 44} Geography and history of interaction with others forged further differences in identities. Not only the process of settlement, the coming of Christianity and conversion, but also the geographical location and landscape were at play in these differences. The tribes which entered the land thousands of years ago, over the course of the centuries developed a culture which was partly the result of the areas in which they lived. Their religion and by extension their law ‘derived important characteristics from the peculiar nature of their physical environment.’⁴⁵

The immensity of the land and the problems of ordinary inhabitants for just getting around affected the articulation of law. The east coast of Norway is 100,915 km, all the way to the Arctic, and includes one hundred and fifty thousand islands, many of them inhabited. Opposite the coast is the Norwegian plateau, which is intersected in many places by fjords which often extend far inland. Sogn Fjord, the longest, is close to one hundred and forty miles.⁴⁶

In early medieval Scandinavia, the coming of Christianity made possible the writing down of oral history. The decision to adopt Christianity in Iceland at the *Alþing* in the year 999/1000 CE was followed within a short time by the introduction of writing. So it is also important to differentiate between ‘conversion’ and ‘Christianisation’. Iceland became a Christian country, but the actual process of Christianisation took much longer. The beginning of a national identity was shaped by the one act, a pragmatic political decision to avoid violence and avoid dealing with the king in Norway. Further identity was shaped by Christianisation within the history, geography, and developing culture and identity of the island and its inhabitants. With reference to the division of Iceland into specific geographical areas, Amy Mulligan notes that law is established simultaneously with knowledge of the land, and that both these things are important in the birth of a society. It is important to know the land, and where one is located within that, in building a national identity. While there were two Christian bishoprics at Skálholt and Hólar, Mulligan draws further on the history of church structure to establish a geographic identity of Iceland as a whole. She says “In the penultimate chapter of *Íslendingabók* we learn that each of the four quarters of Iceland (south, east, west and north) yields a bishop, thus giving an organic church structure which grows from the very land of Iceland itself. The inclusion of bishops from each of the four quarters involves Icelanders from everywhere in the country, and

⁴³Ibid, 3.

⁴⁴National identities were not yet an issue since the nations of today did not yet exist.

⁴⁵Larson, *The Earliest Norwegian Laws, Being the Gulathing Law and the Frostathing Law*”. (New York: Columbia University Press, 1935),159.

⁴⁶Ibid, 160.

with an emphasis on north and west. Religious order and concerns are depicted in geographic, mappable phenomena.”⁴⁷

Why is this important for a comparison of laws? Location, geography, history of settlement, ethnicities, existing laws in an oral culture, social structure and perceptions of community or self, overlaid with the coming of a new faith and the associated laws of the church, all combine to make each set of laws specific to the province or location in which the people exist. Because of the interpolation of the Christian faith which eventually almost subsumed previous pagan culture and beliefs, shifts and adjustments of understanding also took place.

At the time of these codes, clergy within the church hierarchy were subject to the same law as laity, with each set of laws outlining punishments and fines for clergy and lay people who break the law.

3.2 Statements of Law and Faith

3.2.1 *Gulaping*

“Þat er upphaf laga varra at ver scolom luta austr oc biðia til hins helga Crist ars og friðar. oc þess at vér halldem lande varo bygðu. oc lánar drotne varum heilum. se hann vinr varr. en ver hans. en guð se allra varra vinr.”⁴⁸

“That it is the beginning of our law that we shall bow east (ward) and ask the holy Christ for plenty and peace. And this to be land held fast and farmed. And our ruling lord will be well, be he our friend, and we his, and (that) God will be friend to all.”⁴⁹

“The first commandment in our legislation is that we shall bow towards the east and pray to the Holy Christ for peace and a fruitful harvest, and that we may keep our country settled and tilled and that our sovereign lord may have strength and health; may he be our friend and we his friends, and may God be a friend to us all.”⁵⁰

The Simensen translation is in between:

“That is the beginning of our laws that we should bow to the east and pray to the holy Christ for good harvest and peace, that we may retain our settled land and keep our liege lord in health. Let him be a friend to us, and we to him. And let God be a friend to all.”⁵¹

Gulaping's opening statement in the Larson translation reads not so much like law, but a statement of faith and prayer of supplication. Larson uses poetic language, while naming church,

⁴⁷Mulligan, Amy. “Talking Place and Mapping Icelandic Identity in Íslendingabók and Landnámabók” in *Moving Words in the Nordic Middle Ages: Tracing Literacies, Texts and Verbal Communities*, Amy Mulligan and Else Mundal, eds. (Turnhout: Brepols Publishers, 2019), 239.

⁴⁸Rudolph Keyser, P.A. Munch, Gustav Storm, Ebbe Hertzberg, eds. *Den Ældre Gulathings-Lov. Norges gamle love indtil 1387*, (Christiania, Chr. Grøndahl, 1846-1895), Ch.1.

⁴⁹Ota translation 2022.

⁵⁰Larson, *Gulaping*, 35.

⁵¹Simensen, *Gulathing*, I.1

king and people in that order. The simpler translations have echoes of prayer as well. The word ‘commandment’ indicates a more religious approach to this statement of faith and law. ‘Shall’ is unequivocal: ‘*shall* bow to the east and pray’ to Jesus, for the rest of the prayer to be answered, and inherent in the word is a sense of command.⁵² The first part speaks of peace and harvest. Imagine tiny farms spread out along a coast at the very foot of steep mountains with minimal arable land, up against the sea: a good harvest is first and most important. Growing enough food to eat and survive in an isolated location likely weighed heavily on everyone’s mind, thus the need for ‘keeping the country settled’ and ‘tilled’. It is also a prayer for absence of conflict and productivity. Geography and life conditions are the foremost ‘petitions’ in this section. Then comes a petition that the ‘sovereign lord’ will be strong and healthy. The last clause references friendship in daily life, and spiritual friendship among ‘sovereign’, the people, and God. This may be a reference to the writing of Aelred of Rievaulx⁵³, who wrote both historical and spiritual treatises, exploring the sacramental essence of friendship, in which through love for each other humans can “embrace Christ in this life, and enjoy eternal friendship with God in the time to come.”⁵⁴

3.2.2 Frostaping

“Þat er upphaf laga vara at ver skolum kristni lyða oc kristnum dome oc konungr uarum oc biskupi til laga oc til rettra mala at fylgia, at kristnum rette rettom.”⁵⁵

“That it is the beginning of our law that we shall bow to Christ and Christendom and our king and bishop’s counsel and follow a straight way and Christian ecclesiastical law.”⁵⁶

“This is the first command in our lawmaking that we shall be obedient to the faith and the church of Christ and to the king and the bishop, and that we shall live according to law and right behaviour and the correct rules of the church.”⁵⁷

As in *Gulaping*, this also begins ‘That the beginning of our law is...’. The word ‘command’ is not used, yet the word ‘shall’ is used which as mentioned before is unequivocal. The social structure is defined: church, king and church (bishop) first, and then the requirements for the rest of the people; under these earlier laws, even priest or bishop was subject to the same

⁵²*lúta*, bow down or lean. Geir T. Zoëga, *A Concise Dictionary of Old Icelandic*, (University of Toronto Press, 2016), 279.

⁵³Aelred of Rievaulx was a twelfth century Cistercian monk and later abbot.

⁵⁴*Spiritual Friendship* (De spirituali amicitia), Introduction, 2010.

⁵⁵Den Ældre Frostathings-Lov, *Norges gamle lov indtil 1387*. Rudolph Keyser, P. A. Munch, Gustav Storm, Ebbe Hertzberg, eds, (Christiania: Chr. Grøndahl, 1846–1895), Ch.1.

⁵⁶Ota translation 2022.

⁵⁷Larson, *Frostathing*, 255.

laws and penalties. There is no reference to harvest or peace: perhaps since the Frosta area is so different in terms of geography and climate, peace and harvest were not of great concern. God is not directly mentioned: rather there is ‘obedience’ to faith and the church of Christ, then king and bishop, followed by law, behaviour and the ‘correct’ rules of the church. In the simpler translation, there is Christ, the Christian church, king and bishop, and ecclesiastical law. It almost appears that the major focus is on the church as the primary arbiter of both faith and law, rather than the representatives of the assembly. Listed are obedience, faith, church, king, bishop, law, and correct rules. Yet the *þing* had a strong role, and those representatives made and interpreted the law. They have articulated those things which were of most importance in the province of Frosta.

3.2.3 Västgöta

“Krister ær fyrst i laghum warum þa ær cristnæ var oc allir cristnir konungæR - böndær oc allir bocarlær biscupær oc allir boclærðir mæn.”⁵⁸

“Christ is first in our law, then are Christians and all Christian kings, householders and all resident bishops and all book-learned men.”⁵⁹

“Christ is first in our law. Thereafter are our Christian faith and all Christians, king, householders and all resident persons, bishop and all book-learned men.”⁶⁰

In contrast to the statements from *Gulaping* and *Frostaping*, *Västgöta* might read as a statement of fact rather than faith, except for the opening phrase ‘Christ is first in our law.’ It establishes that Christ is the foundation on which everything else is built; from Christ, through the church, comes the teaching for all the community. Even with the differentiation, or perhaps the inclusion, between householders and resident men, and the bishop and men of learning, it establishes that everyone is subject to the law which derives from Christ’s teachings.⁶¹ There are minute differences with translation, as is always the case. The official translation says “householders and all resident persons”, and the meaning of *bondær* means “legally resident persons”, thus the official translation might appear redundant, but the alliterative phrase is not only for literary interest, but functions to include all clergy and laity. Everyone is subject to the law, with no exceptions.⁶²

3.2.4 Grágás

⁵⁸*Äldre Västgötalagen och dess bilagor* I Cod. Holm, B59, 2011.

⁵⁹Ota translation, 2022.

⁶⁰Lindkvist, *The Västgöta Laws*, 22.

⁶¹Note the use of alliteration: *böndær ok bokarlær, biskupær ok allir boklaerdir mæn.*

⁶²*Bonde* - a free, weapon-bearing man who has a fixed abode where he can be lawfully summoned. *Lexicon of Nordic Law*, 53.

“Þat er upphaf laga vara, at allir menn scolo kristnir vera a landi her. Oc trva a ein Guþ foður oc son oc helgan anda.”⁶³

“It is the first precept of our laws that all people in this country must be Christian and put their trust in one God, Father, Son and Holy Ghost.”⁶⁴

“That (it is) the beginning (of) law of ours, that all men shall be Christian in this land, and believe in one God, Father, and Son and Holy Spirit.”⁶⁵

Given here is the original opening to the law in Old Icelandic, followed by the Dennis et al translation, and then my own more literal version. This text uses the word ‘precept’ rather than ‘commandment’. There is a small difference between ‘all people in this country *shall* be Christian’ as opposed to ‘shall be Christian in this land’. *Grágás* is the only one of the four which addresses the Trinitarian formula and the Holy Spirit. The translation of “*helgan anda*” (Old Icelandic) is interesting: *Gulaping* uses ‘*anda heilax*’ (Old Norse). Both literally translate as ‘holy breath’, which possibly refers to the ‘ruach’, the Hebrew word for ‘breath of God’ or Holy Spirit.⁶⁶ The German word is ‘Geist’, and its primary meaning is ‘spirit’, then ‘mind’.⁶⁷ To me the sense of this statement is ‘this is who we are,’ and indicates the beginning of a national identity based on the decision at the *Alþing* to become a Christian nation.

3.3 Outlawry

In one way or another each of the codes of law identifies outlawry and includes penalties and fines for violations of law, so a small summary of outlawry is needed before addressing those sections where it is included. In the Viking Age in medieval Norway and Iceland, an outlaw was literally ‘*stillet udenfor loven*’, living outside both the law and society. This could involve forfeited property, banishment from the king’s lands, and allowed for the outlaw to be “killed by anyone with impunity.”⁶⁸ As Christianity arrived in the eleventh century, the worst kinds of outlaws were described in terms of *vargr* or wolf, evildoer, destroyer; and *niðingr*, or traitor, coward, ‘dastard’. “*Nema uðaða mann, drottens svica, oc morðvarga, tryggrova*. - Except malefactors, traitors, and murdering wolves, oath breakers.”⁶⁹ The earlier pagan practice of

⁶³Vilhjálmur Finsen, *The Icelandic Book of Law (Grágás)*, (Copenhagen:Brothers Berlings Brog Printing House, 1852), 3.

⁶⁴Dennis et al, *Grágás*, 23.

⁶⁵Ota translation, 2022.

⁶⁶Ezekiel 37:9 NRSV

⁶⁷A third meaning is ‘ghost’, but not the primary meaning.

⁶⁸Anne Irene Riisøy, *Deviant Burials: Cultures of Death and Dying*, (Helsinki:Buskerud and Vestfold University Collegium for Advanced Studies, 2015), 49.

⁶⁹Ibid.

denying burial for outlaws in specific holy places was incorporated into church law, denying burial within the church yard, essentially using a pagan value system in church law. The crimes were committed in an ‘unhealthy way’, such as murder or burning a person to death, or the perpetrators may not have taken responsibility for their actions, thus making a redeemable act irredeemable.⁷⁰ Bertil Nilsson conducted a study on burial legislation in the Nordic laws of the Middle Ages, and concluded that canon law had no standard rule regarding exclusion of anyone from Christian burial, other than suicide or apostasy, and that canon law does not specifically mention outlaws.⁷¹ Nilsson notes, however, that the *gríðniðinga* (‘truce villain’ or ‘truce breaker’), and the *tryggrova* or truce-breaker are categories specific only to Norway.⁷²

Each of the codes identifies not only smaller fines and penalties, but larger penalties such *lesser outlawry*, or *full outlawry*. In Norway, two terms, *útlagr* and *úbótamál* were general terms, and the rules were slightly different. Lesser outlawry included a fine of forty marks, and exile until the fine was paid. The logical extension of this was that if they could not pay the fine, they would become full outlaws.⁷³

Grágás identified the two forms of outlawry as *fjörbaugsgarðr* and *skóggangsmáðr*. *Fjörbaugsgarðr*, (*life-money*) or lesser outlawry, involved loss of goods and property and banishment for three years. Failure to leave ensured the man became *skóggangsmáðr* (*man of the forest*, (an outlaw disappeared into the woods - skóg), or full outlaw, which was a sentence of death. Short of being able to find a way to buy passage out of the country, the outlaw was a marked man who could be killed by anyone.⁷⁴ As soon as a person committed a serious violation of law, his sanctity or *helgi* was gone, rendering him *óhelgi*, unholy, and a fugitive.⁷⁵ Assault, injury, and sexual offenses were considered the most serious. Full outlawry was announced at an assembly, and forfeited all his property and rights within community, family and church.

Västgöta includes a separate chapter addressing ‘Non-compensable crimes’ or ‘*orbota mal*’ for which compensation was not enough, and which resulted in the loss of peace and property, or full outlawry. Compensation for crimes was one way of dealing with critical issues while still keeping the individual within the community. These are considered ‘acts of outrage’ or

⁷⁰Ibid.

⁷¹Ibid, 53.

⁷²Nilsson, *De Sepulturis*, 1989, 289.

⁷³Joonas Ahola, *Outlawry in the Icelandic Family Sagas*, (University of Helsinki, 2014), 85.

⁷⁴Fraser Lucas Miller, *Beyond the Fringe: Outlawry & Punishment in Grágás & the Gulapingslög, c.1150-1264*, (University of Oslo, 2017), 2.

⁷⁵Ahola, *Outlawry in the Icelandic Family Sagas*, 2017, 84. .

nipingsværk. *Västgöta* spells them out, though I would venture to say the understadings would be common across the board. They include killing a man inside a church, killing another person at assembly, killing by violent means, killing the master, killing with a knife while eating, slaughtering someone's cattle and becoming a *gorvarg* (a man behaving as a wolf), violating a truce or a reconciliation, revenge with killing. The punishment for all of these is the same as in the other codes of law. The perpetrator forfeited land, right to live in the province, and all his movables, which is full outlawry. As well, *Västgöta* is the only one to state that regardless of how intense any disagreement or fight is between men, women shall always enjoy peace and safety of body, thus killing a woman was prohibited.

Those found guilty of lesser outlawry were not completely cut off from society and the church, provided they confessed and did penance and paid their fine; full outlaws were completely cut off from society and church, both in this world and the next, by being banished from the 'king's lands'. They could not be buried in holy ground. The person had become *niðingr*, 'nothing', a 'dastard' or coward, having committed non-compensable 'acts of outrage'.

Failure to baptise or bury could result in a declaration of partial outlawry and a period of atonement abroad, about three years. As seen in the above quote, *Frostaping* notes that personal rights could be restored if the offender paid the king for annulling the outlawry. Anyone who associated with an outlaw, unless he was on his way to do penance, was also subject to fines. Continued intransigence in failure to baptise or bury would result in full outlawry.

3.4 Conclusion

What can be drawn from these comparisons? Each begins "Þat er upphaf laga vara...", but one is translated as 'commandment', the second as 'command', and the third as 'precept'. This makes sense, as *Grágás* incorporated some Norwegian law, and there was likely transfer of information within Norway, between the provinces. The articulation is different for the Swedish code, but faith and the church are still stated as primary. Each establishes the basis of community, upon which everything is built. These are all statements of community identity, 'this is who we are and how we function.' The community is 'coherent' through the church, and the statements identify the building of community, but also the ongoing relationships and management of the community. Different wordings indicate different populations which write out of their experience and location, but the foundational parts are faith and church. It is a natural extension, in the management of the community, to address those who violate the community. *Gulaping* includes a chapter on outlawry and irredeemable crimes; *Västgöta* addresses non-compensable crimes. The concepts of outlaw as being 'beyond the pale' or 'man of the forest' are identified and are similar

across all the codes. To be an outlaw meant the separation of the individual from home, family, church, community, and society. In these concepts of outlawry we see clearly how attempts to ensure the organisation of society are developed and carried out.

Chapter 4 Baptism

This chapter will examine the importance of baptism in the life of the church and the community, and how that is addressed in the respective chapters of each code. It will touch briefly on how each community dealt with the deformities and exposure of infants. A reality of life in a harsher environment was that caring for a seriously deformed child was almost impossible, and the child may eventually die anyway. Each of the laws addressed this issue differently.

4.1 Importance of Baptism

Baptism is the foundational act of entry into Christian life and community, and was included in canon law. It is important to note that canon law did not usually deal with extensive theological arguments. However, baptism and its theological basis and significance is included because of its foundational importance to the whole life of the church, particularly the belief that unbaptised children would not go to heaven. The Roman Catholic church encouraged local communities to retain their customs and practices where possible, within the requirements of baptism in law. Baptismal practices were important enough to be part of local ecclesiastical legislation, and included in many diocesan and provincial statutes.⁷⁶

In the early days of Christianity, both adults and children were baptised. As Christianisation continued, infant baptism became more common. The mortality rate of infants at birth was a concern, as breech birth or birth defects were possible, resulting in the death of mother or child, or both. From the twelfth century onward canon law was consciously separated from theology, dealing rather with issues of human behaviour and church governance. The exception is the inclusion of baptism, for good reason.⁷⁷

Baptism was the most important of the sacraments. First, only those who were baptised could be held subject to the courts of the church: without baptism, the church had no control over the affairs of the laity, so a way to determine whether or not baptism had actually occurred was needed. Without baptism, legal proceedings could not be instituted against a person.⁷⁸ The issue

⁷⁶Richard Helmholz, Baptism in the Medieval Canon Law in *Journal of the Max Planck Institute for European Legal History*, Rg 21, 2013, 118.

⁷⁷Ibid.

⁷⁸Ibid.

was one of societal regulation, as well as initiation into the life of the church community. Second, the purpose of baptism was one of both conduct and belief: it was necessary to ensure that clergy performed the rite correctly, and that laity were properly instructed. Third, by reason of consequence: baptism strengthened ties of kinship between families. Canon law prohibited blood relatives from marrying each other; baptism created a spiritual relationship among the baptised, the parents, the sponsors, and even the priest, who became a ‘spiritual father’. This restriction was a product of the sixth and seventh centuries in Europe, based on a belief that the baptismal kinship thus created precluded sexual relationships among those participating in the baptism.⁷⁹ Baptism appeared in many treatises on law, particularly those for use by the priesthood, because of its centrality to Christianity. Times and appropriate persons to carry out the sacrament were identified. Mistakes in pronouncing the baptismal formula could be rectified, and the baptism of infants who would have no knowledge of the Christian faith was justified.⁸⁰ It was the only ‘irreversible’ sacrament; rebaptism was not possible. It was so important to the church that every child be baptised, that canon law permitted women to perform ‘priestly’ duties in emergencies: there was great fear that a child might die unbaptised, putting its immortal soul in jeopardy, hence women were given permission to act ‘in extremis’.

The rationale for baptism is found in the Greek word *oikonomia*, from which the word ‘economy’ comes: it means ‘household’. Baptism is the expression of life in the household of God, God’s creation and management of the world and the trust of the flock in God; it is the ‘economy of Salvation’ or ‘Divine Economy’.⁸¹ As the foundational sacrament of the church, it was seen as a bridge and means of redemption for each human being from ‘original sin’⁸², and as a sign of God’s love and salvation.⁸³ These two points of view engendered much discussion which support baptism as foremost for the beginning of life in Christian community, establishing an identity, opening the way to participation in all the sacraments of the church, and the transition of death and burial as a ‘baptism’ into eternal life. Both are germane to defining baptism as the initial sacrament of life in the Church, providing access to other sacraments, and the promise of salvation.⁸⁴

4.2 When to Baptise

⁷⁹Lynch, 1986, 258.

⁸⁰Ibid, 199.

⁸¹Mona Bramer Solhaug, *The Architectural Setting of Baptism: Rituals, Norms and practices in Scandinavia ca 1050 - ca 1250*, 101.

⁸²St. Augustine of Hippo (354-430 CE)

⁸³St. Anselm of Canterbury (1033/4 - 1109 CE)

⁸⁴Solhaug, *Architectural Setting of Baptism*, 102.

An infant would normally be baptised on its day of birth. However, it was allowable to baptise any time within the first five days, or eight days, depending on the code of law. There were also three-month ‘windows’, corresponding to the ‘quarters’ of the liturgical year, noting the times in which baptisms were to be held following birth: in *Gulaping* and *Grágás*, allowance is made for difficulty in travel depending on geographical location. Theoretically, and sometimes practically, any time within that three months would be acceptable. It may be that the different allowances reflect various periods and layers of law, as noted earlier in this chapter, but also that they are a recognition of the reality and difficulty of travel and transportation.

In most cases, particularly baptism on the day of birth, the mother would not attend, partly to recuperate from delivery, but also because the church observed the Jewish custom of preventing women from entering holy places for some time after the birth.⁸⁵

In contrast to *Västgöta* and *Grágás*, *Gulaping* addresses the timing of baptism, noting when children should be baptised, as decreed by both Olaf and Magnus:

“En barn hvert er boret verðr efter nott hina helgu. þa scal þat haft væra firi gagnfostu. En ef boret er i fostu . þa scal haft væra at paschom. En ef boret er efter paschar. þa scal haft væra firi ioansmesso. en barn hvert er boret er efter Mikialsmessu. þa scal haft væra firi nott nina helgu.”⁸⁶

“Every child that is born after Holy Night shall be baptized before Septuagesima; if it is born in Lent, it shall be baptized by Easter; if born after Easter it shall be baptized by St. John’s Day, and every child that is born after Michaelmas shall be baptized before Holy Night.”⁸⁷

Septuagesima is the third Sunday before Lent begins, seventy days before Easter. ‘Ioansmesso’, translated as St. John’s Day, is the feast and mass of the Nativity of John the Baptist on June twenty-fourth. Michaelmas is the feast of St. Michael and All Angels, celebrated on the twenty-ninth of September. While this division would be a common understanding to all churches, only *Gulaping* and *Frostaping* consider the timing important enough to include it in the written code. *Frostaping* has more detail, including penalties for not baptising within the identified times: every child born between Michaelmas and Christmas shall be baptised before Christmas; those born between Christmas and Lent shall be baptised before Lent; those born before Lent and midsummer shall be baptised before midsummer; those born between midsummer and Michaelmas shall be baptised before Michaelmas. In each case, failure to baptise

⁸⁵Melissa Snell, *Medieval Childbirth and Baptism*, 2019,7.

⁸⁶Den Ældre Gulathing-Lov. *Norges gamle love indtil 1387*. **Fix**

⁸⁷Larson, *Gulathing*, 49.

within the appropriate ‘quarter’ included a fine of ‘six oras to the bishop’.

In *Gulaþing*, both Olaf and Magnus decreed that if a child was not baptised within the quarter in which it was born, the father was required to pay a fine to the bishop and have it baptised “*even if it [has to] be at a later time*”.

Gulaþing and *Grágás* identify difficulties in travel, specific circumstances for bringing a child for baptism, and baptism *in extremis*. As a contrast, the beginning of *Västgöta* baptismal law says ‘*when a child is brought to church and christening is requested*’. There is no statement of time in which the baptism should take place, although a working assumption would be that the division into the quarters of the church year would be an expectation, and that the parents would bring the child within a short time. The people lived in a centralised village, surrounded by the farms: the church was in the village, the priest lived in the village on the *church farm*. So in this case it is to be assumed that a priest was generally close to hand, and a child would be brought as soon as possible following the birth.

Grágás is very specific about the timing: every child *must* be brought at the *first opportunity*. The child’s ‘natural heir’ or father is to bring the child, with a second man as witness. If the father is not present, then the householder where the mother is must arrange for the baptism, with a second man as witness. If neither is present, the *legally resident* men in the household take the responsibility. If there are no legally resident men available, or not enough, then those householders who live closest must either bring the child, or give help. Failure to do so incurs penalties. Given the distances required, and given that the law states that every person who lives in Iceland must be a Christian, baptism and recording of the same is of paramount importance for political reasons as well as religious.

4.3 How to baptise

The concept of ‘liturgy’ in the sense of our modern liturgies did not exist in the Middle Ages. There were common ‘ritual’ actions which were included in all baptisms, but there are no scriptures which offer any concrete ritual outline, just as there are no scriptures which outline a worship liturgy; the synoptic Gospels, each in slightly different ways, and using slightly different detail, give us the image of Jesus in the Jordan River. The Gospels of Matthew, Mark and John mention John the Baptist, but Luke only mentions the baptism.⁸⁸ “John the Baptist appeared in the wilderness, preaching a baptism of repentance for the forgiveness of sins....and [they] were baptised by him in the river Jordan, confessing their sins.”⁸⁹ In Jewish practice baptism was a

⁸⁸Ithamar Gruenwald, “The Baptism of Jesus in Light of Jewish Ritual Practice”, in *Neotestamentica*, Vol.50, No.2 (2016), 301.

⁸⁹Mark 1:4,5 NRSV

purification ritual in which Jesus, as a Jew, participated, but other than Jesus being immersed in the river, and mention of John as an agent of the baptism, there is no specific set of instructions.

In the Scandinavian countries, the adoption of Christianity meant inheriting the baptismal rituals of the established Roman Church; and yet, “since there was also no such thing as one single *Urtext*,” there were liturgical transformations and variations of sources⁹⁰. Each diocese or province was encouraged to “maintain local usage and variation within the general outline of the ritual.”⁹¹

Two things were critical to baptism: word and water, or *forma* and *materia*. If either was not present, the baptism would be rendered invalid. The ‘word’ was the Trinitarian formula “*I baptise you in the name of the Father, and of the Son and of the Holy Spirit....*”; water and word together establish a very basic ritual around which other practices can be placed. In Norway and Iceland these words were spoken in Old Norse, the vernacular language, since that would be more easily understood by the people.⁹² The essential element of ‘water’ is supported by multiple scriptural references regarding immersion and change, as a mystical connection to the death and resurrection of Jesus, purification and rebirth. Theologically baptism is seen as the ‘dying and rising with Christ’ a new person.⁹³ White robes signify the new person arising with Christ out of the Jordan, and the appearance of the Holy Spirit. Water was considered by some so essential that in 1206 CE Archbishop Tore of Nidaross asked Pope Innocent III if baptism ‘*in extremis*’ using saliva constituted legitimate baptism. The Pope responded that the use of water was a requirement for baptism’s validity. Eventually the decision by the Pope in this one case became part of general canon law and was included in *Liber Extra*⁹⁴. Even a severe drought was not reason enough to substitute some other liquid.⁹⁵ Baptism is seen as a sacramental ‘door’ to the spiritual life of the Church. It is not possible to enter Heaven unless cleansed of sin and ‘born again’ by water and the Spirit in the fountain (font) of life, the *fons vitae*.⁹⁶ “No one can enter the kingdom of God unless he is born of water and the spirit.”⁹⁷

Västgöta is the only one which describes the discrete sections of baptism practice, but one might venture to say that this was a relatively common practice in each each region, based in the

⁹⁰Solhaug, *Architectural Setting*, 102.

⁹¹*Ibid.*

⁹²Old Norse, in *Gulaping* “*Ec skiri þic (name) í nafne faður · oc sunar · oc anda heilax.*”

⁹³Ephesians 2:6 NRSV

⁹⁴*Liber Extra*, the Decretals of Gregory IX.

⁹⁵Helmholz, *Baptism*, 119.

⁹⁶Solhaug, *Architectural Setting of Baptism*, 103.

⁹⁷John 3:5 NRSV

canon law of baptism. The first part of baptism involved *primesigning*, a cleansing purification ritual before entering the church. It usually took place either in the porch of the church, or anywhere outside.⁹⁸ *Västgöta* is the shortest of the baptismal statements, and the only one which specifically refers to parents and godparents bringing the child to the church, and then names salt, water, primesigning and font. Primesigning was an integral part of the entire baptism ritual. Since inheritance law in the Swedish provinces was of significance⁹⁹, proof of baptism would have been necessary to claim an inheritance. Inheritance is also addressed in the other law codes, though not as extensively, and proof of baptism would have been necessary for everything, as noted previously.

“Var þær barn til kirkiu boret oc bepiz cristnu · þæ scal faþir ok moðer fa guðfæþur oc guðmoþor oc salt oc uatn · þæt scal bæra til kirkiu þa scal a præst kallæ han skal a kirkiu bole boæ.”¹⁰⁰

“When a child is brought to church and christening is requested, then *shall* father and mother bring godfather and godmother and salt and water. The child *shall* be brought to the church, the priest *shall* be called. He *shall* live on the church farm.”¹⁰¹

“Barn scal brymsignæ firi utan kirkiu · dyr · Siþen scal font wigyæ.”¹⁰²

“The child *shall* be primesigned outside the church door. After this the font *shall* be consecrated.”¹⁰³

The child was brought by family and the godparents; they were met at the door by the priest who asked questions and gave admonitions. He breathed into the face of the child three times, and then “marked the child with the sign of the cross, *prima signatio*, the imprint of Christ, followed by a prayer for the candidate.”¹⁰⁴ The priest then laid a hand on the child, and put grains of salt into the child’s mouth as exorcism to free the child from any spirits.¹⁰⁵ The ears and nose of the child were touched with saliva¹⁰⁶ with the words “be opened”, *ephphatha*, following the parable of Jesus healing the man who was deaf and dumb.¹⁰⁷ The godparents ‘renounced the devil

⁹⁸Solhaug, *Architectural Setting of Baptism*, 105.

⁹⁹Inheritance was important in all cases, but in Sweden it took on a greater significance.

¹⁰⁰Äldre Västgötalagen och dess bilagor i Cod. Holm. B 59, 2011.

¹⁰¹Lindkvist, *The Västgöta Laws*, Ch.1, 22.

¹⁰²Äldre Västgötalagen och dess bilagor i Cod. Holm. B 59, 2011.

¹⁰³Lindkvist, *The Västgöta Laws*, Ch.1, 22.

¹⁰⁴Solhaug, *Architectural Setting of Baptism*, 106

¹⁰⁵Matthew 5, Mark 9 for the cleansing and preservative character of salt.

¹⁰⁶Solhaug, *Architectural Setting of Baptism*, 107.

¹⁰⁷Mark 7:34

and all his deeds'¹⁰⁸ and then recited the *Pater Noster*, *Credo in Unum Deum*, and *Ave Maria* to prove knowledge, so they may be able to instruct the child. From the eleventh and twelfth century onwards, the *primesigning* ritual closed with prayer and scripture, usually *Evangelium Infantium* (Gospel for Children). Norwegian rituals used the stories of Jesus, "Come to me, you who are weary"¹⁰⁹ or the children coming to Jesus.¹¹⁰

The second part, the actual baptism using water and word, was conducted inside the church. The priest laid his stole over the child and the baptismal party went to the font. The baptismal water had been infused with the Holy Spirit, by immersion of the lighted Easter candle in the water.¹¹¹ Again the *Pater Noster* and *Creed* were recited, and the priest prayed; the child was anointed with holy oil or chrism on the chest and between the shoulders. The priest confirmed the request for baptism, and then immersed the infant in the font three times, using the words of the baptismal formula.

The third part of the ritual concluded with further prayers and ceremonies. The ceremonies were eventually dropped, retaining only prayers, anointing with holy oil, dressing in white clothing, and presentation of a lighted candle.

4.4 Baptism in Law

All four codes state that *every child* was to be baptised, with no exceptions. Failure to baptise carried heavy penalties. *Frostaping*, *Västgöta* and *Grágás* situate baptism at the beginning of church law, following the opening statement of faith/law. Only *Gulaping* does not, placing baptism at Article 21. The question then arises 'Why so far into the set of laws?', given the importance of baptism as the entry point into the faith and community. A look at what comes before baptism may give a partial clue; Articles 2 through 12 deal with new ordinances of Magnus, then ordinances of both Olaf and Magnus, then ordinances of Olaf. Articles 13-19 address church fences, consecration and supervision of churches, observation of the Sabbath, Mass days, and Olaf's ordinance on the sending of the cross calling the people to church. Since *Gulaping* is the one which contains the 'Olaf text' as well as further additions by Magnus, it may be that in the minds of the compilers, clarifying the decrees of those kings takes precedence, as they represent different dates and layers of law. Since the law required a child be brought to church for baptism, then there must be a church, which then required establishment of holy

¹⁰⁸ Solhaug, *Architectural Setting of Baptism*, 106

¹⁰⁹ Matthew 11:25-30

¹¹⁰ Matthew 19:13-15

¹¹¹ Solhaug, *Architectural Setting of Baptism*, 107. The *benedictio fontis* ritual took place Easter Saturday of the Triduum.

ground, fences, and consecration of the church *before* baptisms could be held.

4.5 Deformities and Exposure

Gulaping's Baptism section begins:

“Þat er nu þvinest. at barn hver scal ala a lande varo er boret verðr. **O.** *nema þat se með þeim orkymlum boret at þennug horve anlit sem nacke skyllde. æða þingat tær sem hælur skyllðu. þa scal þat barn til kirkiu föra. oc hevia ór heiðmum dome. oc liggia niðr i kirkiu. oc lata þar deyja..*”¹¹²

“...then shall that child be brought to church, and be lifted from heathendom. and be laid down in the church. and left to die.”¹¹³

“The next is this, that every child that is born in our land shall be reared [and cared for] O(laf): *unless it be born with some deformity, the face turned around to where the neck should be, or the toes to where the heel should be; in such a case the child shall be brought to church to be baptized and then [it may be] laid down in the church and be left to perish.*”¹¹⁴

By contrast *Frostaping* states: “En þat er kristin retter at ala skal barn huært [hvert] er boret værðr. kristna oc til kirkiu föra *ef mannz er hafuuð a.*”¹¹⁵ “It is Christian law that every child that is born shall be nourished, brought to church, and baptised, *if it has the head of a human being.*”¹¹⁶ There is nothing at this point about exposure, nor the kind of deformities which are identified in *Gulaping*. *Frostaping* does address exposure in considerable detail further on at Section 2, as a negative action. It does not explicitly give permission to expose the child; it also distinguishes between death by exposure, and stillbirth. Exposure of a child actually carries a fine, whether by the actions of the householder or anyone in his full household:

“If a man exposes his child, let him confess and do penance and pay a fine of three marks to the bishop. But if the man denies that the child was exposed claiming that it was still born, the woman who assisted [at the birth] shall testify; she must be a free woman, and if she [the mother] were alone [at the time of birth] she shall offer her own oath. But if the child was exposed on the householder’s command, let him pay three marks to the bishop. If he denies the charge, he shall take an oath that it was not exposed on his orders; and let him pay six oras, if it was carried out by any one for whom he has to answer with pledge and promise; [if it is] otherwise he is free from guilt.”¹¹⁷

Grágás says: “Every child that is born is to be brought for baptism at the first

¹¹²Den Ældre Gulathings-Lov. *Norges gamle love indtil 1387*, Ch.21.

¹¹³Ota translation, 2022.

¹¹⁴Larson, *Gulathing*, 49.

¹¹⁵Den Ældre Frostathings-Lov, Ch. 1 first statement on baptism immediately following the statement of belief.

¹¹⁶Larson, *Frostathing*, 225.

¹¹⁷Larson, *Frostathing*, 226.

opportunity, *no matter how deformed it may be.*”¹¹⁸ Nothing in this particular chapter addresses exposure of the child; the statement is short and to the point. Nor does it appear that there is anything elsewhere to address child exposure. Given the geography of Iceland, and the widely scattered small population of settlers, one might speculate that every single child was to be baptised and counted as part of the community, despite any deformity, because of administrative and population reasons. I suggest it reflects the beginning of this law code: that every person living in Iceland must be Christian, so they must be baptised, and that there are no exceptions.

4.6 Refusal or Failure to Baptise

In *Gulaping*, if the father refused to have the child baptised and kept it in his home for two terms, he paid a fine of three marks to the bishop and was expected to have it baptised forthwith. If the father continued to refuse to have the child baptised, and raised the child in his home for a full year, he forfeited all his property “to the last penny”, and was expected to confess and receive a penance. If he refused, “both [he and the child] shall depart from the king’s dominions.” The child also would be considered as outlaw since it was not baptised. As noted before, baptism had the function of being jurisdictional: refusal to baptise effectively meant the person was outside the jurisdiction of both king and church, and could not be held accountable for any action. Thus penalties were brought to bear to ensure compliance. While it is not explicitly named, it would be implicitly understood that forfeiting of property and money was lesser outlawry: departing from the king’s dominions, or banishment, constituted full outlawry for both the father and the child. The mother is not mentioned.

Both males in the families, and the priests, were penalised under these codes which, while they pertain to church within each specific province, are also secular in nature to some extent. These codes are earlier than the introduction of ‘benefit of clergy’, and include fines and penalties for priests who fail to carry out their duties to the congregation and community which they serve.¹¹⁹

4.7 Penalties

“The men who take a child for baptism are to go to the legal home of a priest, unless they meet him beforehand, and ask him to baptize the child. *If he refuses the penalty is lesser outlawry* and the case lies with the men who brought the child for baptism.”¹²⁰

According to *Grágás*, men who took a child for baptism could bring charges against a

¹¹⁸*Grágás*, Ch.1, 23.

¹¹⁹Newman F. Baker, “Benefit of Clergy - A Legal Anomaly”, *Kentucky Law Journal*, Vol.15 Iss. 2 Article 1, 85-115.

¹²⁰Dennis et al, *Grágás*, Ch.1, 23.

priest who refused, and the case would be heard at the local assembly, with nine neighbours summoned to hear the case. The penalty to the priest is lesser outlawry. If a priest came to believe that the baptism had not been done correctly, the penalty was lesser outlawry for anyone, man or woman, of more than twelve winters.¹²¹

Following the first statement of Christian law regarding baptism, *Frostathing* moves directly to the paternity of the child. Since the law required a father to ensure the child was baptised, and the paternity was specifically noted, would establishing of paternity would also be relevant to inheritance.

“Every child has a right to a father. He whom the mother points out shall be [regarded as] the child’s father, whether it is the child of a free woman or a bond woman, unless his innocence shall be proved at the first doom to which he is summoned.”¹²²

The word ‘doom’, in Old Norse ‘dómr’ or ‘döm’ in Old English, would mean issuing an opinion or judgment. If the man identified denied paternity, then his claim must be proven in court. The wording might imply that the woman naming the father is being honest, but in fact it also implies that the burden of proof is on the man, in a court of law. This follows:

“But if the woman dies without having pointed out the father of her child, let him who has the right to atonement in her case take action both to secure his own atonement and to [force the accused] to acknowledge the child. And let the accused defend himself with his oath.”¹²³

The word atonement carries the meaning of ‘satisfaction’. The man who holds the right on behalf of the woman to ensure satisfaction, perhaps her father or a male guardian, takes action to ensure or force the accused (man who was named as the father) to acknowledge the child.

4.8 Who Baptises

Grágás is the most detailed about men and baptism. In general only a priest can baptise: it is the responsibility of the men in a household to ensure the child is taken to the priest, or a priest is found. If “the child’s natural heir” is present, most likely the father “he is to bring the child for baptism and a second man *must* go with him if he asks him to.”¹²⁴ Two men, and if a second man is asked he has no option but to go, presumably as a witness or sponsor. Further, if there is no father present, the householder in whose home the woman has given birth is to take the child, “and a second man *must* go....” and if there is neither father nor householder, then any other men *legally resident* in the house are to take the child to be baptised. If there are no legally resident

¹²¹Ibid, 25.

¹²²Larson, *Frostathing*, 225.

¹²³Ibid.

¹²⁴*Grágás*, Ch.1, 23.

men, or not enough within the household, any men who live closest to the family *must* take the child to be baptised, or give assistance. Anyone who is responsible for bringing a child for baptism, and who does not do it, is charged with *lesser outlawry*, giving up all his possessions and chattels as penalty. The two things which stand out for me are the words “*must*” and “*legally resident*” men, within that particular household, and the legal consequences of not following the law.

4.9 Baptism ‘in extremis’

Emergency baptism was also included in Canon Law, and is addressed in all four of these codes. Women could baptise in emergency circumstances, as is evidenced in *Gulaping* and *Frostaping* particularly, provided the proper words and gestures were used exactly. Canon law drew distinctions between valid and invalid baptisms in order to ensure adherence. Errors could lead to an invalid baptism, either on the part of the priest, or whoever else performed the sacrament. Other than in cases of imminent death, only a priest could lawfully baptise. Laity who baptised aside from imminent death had to do penance.¹²⁵

Gulaping notes that in ordinary circumstances the child would be baptized by the priest from whom the people would normally “buy divine services”. If the child suddenly became ill and the regular priest was not available, the priest soonest available *shall* perform the baptism. “And no priest may refuse to do this; if he does refuse, he *shall* owe a fine of three marks to the bishop.” The word ‘*shall*’ is again quite deliberate. If no priest can be found then the men who are bringing the child can perform the baptism.

“If the child is so weak that no priest can be reached in time, *the men who are bringing the child shall give it a name and plunge it into water, speaking these words over it: I baptize thee N in the name of the Father, and of the Son, and of the holy Ghost; after that it may be buried in the churchyard.*”¹²⁶

This is an important theological point. If the child remained unbaptised, it could not be buried in holy ground, and the soul was lost. The emphasis is not just on correct baptism, although that was essential, but also ensured that the child could be buried inside the churchyard, holy ground.

Gulaping continues:

“If water cannot be obtained, the child may be baptized in *any fluid that may be found.*” This may be a practice of baptism which existed prior to the response of Pope Innocent III to the Archbishop of Nidaross, which later was incorporated into canon law. In my mind it was not only

¹²⁵Helmholz, *Baptism*, 124.

¹²⁶Larson, *Gulathing*, 49-50.

based in an existing law, but also a law of exigency; nevertheless, one letter from a Pope can change practice. It is important to remember that canon law came to the Scandinavian countries from an entirely different milieu, Rome in the Mediterranean, where presumably fresh water was easily available. In this case, for western Norway where a lot of travel is over salt water from the coastal islands, including this statement would allow for emergency baptism to happen.

“If there is no fluid at hand, one may spit in the palm [of his hand] and make the sign of the cross on the [child’s] breast and between the shoulders. And such a baptism a woman may perform as well as a man, if no man is available.”¹²⁷

Frostaping also allows for women to baptise, if the woman is alone, the child is too ill to be taken to a priest, and there is no man to provide assistance. It is given weight by the inclusion of Jon Birgersson, the first archbishop of Nidaross, in Trondheim from 1152 or 1153 CE:

“Archbishop Jon has promised and ordained this, that if it shall happen that a woman is delivered of a child while all alone and the child is too weak to be brought to a priest and no man is near enough to give assistance, *the mother shall baptize it herself rather than let it die unbaptized.*”¹²⁸

“...þa skal hon skira þat seolf helldr en oskirt værði daut.”¹²⁹

Frostaping is also important because it is explicit that any source of water can be used including saliva: it may be fresh water, dew, snow, or seawater. If none of these is available, the woman can “take spittle and make the sign of the cross with it on the [child’s] breast and shoulders...” while speaking the words of the Trinitarian formula for baptism and naming the child. “A father too *shall* also baptize his child rather than let it die unbaptized.” In both cases the word ‘*shall*’ is used for the directive. This suggests that there is no question that if the mother is the only person present when the child is born, she must baptise the child. If the father is present, he must baptise the child. Failure to do so on the part of either parent would result in penalties already noted, from the church.

Last, if the child becomes stronger and can be taken to the priest, the priest will anoint the child with chrism, and use the words and rite of baptism. These particular laws are very specific about the ‘*forma*’, the words, and more relaxed about the ‘*materia*’, the water. They allow for the use of saliva if water is not present. In 1206 CE Archbishop Tore of Nidaross wrote to Pope Innocent III requesting permission to baptise with saliva in cases where water was not available, noting that water was scarce. His request was refused.¹³⁰ Although this was not a formal change

¹²⁷Larson, *Gulathing*, 50.

¹²⁸Larson, *Frostathing*, 226-227.

¹²⁹Translation of italics in quote directly above.

¹³⁰Winroth, *Canon Law of Emergency Baptism*, 2018, 207.

to Canon Law at the time, the letter of response from the Pope became a part of the law from then onward.

However, necessity often carries more weight in practical matters than doctrine, since practicality addresses the need to provide alternatives. Depending on circumstances, priests could baptise with water from snow or ice, for example; Pope Victor I included what he termed the “tears of the earth”: sea water, river water, lakes, fountains, or ponds. The intention was that everyone could be baptised at any time and place.¹³¹

Grágás includes a very detailed passage regarding emergency baptism. First, it notes that the child must be baptised at the first place where water can be found. This is followed by a list of penalties if the priest does not have with him all the things needed for baptism. A man must baptise the child; a woman cannot. However, if the man did not know the appropriate words and actions, a woman may instruct him. The father performed the rite only if no other man was present.

Grágás also includes detailed instructions on baptism if a priest cannot be found.

“If a child is so ill that its life is in danger then [a layman should baptize the child if it is at] a householder’s home, and water is to be fetched [in a vessel]. If a child becomes ill as men journey with it [it is to be baptized] wherever fresh water is nearest obtainable, or sea water if fresh is not obtainable.”¹³²

If the child was ill at a householder’s home, water was to be brought and a layman performed the baptism. If the child became ill while on a journey then it took place wherever fresh water, sea water, or even snow is to be found; baptism with saliva was not allowed. If snow was used, then the sign of the cross was made on the snow using the Trinitarian formula, so that the signs are made three times. Then the child was dipped in the snow three times, using the same words for baptism; but the man was to melt the snow with his hands and rub it over the body of the child. The child should not be dipped in the snow long enough to cause chilling or death.

While the law given here is explicit that only men can baptise, this was not always the case, depending on the particular manuscripts and their ages. In most of the manuscripts of the Older Christian Law it is clearly stated that men must baptise and women can instruct. Winroth notes, however, that three of the manuscripts state “that a woman may baptize in an emergency if no men or boys seven years or older who know the baptismal formula were present.”¹³³ Canon law set seven as the ‘age of reason’, so it makes some sense, but nevertheless this latter does not

¹³¹*Gesta Innocenti III*, Deeds of Innocent III ca.1208 CE.

¹³²*Grágás*, Dennis et al, 24.

¹³³Winroth, *Canon Law of Emergency Baptism*, 210.

appear in European canon law, only in the North. As well, although some older law originally did not allow women, once it was discovered that this prohibition was not reflected in general canon law, law books and codes were updated to include it.¹³⁴

4.10 Conclusion

In this chapter we have seen how each of the codes addresses membership in the community, and how baptism is not only the entry point for that community, but a means of regulating and ordering a society. In the case of Iceland it also became a way of knowing every single member of the society and who was connected to whom. Each of these sets of laws represents the role of the church in a feudal structure. Yet even within this feudal system, not only were priests subject to the law, but also kings. Above all, however, was the motivation of faith and theology. The church believed that lack of baptism put the individual right outside even the realm of God, to the peril of their souls. Baptism was crucial to ensuring the souls were saved, even an unborn child. Every statement within these codes is with the intent to ensure that every soul is brought within the community of faith, and the souls are saved.

Chapter 5: Burial

In this chapter I will examine not only the content of each section, but also the placement within the body of the text. As noted earlier, baptism and burial are the two most important rites of the church, signifying entry into the wider church community, and the going onward to the ‘community’ of the saints after dead. Some questions arise, particularly in the case of both *Gulaping* and *Frostaping*, why so far into the body of law.

5.1 Where to Bury

The placement of burial law in each code differs. *Gulaping* locates burial in Chapter 23 following Chapter 22 on outlawry. In relation to this I found it odd that Baptism appears at Ch. 21, and Burial at Ch. 23. Why is outlawry placed between the law on the two rites instead of either before or after? It may be that because outlawry was mentioned in connection to baptism, it was then addressed before going on with burial which also notes penalties, but I do not feel this is a strong reason. Given that *Gulaping* includes decrees from both Olav and Magnus, it seems more likely that outlawry was not in the original text, but was material inserted later. *Frostaping* addresses baptism at burial at Chapter 15, and addresses penalties and outlawry separately in Chapter 24. *Västgöta* locates burial at Chapter 18 in the church section. *Grágás* locates burial at the beginning, immediately following baptism.

¹³⁴Ibid, 211.

Burial in a mound in times prior to Christianity was considered honourable, but burying in a cairn was not.¹³⁵ References to ‘mound’, ‘heap of stones’ and ‘disinter’ were all related to preserving the integrity of the body, preventing damage by animals or by exposure, until the body could be conveyed for proper burial; the body could not be left outside, but must be up off the ground and stored in a shed or other structure, or interred as noted.

Christian burial practice was inhumation; burial in a cairn of stones was reminiscent of pre-Christian pagan practices and therefore undesirable, but cairns are included in *Grágás*. So one might conclude that in the case of Iceland, burial in a cairn *might* be considered a temporary measure until the body could be transported and given a Christian burial, particularly during winter and given the difficulty of transporting the body.

5.1.2 Gulaping

This section begins “Þat er nu þvi nest at mann skal til kirkiu föra er dauðr verðr, ok grava i iorð helga.”¹³⁶ “Now the next is that every man who dies *shall* be brought to church for burial within the church grounds”. “Ok grava i iorð helga” actually translates as ‘and buried [grave¹³⁷] in holy ground.’ Holy ground and church grounds may be considered the same, though the ‘holy ground’ or ‘God’s acre’ was a more specific location within the wider church grounds. Larson translates the word ‘scal’ as ‘shall’ in every case, while the newer Simensen translation uses the word ‘scal’ as ‘shall’ at first but then subsequently translates as ‘should’. The implications of the words ‘shall’ and ‘should’ are quite different: the former ‘scal’ is that something will happen without question, the latter ‘should’ implies an expectation of ‘if at all possible’ which then begs the question ‘what if it is not possible?’ Perhaps, given the particular geographical location in southwestern Norway, the word ‘should’ allows for more freedom to respond to changing circumstances, such as weather and ability to travel. Larson translates ‘mann’ as ‘man’, but this also could be used collectively for ‘household’.¹³⁸ Simensen translates ‘mann’ as ‘human being’, since the law relates to all people who are buried, not just men. While the word ‘man’ may reflect cultural and historical context, it also stands as ‘human’ or ‘person’, encompassing everyone within the law.

5.1.3 Frostaping

Chapter 15 begins “*Kristin mann huærn skal at kirkiu grafa oc til kirkiu hafa fört innan fim nauðsynia laust.*” “(Every) Christian man shall be buried at the church and his body must

¹³⁵Simensen, *The Older Gulathing Law*, 33.

¹³⁶Larson, *Gulaping*, 51.

¹³⁷Grava, grafa: to dig, earth, bury.

¹³⁸Love et al, *A Lexicon of Nordic Law*, 236

normally be brought to the church within five nights.” The time in which a body should be transported for burial appears right at the beginning of the text: five nights, whereas *days* are noted in *Gulaping*. Is there a difference? It is likely that the intent is the same and thus a consistent expectation in both sets of laws.

5.1.4 Grágás

“*Lik hver skal til kirkio færa þat er at kirkio a lægt sva sem menn verþa bunir fyrst til.*”
“Every corpse *with the right to church burial* is to be taken to the church *as soon as men can get ready to do so.*”

This statement reflects not only Christian law, but also the reality of a sparsely settled island country in which distances can be daunting, not to mention getting men plus a draft beast, food, in order to transport the body. It cannot happen quickly, particularly if there is inclement weather as well. Burial is the second most important rite of the church, representing a new baptism and transition into the communion of saints. While Icelanders, other than some converts, may not have understood fully the Christian faith at the beginning, given that the decision to become a Christian nation was mostly pragmatic and political, these three things demonstrate an immediate grasp of its importance in law: statement of Christian law and faith, baptism into the community of the church, and burial and ‘baptism’ into the next life. The order in which they appear is quite deliberate, and represents the foundations of faith and law. By the time the codes were written down, Christianisation had increased individual knowledge and understanding. However, the placement of baptism and burial at the very beginning would indicate an already significant understanding of the important rites in church life and community. It was a definitive statement that the country was Christian, thus deflecting interference from the Norwegian king.

5.1.5. Västgöta

Compared to the other sets of laws, *Västgöta* is very short, and does not approach burial in any way similar to the others, except for recognition of crimes and outlawry which precluded Christian burial. I believe that this is connected to the geography and village structure. Since the priest lived within the village and was likely easily available, transporting a body for burial would have been fairly simple, thus entirely different from the other areas where transportation of a body was more difficult.

“*Prestær scal bondæ ola oc bonda kono · bonda svn oc dottor hans ælstæbarn firi · tyunda sin · æn firi hiona hans huart er olia scal giui öra tva ok sva firi alla þa mæn eigh göra tyundæ sin ok öri firi lægher · staþ allum frælsuð mannun · þem huls taca · ok ortogh firi*”

natuaku .”¹³⁹

“The priest shall administer the extreme unction to the householder, the householder’s wife, the householder’s son and his daughter, his oldest child, for his tithe. But for each servant to whom he administers extreme unction he is given two *örar* as well as for all men that do not pay tithe; and one *öre* for a burial place for all free men receiving Holy Communion, and one *örtug* for a night’s vigil.”¹⁴⁰

The only thing in this statement which really addresses burial is the price of a burial place, ‘for all free men receiving Holy Communion.’ This would by inference refer to burial in holy ground, though it is not explicitly stated. Three subsections address what happens in particular situations of death, but not necessarily the process of burial.

§1 If a guest dies at someone’s home, one *öre* worth of his cloth (or clothing) is to be given to the priest as the cost of a place for burial, and one *örtug* is to be given for vigil. Cloth or homespun, *vaðmal*, was a significant form of currency, and would be useful. The priest “is obliged” to give communion to both guests and householder. ‘*En präst är skyldig att åt gäst ge nattvarden som åt bonde.*’

§2 If a beggar dies (man with a beggar’s staff) the priest takes the staff and the beggar’s bag as payment for a burial place.

§3 If the bishop is in the parish and is asked to come to give extreme unction to a dying person, the bishop ‘*shall administer extreme unction*’ and receive half a mark. The bishop is required to do so.

In Chapter 18, burial outside the parish was addressed. If a householder in a parish died and wished to be buried elsewhere, perhaps at his childhood parish, the parish priest would consecrate the corpse and go with it to the ‘farm gate’, which is assumed to mean the gate of the farm belonging to the deceased. The priest can go further if he himself wishes to do so. He receives half the regular burial fee, and the other half goes to the priest who buries the deceased.

5.2 Who can be Buried?

Burial in holy ground was not a given. All specified crimes were punished with outlawry, which is found in the oldest secular sections of the surviving manuscripts and codes of law, those from *Gulathing* and *Frostathing*.¹⁴¹ An outlaw could not be buried in holy ground.

5.2.1 Gulaping is the only law which named those who were excluded at the beginning in the text: ‘evildoers, traitors, murderers, truce breakers, thieves, and men who take their own

¹³⁹ *Äldre Västgötalagen*, Ch. 15.

¹⁴⁰ Lindkvist, *The Västgöta Laws*, 26.

¹⁴¹ Riisøy, *Deviant Burials*, 53.

lives.’ Truce breakers and oath breakers were those who violated agreements confirmed by oaths, such as reconciliation after blood revenge, disposal of land, or giving slaves their freedom.

5.2.2 Frostabing

The two exceptions for burial reflect canon law regarding suicide and apostasy: “unless he was *by intent his own banesman*¹⁴² or had cast aside his Christian faith while he was still living.” Thus suicide and apostasy are a bar to burial; while canon law did not address outlawry, it did address ‘self-murder’, and abandonment of the faith. Accidental death allowed for burial within the churchyard: “...*but if he lost his life through negligence he shall be buried at the church.*”

5.2.3 Grágás

Neither ‘person’ nor ‘Christian’ is specified, as in the other two, but ‘corpse’, and ‘it’ is used. Theologically Christians believe that once the person is dead, the soul is gone and only the body, the corpse, remains. The word used is specifically ‘*lik*’, meaning dead body or corpse. Is this use of ‘*lik*’ an intentional reflection of this theology of death? By law everyone who lived in Iceland was required to be Christian, so an assumption was made that since everyone is Christian, they would have the right to church burial. Yet inherent in the term ‘right to church burial’ was the possibility of exclusion as well. *Grágás* names the exclusions at the end of the section:

“The first is the corpse of someone who dies unbaptized. The second is the corpse of a full outlaw who may not be sustained or given passage; it is not to be buried at church unless the *bishop with jurisdiction in that Quarter* permits; but if the bishop permits it the body may be taken to church.”¹⁴³

Any decision for burial of an outlaw lay with the bishop. There is also reference to the four Quarters of the island and the authority of each bishop.

The third corpse not allowed church burial is a person who injures himself enough to cause his death, unless he repents and confesses to a priest before dying. This refers directly to suicide. If those injuries were severe enough that death was certain, but the person repented and confessed before death, the person received absolution and permission for burial. Even without a priest available, or if the person could no longer speak, so long as they could express repentance to witnesses, they could be buried in holy ground. Fourth, anyone the bishop sees fit to ban from burial at church may not be buried in holy ground. While suicide is specifically mentioned, there is no note taken of apostasy, or leaving the faith.

¹⁴²*Bane*, in the archaic definition, something which causes death.

¹⁴³Dennis et al, *Grágás*, Ch.2, 30.

5.2.4 Västgöta

This code addresses a person dying in one parish and requesting burial in another. The parish priest consecrated the body and followed it to the farm gate “*and not beyond, if he does not wish to.*” The reference to the ‘farm gate’ is a further indication of the basic societal structure of the ‘farm’ in Västergötland. These are defined boundaries within both the social structure and the law. As this is the priest’s own parishioner, accompanying the body to the gate of the farm fulfilled his obligations. The actual wording is “*he gives as much as he wishes to the priest who meets him there.*” Once the body has been transferred, there is no obligation of the first priest to actually participate in the burial, though he may.

5.3 Timing of burial

5.3.1 Gulabing

Allowance is made regarding inability to transport a body within a five-day period, but penalties for failure to do so are noted up to and including full outlawry.

“Bodies shall ordinarily not remain unburied longer than five days: but if a corpse does remain longer [unburied], the one responsible shall pay the bishop a fine of three oras and bring the body to the church.”¹⁴⁴

Gulabing refers to burial in a mound or a stone cairn. Disinterment is required as soon as is possible, and a fine of three *öras* must be paid to the bishop, plus transport of the body to the church for appropriate burial. There is recognition that weather and distance can interfere with the timing of burial, so while use of a mound or cairn is a stopgap measure, the connection to the pagan history of burial meant that as soon as possible proper Christian burial must take place.

5.3.2 Frostabing

If the body was not buried “as the law demands” a fine of *six öras* was to be paid to the bishop and the body must still be taken to the church for proper burial. This penalty was twice that of the *Gulabing* law, perhaps reflecting different economic circumstances of the residents of the province, or the perceived severity of the crime, or both. If someone wished to transport a body for burial but did not have enough assistance in his own house, he could call on neighbours until he had five, but he must depend on his own home first and then supplement if need be. He must provide for them all. If someone does not come to assist, that person pays a fine of three oras unless witnesses can be found that the summons was not properly made.

Frostabing is the only code to address burial of a pregnant woman.

“If a pregnant woman dies she shall be buried in the churchyard like any other

¹⁴⁴Larson, *Gulathing*, Ch. 23, 51.

person, but [the womb] shall not be opened or [the child] removed.”¹⁴⁵

This suggests that the woman died either during pregnancy or childbirth. She may be buried in hallowed ground in the churchyard, but the child must remain within her body, and not be removed. As well, it may mean that if the mother died but the fetus still lived, or if the mother died in labour without actually giving birth, the fetus was also allowed to die. This may be a remnant of early belief having its basis in Hebrew theology, that a fetus is not a ‘person’ until it is born and the breath of God or *ruach* enters its lungs¹⁴⁶. The fetus was considered to be part of the mother until it was born.¹⁴⁷ It is also possible that it was forbidden to cut open women who died in pregnancy, so that the woman could be buried in a Christian way, reflecting the importance of the integrity of the body. It might also recognise the lack of baptism of the unborn child, as it would be considered pagan without baptism, and therefore could only be buried in a Christian rite if it remained inside the baptised Christian mother.¹⁴⁸ While it is mentioned only in *Frostathing*, I would suspect that it was a common understanding in all codes of law.

5.3.3 Grágás

The detail in *Grágás* is clearly an endeavour to ensure that every possible eventuality which may arise in effecting burial has a solution. *Grágás* draws upon the responsibility of family to transport the body for burial; it is the only one which identifies so clearly who accompanied the body: the immediate legal heir and one male witness were responsible. If there was no heir, or one not of age, the “householder who last provided lodging to the dead person is to take the body to church.” If neither heirs nor a householder exist who could fulfill this, the nearest legal resident men must do it, and prepare the body; and the law required provision of shelter and food for all persons transporting a corpse for burial.

Grágás is specific about the obligation of householders to provide hospitality to those conveying a body for burial: five men plus a draft animal. Distances in Iceland were considerable, there were few churches or priests, so transport of a body for burial could involve several days, and would of necessity include stops at known farms. If a landowner failed to host persons conveying a body, his action would invoke a fine; a case could be brought against him for refusing hospitality by making a local summons, and then calling five neighbors at the assembly.

It is an important factor as well that this ‘hospitality’ is legislated and not considered optional. The body must be conveyed to a church where the bishop allowed burials. In the very

¹⁴⁵Larson, *Frostathing*, Ch.15, 232.

¹⁴⁶This is still the case in Jewish theology.

¹⁴⁷Biblical references Genesis 1:2 and Ezekiel 37:1-14

¹⁴⁸ https://second.wiki/wiki/christenrecht_norwegen

early days there were only two locations of churches, Skálholt built in 1056 CE and Hólar founded 1050 CE. This could have meant a considerable amount of travel for burial in holy ground. The text says “the man who has charge of a church must allow burial there and the body is to be buried where he and the priest who serves the church decide.” This would imply that the ecclesiastical governance structure had increased by the time the laws were written, and thus might include a householder or farmer who has built a church on his own property. It is possible that by this time a few more churches or chapels existed, or that those existing churches had a sexton who would look after graves and churchyard. The language here is ‘*must*’ allow burial, though the sexton and the priest together decide where the place of burial is to be. A person who had no right to enter a church while living could not enter the church after death, and a fine was levied for anyone who tried to violate these laws. The penalty of banishment and exclusion continued after death.

Grágás ends: “A body with no right to church burial is to be buried at a place beyond bowshot of *anyone’s* homefield wall.”¹⁴⁹ The householder was not restricted to just beyond bowshot of his own homefield walls, but literally beyond the walls of any adjoining neighbours. It must also be “where there is no arable land nor meadow, and from where no water flows to farms.....” This would ensure no body was buried in a place which might be plowed for crops, nor buried near water where it might pollute drinking water. “...and “no funeral mass is to be sung for it.”

5.4 Failure to Bury

5.4.1 *Gulathing* says bodies shall *ordinarily* not remain unburied longer than five days”.

The important word is ‘ordinarily’, indicating that there is allowance given for difficulties which may arise in arranging transportation of a body, whether because of distance, or weather, The section continues addressing failure to bury and the penalties associated:

“But if a corpse does remain longer [unburied], the one responsible shall pay the bishop a fine of three oras and shall bring the body to the church. But if he refuses to do so and leaves the corpse at home to decay, *he has forfeited his chattels to the last penny; and his only choice is to go to confession and do penance; and if he is unwilling to do this, he shall depart from the king’s dominions.*”¹⁵⁰

The penalty for failing to bury a body properly was first one of ‘lesser outlawry’, to “forfeit all chattels to the last penny”, unless the offender confessed and did penance. Only if all

¹⁴⁹Dennis et al, *Grágás*, Ch.2, 30.

¹⁵⁰Larson, *Gulathing*, Ch. 23, 51.

the other options had been tried and had failed, would full outlawry occur. The following quote reflects the reality of living and travelling in this particular area:

“If he lives so high up in the mountains or far out among the islands that those things prevent him from bringing the dead body forward - that it is impossible to cross the sea or the mountain - then he should bring it to an outhouse and suspend it and not let it lie on the ground.”¹⁵¹

This recognised the physical geographical surroundings, and the reality of mountain travel in adverse weather conditions. Although there were few predatory animals, polar bears appeared from time to time, and Arctic fox were common. Instead I believe this provided “wiggle room”, when the transport of a body would simply be impossible, and at the same time recognised that the integrity of the body for burial was of singular importance.

5.5 When to bury

Lawful burial in *Grágás* could take place on “all established holy days” except Easter and Christmas, but the grave could not be opened on Good Friday. Burial could only take place in a churchyard where the bishop allowed burials. No corpse could be buried until it was cold. Burial before breath had left the body was considered murder, so it was necessary to ensure the person was actually dead; the penalties for burying alive would incur a fine, and if it were determined that the individual were still breathing when buried, this would constitute murder. At the very least there would be fines and at the most serious prosecution.

“No corpse is to be buried before it is cold. If a man buries a body before it is cold, he is fined three marks and the case lies with any one who wishes to prosecute. If men hasten a burial so much that a panel gives the verdict that there was still breath in his body when he was buried, *then it becomes a case of murder.*”¹⁵²

This particular statement regarding ‘burial of a corpse before it is cold’ is not mentioned in the other three codes at all. Is it assumed to be the case therefore not mentioned? Or is it not considered relevant? Or is it once again an example of different groups of people finding particular things important to their group?

5.6 Extreme Unction - burial ‘in extremis’

Gulaping and *Frostaping* make specific mention of extreme unction, or anointing with oil as a religious rite in the context of imminent or coming death. *Gulaping* states that if a man wished unction he should send for the priest “from whom he buys divine services”. The wording indicates that the priest “*shall go to him and anoint him*” if he desires unction, and the text says

¹⁵¹Simensen, *The Older Gulathing Law*, 31

¹⁵²Dennis et al, *Grágás*, Ch. 2, 27.

Olaf included this. The priest “*shall*” be paid two *öras* as a fee for the service. If the illness is an emergency and it appears death is imminent, a priest from another shire which may be closer is to be called,¹⁵³ and given “without charge”.¹⁵⁴ Further along, however, *Gulaping* states that every man who has paid his tithe shall receive unction “if he confirms his desire for it while still able to speak.” This may appear to be somewhat of a contradiction to the previous statement of charge of two *öras* for the service. Two things are possible: that if the priest anointed someone who had not paid tithe, a fee for service would be charged; or there are different layers within the text, with the fee for service being older, and the introduction of tithe being younger law. Given that the priest may have to travel some distance, the fee might well cover the costs of the trip. If the priest failed to attend without legitimate reason, *he was fined three marks*. This may also be a case where an addition made by Magnus contradicted that which *Olaf* had decreed. Remembering that all decrees were considered to be ‘in force’, decisions would then have to be made on a case by case basis. If the person had already died and the priest was called, he (the priest) was required to sing the death mass over the coffin in the church, and receive compensation. Provision was made for interment even if the priest was not available. Upon the priest’s return a stake was pushed into the coffin, holy water poured down and along it, and the priest sang the mass.

Frostaping addresses anointing or extreme unction, and in the wording we get a glimpse of social structures and slightly different practices.

“If a man is in need of unction and the shire priest is unable to come, let the patron of the parish anoint the sick man with the aid of the priest’s assistant, if no other help is available, *or even without assistance rather than have the man die without unction.*”¹⁵⁵

In the Frosta area, through this statement it is possible to tell that there was already a difference of social and geographic structure. We know that Frosta, in terms of travel and accessibility, was quite different from Gulen, thus it appears there was a different ecclesiastical structure: parishes had patrons, and some priests had *assistants* as well. If the priest had no assistant, the patron could administer unction. A ‘private chaplain’ is also mentioned, a priest who was in the employ of someone fairly wealthy and prominent in the shire, who also had a private chapel on his property. If the shire priest was present with the private chaplain and the dying person had promised to pay the ‘greater tithe’¹⁵⁶, the chaplain received one-third of that,

¹⁵³Both *Olaf* and *Magnus*.

¹⁵⁴Added by *Magnus*.

¹⁵⁵Larson, *Frostathing*, Ch.17, 233.

¹⁵⁶Tithe consists of 10% of income. “Great tithes” are defined also as produce, as in the case of farmers. Corn, hay or wood.

and the priest two-thirds. If the shire priest was not present, he and the chaplain each received one-half. Every shire had a church and priest, independent of those with ‘private chaplains’. The shire priest may or may not attend to give unction, and the compensation was adjusted accordingly, but each still received compensation. Laws regarding payment reflected the social and church structure, where a priest was not paid a salary or stipend, but rather provided a fee-for-service.

“And this rule is properly applied in cases where the priest’s share would all go to the shire priest; in other cases the division shall be made according to circumstances. And the unction shall be without price in any other respect.”¹⁵⁷

The division noted above would apply in cases where normally only the shire priest attended to give unction, and received all the fees. If another priest or private chaplain was present then the fees were divided. No extra charges could be made.

Gulaping specifically notes: “In no case ought a priest enter the parish of another priest for the sake of gain.” The implication in this context is that some priests augmented their income by doing burials rightly belonging to another priest. If a priest was found guilty of ‘poaching’ on the parish of another priest ‘for the purpose of gain’, that priest “*shall*” return the funeral fees to the rightful priest, and also *shall* pay a fine of twelve oras to the bishop. This specific issue is not addressed in the other codes, although *Grágás* makes a rather sideways reference to priests and other parishes:

“If a body is taken out of a priest’s district, he is required to accompany it to burial provided he is sent word of this in advance and it is within the commune.”¹⁵⁸

Thus priests within their districts could go to another district to effect a burial, with permission and agreement, but could not go outside the wider commune.

5.7 ‘Found’ bodies

Frostaping addresses ‘found’ bodies and those of beggars, and this is mentioned in *Grágás* as well. ‘Found’ bodies could be anyone who died or was killed, or those of beggars who lived outside. Whoever found the body was responsible to transport it to the nearest church with a graveyard. If the priest refused the burial or the church patron refused to allow the church to carry out burial, the one who found it then produced two witnesses that the priest/patron had refused the burial, and was then absolved of further responsibility. The responsibility then passed to the priest or the patron who then were required to transport the body to the shire church and ensure

¹⁵⁷*Frostaping*, Ch.17, 233.

¹⁵⁸Dennis et al, *Grágás*, Ch. 2, 28.

its burial.

Why would a priest refuse burial? If it were known that the deceased fell into one of the categories of exclusion from burial, this might have been a possibility. However, if the deceased was an unknown person, perhaps sending the body to the shire church was more appropriate. Churches or chapels were often established on farms or property of wealthy and influential people, who were then in a position to refuse to allow the church to be used for a mass for such a person, or for laying out of the body prior to burial.

Grágás specifies cost of graves, the same regardless of location in the churchyard. Under Norwegian law higher fees might be charged to people of better means. Rights to be buried within the church building could also be bought.¹⁵⁹ Infants younger than about four months cost half as much as an adult. Whoever brought the body was responsible for all fees, and could take anything needed from the property of the deceased or claim from the family for payment of the fees. If minimal property existed, costs of preparation were first, then funeral service, then grave fees. If there was no property, services were free. This is the only place where this is mentioned, but I believe it is another case where customs were similar across the codes even if not articulated.

5.8 Preparation for burial

Grágás makes note of preparation of the body:

“ If neither heir nor householder is present, then the nearest legally resident men are to take the body to church and take linen or homespun from the property owned by the dead and prepare the body for burial. If he did not have the property to provide it, then the man who takes the body [to] church is required to supply what is needful to prepare the body.”¹⁶⁰

Grágás also notes “a body naked or bloody is not to be taken into church”. The body must be properly washed and wrapped, ready to be laid out for vigil and for subsequent burial. The priest would come to sing a burial mass and accompany the deceased for burial provided he was notified in advance, and the burial place was within the commune. If an heir requested mass sung at the funeral bier, the priest ‘*must*’ do it. The priest ‘*must*’ perform the appropriate rites at the church and inter the body.

The duty of the priest was to accompany a body to burial, even if taken out of the district for buried elsewhere, but he must be asked in advance, it must still be within the commune and he is paid whether or not he is notified. Within the ecclesiastical structure for local parish priests,

¹⁵⁹Nilsson, *De Sepulturis*, 1.1.3.1.

¹⁶⁰Dennis et al, *Grágás*, 26.

living quarters were provided and perhaps a small piece of land, but there was no salary; the priest depended mainly on fees for services to be able to live. If a burial was scheduled without the knowledge of the proper priest, that priest must be still be paid.

The priest was not required to accompany the body out of the commune if there was a church within it which allowed for burial. First, if it was a parish church with a burial ground then that was where parish burials took place, but not all churches had burial grounds. If the priest did not accompany the body, then whichever priest sang the mass received payment. If the priest accompanied the body outside his parish, without arranging ‘coverage’, he could not claim the funeral fees. “He is not to have funeral fees if people die there.” [while he is gone]. This derives from the previous sentence as well: whichever priest legitimately sang the mass was paid.

Västgöta does not appear to contain one specific and discrete section on burials, as the other three do: rather, laws regarding burial are interspersed throughout the text. The law is divided into sections, and subsections which serve as qualifications for specific circumstances. These laws provide a picture of a different legal tradition, not only different from other Swedish laws but also different from the Nordic and Icelandic law. Since the conventions of burial are not mentioned in a similar way to the other texts, my conclusion is that because the priest lives within the village, the circumstances surrounding the calling of a priest which are found in the other laws are probably non-existent. He is there in the village and present when needed.

The first mention of anything to do with death and burial is in Chapter 15, specifying that the priest *shall* administer extreme unction to the *householder, wife, son and daughter, his oldest child*, for which the householder’s tithe pays. Whose oldest child is unclear. The householder’s, or the oldest child of the householder’s son or daughter? Perhaps this is linked to the laws of inheritance. The priest is paid a fee for each servant, but it is not stated who pays the fee; is it the householder, or the servant. Who pays for the burial? The wording is “*for each servant*” and “*he is given*”. It is then clarified that this applies to all men who do not pay tithe. Thus it could be concluded that those who receive anointing before death pay the fee, as well as the fee for all ‘free men’ receiving Holy Communion, and payment for a vigil for one night prior to burial. The priest *shall not* take a larger fee, even if he holds a longer vigil. The following phrasing is interesting: “..he shall hold no further vigil unless the priest or householder wants it, even if the body remains inside the church for three nights.” This is reinforcing the previous statement that the priest takes a fee for only one night of the vigil, even if that vigil is three days, Perhaps there is also a very practical reason, that of ensuring the priest is available whenever he is needed, thus one night vigil is sufficient.

Three subsections address situations of death in a home, death of a beggar, and responsibility of the bishop if he is anywhere in the parish and is requested to give Extreme Unction. In the case of a guest at a householder's home, the priest is paid in cloth which is likely the guest's clothing, to cover the costs of a burial place and vigil. The priest "*is obliged*" to give Holy Communion to the guest: there is no room for refusal. Beggars were identified by a staff and a sack in which they carried belongings, and the priest's fee is the staff and the sack. The bishop is required to do the anointing if requested, and is paid half a mark.

5.9 Conclusion

Across all of these statements of law, the 'right to church burial' excluded the unbaptised, suicides, and those considered 'outside the law'. According to canon law, unbaptised children and suicides would be buried outside the church yard. The inclusion of outlawry is drawn from pre-Christian pagan practices, which existed prior to the coming of Christianity. None of the codes had any death penalty, except the understanding that an outlaw banished could be killed with impunity. Outlaws were denied even church burial.

Chapter 6: Conclusions

When I began this comparison, it seemed that each text was quite different. As I worked through each of the texts, particularly in the process of translation, similarities appeared which had not been immediately evident. Throughout, it was necessary to bear in mind that translations can vary widely, depending on the translator and when the translation was made. While the *Gulaping* opening is poetic, and reflects the intent of the law, the actual words when translated are exactly the same phrase as both *Frostaping* and *Grágás*. Even allowing for different translators, it was difficult to see where some of the translated English sentiments originated. Parts of each text are different, as well: for example the noting of burial of a pregnant woman. Clearly this was something considered important enough to be mentioned, especially in the light of the meaning and function of baptism. Only *Västgöta* is phrased differently, although the intent is similar. This set of laws was compiled approximately one hundred years after the other three, with a hundred years of Christianisation. Thus the opening reflects the state of the Christian church and Christianity in *Västergötland*.

One of the premises of this thesis is that the opening sentences of law were both a statement of belief, as well as one of identity. I see them very much as statements of 'this is who we are', and statements of social structure and location. Each invokes a level of authority as noted in the quote from Francis Fukuyama. Church eventually became the highest authority, rather than

a king, and this is most specifically stated in *Västgöta*. While legislation was important as king and church particularly sought control by establishing ideological power, at the time these were compiled the power to enact law rested with the people.¹⁶¹

The codes were assembled over a significant period of time and were always subject to change; they reflected older practices, newer practices, incorporated changes to canon law, as well as changes to social or cultural interpretation. Each contains a statement of faith, chapters addressing church, baptism, burial, marriage, inheritance, church, penalties and outlawry - the things which were important for the smooth functioning of the society. There is a reflection of old common law (*ius commune*) in each. Each outlines a social contract, and who fits where. In *Gulaping*, the Larson translation casts the opening statement in a more poetic “Christian” light, possibly to reinforce the relationship among people, faith and law. The *Frostaping* translation is only slightly less flowery but with the same intent. One thing which stands out particularly is that the words “commandment”, ‘command’ and ‘precept’ are implicit in the text rather than explicit. In both *Gulaping* and *Frostaping*, the sense of ‘command’ denotes a perceived role within society, and the role of the church in the regulation and structuring of society. *Grágás* has no relationship to a king, and I believe the word ‘precept’ is quite deliberate rather than command, to establish the role of law in a more egalitarian society. *Västgöta* recognises a king but seems to accord more authority to the church and the ‘book-learned men’ and householders.

Ditlev Tamm says that Roman law ‘was not part of the law of the land’, but that legal thinking from southern Europe, and canon law, had a great impact. Canon law may not have played as significant a role as in the law codes of continental Europe, but there were very clear instances where awareness of, and incorporation of canon law was clearly evident. Laws regarding baptism were changed as errors and differences in interpretation became known. Some laws may have echoed Roman legal tradition, but some used canon law directly. Following the establishment of the See of Nidaross in 1153 the authority of the church grew, and the use of canon law was encouraged.¹⁶² Even so, despite the growing influence of kings, formal power to enact legislation still rested with the provincial assemblies, and did not really shift until the 13th century.

It was very clear in doing this comparison that geography does play a large role in how each society is governed through law. In *Gulaping* and *Grágás*, distances and weather become important factors in being able to fulfill the law, whereas in *Frostaping* and *Västgöta*, geography

¹⁶¹Sigurðsson, Jón Vidar, Frederick Peterson, Anders Berge. *Making and Using the Law in the North* c. 900-1350. (Pisa: Pisa University Press, 2018:) 38.

¹⁶²Ibid, 45.

was less important in fulfilling the requirements of those laws. Within the requirements of the church and canon law, the laws as written were adapted to ensure that compliance was possible. Nevertheless, a much more detailed examination would be useful.

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Appendix I

Gulaping

1. The first commandment in our legislation is that we shall bow towards the east and pray to the Holy Christ for peace and a fruitful harvest, and that we may keep our country settled and tilled and that our sovereign lord may have strength and health; may he be our friend and we his friends, and may God be a friend to us all.

Frostaping

1. This is the first command in our lawmaking that we shall be obedient to the faith and the church of Christ and to the king and the bishop, and that we shall live according to law and right behaviour and the correct rules of the church.

Västgöta

1. Christ is first in our law. Thereafter are our Christian faith and all Christians, king, householders and all resident men, bishop and all book-learned men.
(Alliteration in the original: *bönder ok bokarlar, biskupar ok allir boklærdir mæn.*)

Grágás

1. It is the first precept of our laws that all people in this country must be Christian and put their trust in one God, Father, Son and Holy Ghost.

Appendix III Burial

Gulaping

The next is this, that every man who dies shall be brought to church and buried in hallowed earth, excepting only evildoers, traitors, murderers, truce breakers, thieves, and men who take their own lives. And those whom I have now enumerated shall be buried on the shore where the tide meets the green sod. Bodies shall ordinarily not remain unburied longer than five days; but if a corpse does remain longer [unburied], the one responsible shall pay the bishop a fine of three oras and shall bring the body to the church. But if he refuses to do so and leaves the corpse at home to decay, he has forfeited his chattels to the last penny; and his only choice is to go to confession and do penance; and if he is unwilling to do this, he shall depart from the king's dominions. But if he lives high up on the mountain side or very far out among the isles, and the stress of the conditions, be it stormy seas or [bad] mountain [roads], prevent him from transporting the

Frostaping

Every Christian shall be buried at the church and his body must normally be brought to the church within five nights, unless he was by intent his own banesman or had cast aside his Christian faith while he was still living; but if he lost his life through negligence, he shall be buried at the church. If he is not buried at the church as the law demands, there shall be a fine of six oras to the bishop, and the body shall be brought to the church all the same. If a man wishes to convey a corpse out of his keeping but does not have sufficient help in his own house, let him call upon his nearest neighbors till he is one of five; but he shall make use of such capable men as he has at home before calling upon the others; and [he shall] find provisions for all. And whoever was chosen [but did not come] shall pay three oras, if he was properly summoned. If he denies [having received] the summons, his own oath shall suffice, unless the other can produce witnesses. If a

Västgöta

The priest shall administer extreme unction to the householder, the householder's wife, the householder's son and his daughter, his oldest child, for his tithe. But for each servant to whom he administers extreme unction he is given two *ōrar* as well as for all men that do not pay tithe; and one öre for a burial place for all free men receiving Holy Communion, and one *örtug* for a night's vigil. He shall not take more, even if (he)* holds a vigil more than one night; he shall hold no further vigil unless the priest or the householder wants, even if the corpse is inside three nights. If it is inside longer he gives one *örtug* for each night

Grágás

Every corpse with the right to church burial is to be taken to church as soon as men can get ready to do so. If an heir (p.8) of the dead person is present, he is to bring the corpse to church, and the man he asks to go with him. If no heir is present or if he is not of age, then the householder who last gave lodging to the dead person is to take the body to church. If neither heir nor householder is present, then the nearest legally resident men are to take the body to church and take linen or homespun from the property owned by the dead and prepare the body for burial. (Fn8) If he did not have the property to provide it, then the man who takes the body [to] church is required to supply what is needful to prepare the body.

It is lawful to prepare a body for burial, to make a coffin for it, and to take it and bury it on all established holy days in the year except two, Easter Day and Christmas Day. One may take a body to church on Good Friday but the earth is not to be opened

Appendix III Burial

body, he shall carry it into an outhouse and fasten it up; for a corpse must not be allowed to lie on the ground. If a man has buried a body in a mound or a heap of stones, (58) he shall disinter it and pay three oras to the bishop and bring the body to the church to be buried in hallowed earth. If a man falls ill and wishes to have a priest summoned, let him send for the one from whom he buys the divine services. If he desires unction, the priest shall go to him and anoint him, *O[laf]*: and he shall have two oras as a fee for the unction. *Both:* But if the illness comes on so suddenly that it is necessary to send for a nearer priest, this priest shall go to him and anoint him *M [agnus]*: without charge. But if he fails to come, he shall owe a fine of three marks, unless he is prevented by a serious hindrance or [the needs of] his own parishioners, and the fact is known to witnesses. And every man who has paid his tithe shall have unction if he confirms his desire for it while still able to speak. *Both:* When the man is dead and his heir goes to the priest and asks him to come to

pregnant woman dies, she shall be buried in the churchyard like any pregant woman dies she shall be buried like any other person, but [the womb] shall not be opened or [the child] removed.

16. Concerning Corpses that are Found and [The Bodies of] Beggarmen

All corpses that are found and the bodies of beggarmen shall be taken to the nearest church that has a graveyard. But if the priest refuses [burial in] the churchyard or the patron [refuses the use of] the church, let him [who brings the body] declare the facts before two witnesses and convey the responsibility to them who refused [access to] the churchyard; and if the witnesses are sufficient, the man has no further duties in this case. And let him who forbade [the burial] take the corpse to the shire church, if he does not want it in his own; and he shall have the same duties [toward it] as the man had who brought it first.

17. Concerning Unction

If a man is in need of unction and the shire priest is unable to come,

Chapter 42: If a householder dies in one parish and wishes to rest in another.

If a householder dies in one parish and wishes to rest in another, the priest consecrates his corpse and follows it to the farm gate and not beyond, if he does not wish to. Then the priest shall receive all his rights, both for extreme unction and for burial place and night's vigil, and he gives as much as he wishes to the priest who meets him there. Otherwise he is not obliged to bury him, if he, the priest, does not wish to do so himself.

for the committal of corpses. A body is [to be taken] to a church at which the bishop permits burials.

A householder is required to board a man who is taking a body to be buried, with four others and a horse or draught animal if they have one with them. If he refuses them, he is fined three marks and the case lies with the man who is refused lodging. The summon is to be made locally and five neighbors called at the assembly.

(Fn9) The man who has charge of a church must allow burial there and the body is to be buried where he and the priest who serves the church decide. A body naked or bloody is not to be taken into church. The body of a man who had no right to enter a church while he was alive is not to be taken into church. If a man takes into church the body of someone thus excluded, he is to atone for that desecration with twelve ounce-units. If [he] will not pay that money, he is fined three marks for it and must still pay the church its money. (Fn10)

No corpse is to be buried before it is cold. If (p. 9) and if a man buries a body before it is

Burial

chant the death mass at the bier, he shall go and sing [the chant] at the bier; *O[laf]*: for that he shall have half an ora, which men call the fee for the death mass. *Both*: When the body comes to the church, the priest shall go to meet it and shall chant before it such prayers as the ritual-prescribes; he shall place the body in the grave; *O[laf]*: and for that he shall receive the burial fee. *Both*: But if the priest refuses to perform the rites, the heir of the deceased shall take *M [agnus]*: the tithe (*O[laf]*: the burial fee) and [use it to] buy masses for the soul of the deceased. If the priest is away from home the body shall be interred nevertheless; and, when he returns, a stake [shall be driven] down to the coffin, and holy water poured down upon it, and the priest shall chant the death mass over it. In no case ought a priest to enter the parish of another priest for the sake of gain. But if he is accused and convicted of [having done] this, he shall restore the fees to the one to whom the parish belongs, and he shall atone for

let the patron of the parish anoint the sick man with the aid of the priest's assistant, if no other help is available, or even without assistance rather than have the man die without unction. And if the sick man promises in the presence of his private chaplain to pay the greater tithe and the chaplain is with the shire priest at the unction, he [the chaplain] shall have one-third of the priest's share in this and the priest two-thirds. But if he is alone at the anointing, the shire priest not being present, let each of the two have one-half. And this rule is properly applied in cases where the priest's share would all go to the shire priest; in other cases the division shall be made according to circumstances. And the unction shall be without price in any other respect.

cold, he is fined three marks and the case lies with anyone who wishes to prosecute. If men hasten a burial so much that a panel gives the verdict that there was still breath in his body when he was buried, then it becomes a case of murder.

- Priest's duty/fees

If a body is taken out to a priest's district, he is required to accompany it to burial provided he is sent word of this in advance and it is within the commune. He is then to have the funeral fee if no word is sent to him and even though he then does not go at all. A priest is not required to accompany a body out of the commune if there is a burial church anywhere in it. But if he will not accompany the body, as is now rehearsed, then the priest who sings the service has the funeral fee. If a priest leaves his district without procuring another in his place, he is not to have funeral fees if people die there.

There are four classes of corpse not to be buried at church.

The first is the corpse of someone who dies unbaptized.

Burial

it with a fine of twelve oras to the bishop. And whenever, on the death of a man, his heir wishes to give an ale feast, whether on the seventh or the thirtieth morning, or even later, that is called an inheritance ale. But if men give an ale and call it a soul's ale, they shall invite the priest from whom they buy the services; they shall invite him as one of three at the fewest; and the priest ought to attend an inheritance ale or a soul's ale as a matter of course. If he refuses to attend, he shall forfeit the tithe (*O[laf]*: the payments) that he should receive in a twelvemonth from the levy district (59) where the feast was given. And the man who is the heir after him for whom the feast was given shall take *M [agnus]*: the tithe (*O[laf]*: the payments) and use it for the spiritual welfare [of the deceased]. *Both*: If there are several funeral feasts, the priest shall go first to the one to which he was first invited and shall remain there the first night; in the morning he shall go to the second. *Both*: Even if there be three gatherings and he

The second is the corpse of a full outlaw who may not be sustained or given passage; it is not to be buried at church unless the bishop with jurisdiction in that Quarter permits. (Fn20) But if the bishop permits it, the body may be taken to church.

The third corpse not to be buried at church is of someone who wilfully inflicts on himself the injuries that cause his death, unless he afterwards repents and confesses to a priest, and then he is to be buried at church. Even if he is not able to reach a priest but makes such signs that men perceive that he repents at heart even though he cannot tell it with his tongue, then he is nevertheless to be buried at church.

The fourth corpse not to be buried at church is of anyone the bishop sees fit to ban from burial at church.

A body with no right to church burial is to be buried at a place beyond bowshot of anyone's home field wall, where there is neither arable land nor meadow land, and from where no water flows to farms; (Fn22) and no funeral service is to be sung for it

Burial

will have to travel the same
road twice in one day, he shall,
nevertheless, bless all the ales.
But if he cannot [do this], let
him go to the second and drink
there while the ale lasts.

Appendix II Baptism

Gulaping

(M partly revoked)

21. a) The next is this, **that every child that is born in our land shall be reared** [and cared for], O[*laf*]: **unless it be born with some serious deformity**, the face turned around to where the neck should be, or the toes to where the heel should be; in such a case the child shall be brought to church to be baptized and **then [it may be] laid down in the church and be left to perish.**

b) *Both*: **Every child that is born after Holy Night shall be baptised before Septuagesima; if it is born in Lent, it shall be baptised by Easter; if born after Easter it shall be baptised by Saint John's Day, and every child that is born after Michaelmas shall be baptized before Holy Night. (The quarters)**

Frostaping

2. Baptism

a) It is **Christian law** that every child that is born **shall be** nourished, brought to church, and baptized, **if it has the head of a human being.**

b) Every child has a right to a father. He whom the mother points out shall be [regarded as] the child's father, whether it is the child of a free woman or a bond woman, **unless his innocence shall be proved at the first doom to which he is summoned.**

c) But if the woman dies without having pointed out the father of her child, let him who has the right to atonement in her case take action **both to secure his own atonement and to [force the accused] to acknowledge the child.**

Västgöta

2. Baptism

a) When a child is brought to church and **christening is requested**, the **father and mother** bring the **godfather and godmother, salt and water.** The child shall be brought to the church. The priest shall be summoned.

(He shall live at the church farm *kirkiubol*)

The child shall be **primesigned*** **outside** the church door. Thereafter the **font shall be consecrated; the priest shall baptize the child.** The godfather holds it and the godmother names it. The priest shall command how long the father and mother are to take care of it.

If the child falls sick on the way and the church cannot be reached, the **godfather shall baptize** it and the **godmother hold it, in water**, if there is water, **in the name of the Father and the Son and the Holy Ghost.** Thereafter it can be interred in the churchyard [and inheritance].

Grágás

2. Baptism

a) **Every** child that is born is to be **brought for baptism** at the first opportunity, **no matter how deformed it may be.**

b) **if the child's natural heir is present, he is to bring the child for baptism, and a second man must go with him if he asks him to.**

c) If the child's natural heir is not present, then the **householder who is lodging the woman** who has given birth **is to bring the child for baptism and a second man must go with him if he asks him to.**

If neither of them is present then the **men who are legally resident in the house are to bring the child for baptism.**

Appendix II Baptism

c) It shall normally be baptized by the priest from whom men buy the divine services. But if the child is stricken with sudden illness and and this priest is out of reach, the priest who can first be secured shall perform the baptism; and no priest may refuse to do this; if he does refuse, he shall owe a fine of three marks to the bishop.

If the child is so weak that no priest can be reached in time, the men who are bringing the child shall give it a name and plunge it into water, speaking these words over it: I baptize thee N. in the name of the Father, and of the Son, and of the Holy Ghost; after that it may be buried in the churchyard.

d) M: If water cannot be obtained, the child may be baptized in any fluid that can be found. If there is no fluid at hand, one may spit in the palm [of his hand] and make the sign of the cross on the [child's] breast and between the shoulders. And such a baptism a woman may perform as well as a man, if no man is available. Both M & O. If a child is not baptized within the appointed

Section 2.

If a man exposes his child, let him confess and do penance and pay a fine of three marks to the bishop. But if a man denies that the child was exposed, claiming that it was stillborn, the woman who assisted (at the birth) shall testify; she must be a free woman and if she [the mother] were alone [at the time of birth] she shall offer her own oath.

Section 3

Archbishop Jon has promised and ordained this, that if it shall happen that a woman is delivered of a child while all alone and the child is too weak to be brought to a priest and no man is near enough to give assistance, the mother shall baptize it herself rather than let it die unbaptized.

And she shall baptize it in water if there is water at hand; but if there the cross with it on the [child's] breast and shoulders, [at the same time] speaking the words that are ordered: "I baptize thee in the name of the Father, and the Son, and the Holy Ghost, and let her give the child a name.

If such men are not available or there are not enough of them, then those who live closest must take the child for baptism or give help. If someone whose duty it is does not bring a child for baptism or if a man who is asked refuses to go, the penalty is lesser outlawry and the case lies with anyone who wishes to prosecute. That is the penalty for both of them and the summons in the case (p.4) is to be made locally and nine neighbors of the man prosecuted are to be called at the assembly.

The men who take a child for baptism are to go to the legal home of a priest - unless they meet him beforehand - and ask him to baptize the child. If he refuses, the penalty is lesser outlawry and the case lies with the men who brought the child for baptism. The summons is to be made locally and [nine of his neighbors are to be called at the assembly.

If they meet the priest on the way, then he] lawfully administers baptism if he administers it at his [legal home], provided he has only been away from home within the day.

Appendix II Baptism

term, the father shall pay a fine of three oras to the bishop and have it baptized **even if it [has to] be at a later time**. But if he refuses to let the child be baptized and keeps an unbaptized child in his house over two terms, he shall pay a fine of three marks to the bishop and shall have the child baptized. But if he still refuses and keeps the child in his house **unbaptized for a twelvemonth, he has forfeited all his property to the last penny**. His [only] choice is to go to confession and do penance. **And if he refuses to do this, both [he and the child] shall depart from the king's dominions**.

The child may then be laid in hallowed earth and the woman may possess her husband as before.

A father too shall baptize his child rather than let it die unbaptized, and may possess his wife nonetheless.

But if the child gains the necessary strength, let it be brought as soon as can be to a priest; and he shall anoint it with the chrism, using the words and the rite belonging to baptism.

And if the priest doubts that the child has been baptized, let him who performed the baptism, or someone who was present, prove it with his own oath.

5. Every child that is born between Michaelmas and Christmas shall be baptized before Christmas; and whoever has an unbaptized child in his house on Christmas night shall pay six oras to the bishop. All the

If a priest has been away from home a night or more and he is met on the way and asked to baptize a child, **then he lawfully administers baptism if he administers it at the nearest church-farm, provided the child is not sick**.

If the child is sick it is to be baptized at the first place where water is to be had. A priest is not to leave home for a night or more without having with him all the things needful to baptize a child. If he does not have them the penalty is three marks if there is no call for them. But if there is call for them and the fact that he is without them prevents a baptism, then the penalty is lesser outlawry and the case lies with those who brought the child for baptism. The summons is to be made locally and nine of his neighbors are to be called at the assembly. If a child is so ill that its life is in danger and a priest cannot be reached, then [a layman should baptize the child if it is at] a householder's home, and [water] is to be fetched [in a vessel].

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between Lent and midsummer shall all be baptized before midsummer, or [the father] shall pay six oras to the bishop. [Those that are born] between midsummer and Michaelmas shall be baptized before Michaelmas, or [the father] shall pay six oras to the bishop. If a man harbors an unbaptized person for a twelvemonth, the bishop shall have every ora that the man possesses, but the wife shall keep what is hers. And both husband and wife shall go to confession and do penance. **If there is fear of death, a child shall have baptism at once. If [a child] is not baptized as provided above, the householder who has it in his house shall owe a fine of six oras to the bishop, except in the case that he is expecting the king, the jarl or the bishop to come [to serve] as godfather, in which case he shall have the child marked with the cross; then let the matter rest for a twelvemonth.** And every man in this country who remains a heathen but conceals the fact, has forfeited his right to peace among men and his chattels to the bishop as soon as the fact comes to light.

If a child becomes ill as men journey with it, [it is to be baptized] wherever fresh water is nearest obtainable, or sea water if fresh water is not obtainable. The layman is to speak thus: "I consecrate you, water, in the name of the Father" - and make the sign of the Cross on the water with his right hand - "and the Son" - and make another sign of the Cross on the water - "and the Holy Ghost" - and make another sign of the Cross on the water. He is to use his thumb to make the cross (P.6) as he utters each of these three phrases. He shall give the child the name by which it is to be called and speak thus: "I baptize you" he shall say, and name the child by name, "in the name of the Father" - and dip the child in the water - "and the Son" - and dip the child in a second time - "and the Holy Ghost" - and dip it in a third time so that it gets wet all over. But it is also lawful to dip the child in only once or to pour or sprinkle water over it if there is not time enough to do otherwise. Now if fresh water or sea water is not obtainable but snow is to be had, he is to make signs of the Cross on the snow and utter the same words over it as he should

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over water. He is to dip the child in the snow and accompany this with all the words he would use if he were dipping it in water. He is to melt the snow in his hands and rub it on so that the child gets wet all over. He is not to dip the child in the snow in such a way that it becomes chilled and in danger of death, but rather rub snow over the child with his hands.

A man must baptize a child. But if he does not know the words or actions, it is lawful for a woman to teach him. The father of a child is to baptize it only if no other men are at hand.

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