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A Medieval Welfare State? Welfare provision in a twelfth-century Icelandic law code

The history of law in Iceland is remarkable both for the respect with which the Icelanders held the law and for the attention to detail and concern for the well-being of the population as a whole which the law showed in its canons. Several law codes were published in the era of the Icelandic commonwealth in the tenth to twelfth centuries. At first these were transmitted orallly, but later they were written down and codified into a complex and comprehensive system of conflict resolution and provisions for social security aimed at securing the peace of the land. Each of these law codes reflected the political, religious and social concerns of the country and of the population as a whole. Particularly outstanding in this respect is Icelandic law's concern with the care of the elderly and for those in need. Indeed, as far as can be ascertained, Icelandic law goes much further than any other law code in contemporary Europe in terms of the detailed nature of the law's definition of the rights and responsibilities of children to their parents and its concern for the maintenance of the needy. It is the purpose of this article to present an outline of the rules for social welfare contained in the twelfth-century Icelandic law code, the *Grágás*. The intention is not to speculate at length about the origins of these rules, nor is this the place for an analysis of the way in which these laws fit into the history of European law. Such an analysis must wait until more is known about welfare provision in other countries around the North Sea and in the Baltic Region and about the reception of the Christian faith's precepts about such matters. Instead, this paper aims to present what appear to be unique early rules for welfare provision in medieval Europe.

The historical background to the law codes

Though sparse in resources and poorly suited for agriculture, Iceland was settled fairly quickly by the Norse in the last decades of the ninth century. The settlement pattern of medieval Iceland was unusual throughout the Middle Ages. A medieval traveller would never meet towns or even villages. The population lived in independent farmsteads near the coast and rivers and in the interior lowlands. The interior highlands were never settled. It is estimated that the maximum population of Iceland never exceeded 50,000 at any time in the Middle Ages.[1]

Even in its earliest years, the Icelandic commonwealth was based on a code of law. *Íslendingabók* reports that a Norwegian called Úlfjótr brought the law to Iceland before 930. Úlfjótr's law was probably modelled on Norwegian laws whose earliest forms are preserved in the *Gulaþingslǫg*. These original Icelandic laws were never written down, but it is clear that the laws were added to and modified in the following centuries. Among the reforms were the adoption of new administrative units – the *fjorðungar* (quarters) – the abolition of duels, and the acceptance of Christianity. This last reform resulted, in 1096, in the introduction of new laws on tithes which contained substantial legislation on poor relief. In the summer of 1117 the Icelandic general assembly – the *alþingi* – made a decision that all laws be written down in a book. The compilation of the book was to be undertaken by Hafliði Másson, the Lawspeaker Bergþor Hrafnson, and other wise men. Their brief included drawing up new laws to replace old laws that they felt were outdated or unclear. They were also to compose new laws in areas where they felt the old laws were inadequate or in areas where legislation was absent. The result was published the following summer and was confirmed by the *alþingi* with no changes. This law code – the *hafliðaskrá* – is now lost. However, parts of it survived by being included in later compilations of the Icelandic laws which are known as the *Grágás*, whose oldest surviving fragment – the AM 315d fol. – was composed only thirty years after the *hafliðaskrá*. Although the two main manuscripts of

the Icelandic law codes, known as the *Konungsbók* and the *Staðarhólsbók*, date from the middle of the thirteenth century and were thus written down later than most of the other Scandinavian law codes, many fragments of the law dating from the century between 1150 and 1250 survive. Most of the legislation for poor relief contained in the *Grágás* can be dated to the period between 1096 and 1236.[2]

Strategies for care

Just as the country itself was unusual in not developing villages and towns, Icelandic law was unusual in that legislation never clearly distinguished between secular and ecclesiastical jurisdiction and that the Church never developed the ecclesiastical offices necessary to pursue Church interests and distribute the wealth collected through the tithes. Icelandic law as we find it in the *Grágás* – which was passed by an *alþingi* that congregated once every year to pass laws and to pass sentences in feuds – was a motley collection of secular criminal law and ecclesiastical law. For example, the most complete manuscript of the *Grágás* – the *Konungsbók* – contains sections on tithes, fasts, the acceptance of Christianity, assembly procedure, homicide, *wergild*, procedure for peace agreements, sections on the administrative system of the country, inheritance, poor relief, betrothal, land claims, investments, duties of the local communities, and a large number of miscellaneous canons.

Every Icelandic head of household between the ages of sixteen and eighty above a certain level of wealth was liable for the levy called *þingfararkaup*. This levy was intended to finance attendance at the *alþingi*, Iceland's combined court and legislative assembly. The wealth required was not large: to qualify the household had to own all necessary household goods, have the equivalent value of a cow, a net or a boat for each of the members of the household and own a further bull or horse.[3] The levy served several purposes: it gave a certain legal status, it helped ensure attendance at the *alþingi* and it identified those who were liable to pay church tithes.

Qualifying for the payment of *þingfararkaup* did not mean that the household necessarily paid the levy: if a representative of the household appeared at the meeting of the *alþingi*, he received compensation for his travel expenses out of the *þingfararkaup* paid by those who did not appear at the meeting.[4]

Among the many canons of the *Grágás* there is an extensive system of poor relief which outlined strategies for the care of all people, whether or not they were normally resident in Iceland. The system of care was comprehensive, and included almost every needy person who was in the country. The only requirement seems to have been that the needy poor were to be permanently resident in one of the four administrative quarters of the country when receiving aid. Only vagrant beggars could expect to suffer hardship.

Care for the needy was provided by the following network:

- The family had primary responsibility for needy persons.
- If there was no family, or if the family did not have the resources to look after the needy person, the local community, the *hreppr*, stepped in and provided for him, if he had living relatives in the *hreppr* or if he had previously been accepted as a member of the *hreppr*.
- Needy poor who had no family and were not provided for by a *hreppr* – aliens who had no relatives in Iceland and the families of outlaws who had been outlawed by the *alþingi* – were to be assigned to one of the four administrative quarters if they needed care.
- The family of an outlaw who had been outlawed at the *várþing* ('spring assembly') were provided for by the *þinglag*, an administrative unit in between the *alþingi* and the *hreppr*.

People who were provided with care under sections three and four cannot have made up a large proportion of the needy in Iceland at any time and therefore only the two first institutions will concern us here.

The family's responsibility

Clearly not all Icelanders would be able to look after themselves, but no general rule set down the age at which an Icelander should retire. A man of less than eighty years was fully in charge of his goods if he was of sound mind and body.[5] Such a man was thought to be able to look after himself and was responsible for his family until he reached the age of eighty years. Although the eighty-year-old could continue in his positions of authority – in the case of some posts, such as that of the Lawspeaker,[6] high age was clearly desirable – an eighty-year-old did lose some of his legal capacity. For instance, the eighty-year-old had limited rights to marry. He was not allowed to pay more than twelve *eyrir* as a dowry for his wife and the children produced by their union were not entitled to inherit.[7] Similarly, an old man could alienate neither his land nor his office if he was one of the *goði* (a kind of official of the *alþingi*), unless he was permitted to do so by his heirs (who could expect to inherit the office themselves), even if he was in good health. Similar limitations on the right to alienation applied to the man of any age who was on his deathbed.[8]

The *Grágás* recognised that some people required the support of the community. As has been seen, in law there were three kinds of needy people: those who had a permanent place of residence and a family able to look after them, those who had a permanent place of residence and no family to look after them, and vagrants. The law prescribed different treatment for each group. Its first line of defence against destitution was based around the family. In descending order an individual had an obligation towards his or her

- mother
- father
- children
- siblings
- those from whom the individual stood to inherit
- those who had been accepted into the household under a contract of maintenance
- slaves freed by the individual.

Although this list shows that the Icelander's main responsibility was towards his parents, an individual's responsibilities were not limited to those related to him by blood-ties. A hierarchy of obligations existed when the Icelander stood to inherit, a contractual responsibility existed when a man or a woman purchased his or her maintenance, and least important in the hierarchy of obligations was the duty to look after those slaves whose freedom had been granted by the Icelander, who had thus burdened society with another free man.

Children's obligations to their parents

A child's obligation towards his or her parents – especially towards the mother – was absolute, even to the point of the child having the duty to sell himself into slavery. If the child was wealthy enough, he or she was required to provide for parents as members of his or her own household. If a man or woman was not wealthy enough to support parents – i.e. did not own the means to look after them for two years – the law required the Icelander to sell him- or herself as a bond-slave to the nearest relative who could provide for his or her children as well as the parent who sold him- or herself into slavery.[9] Normally, this bond-serfdom would be served in the household of the nearest relative who was able to look after the parents. The son or daughter thus sold into bond-slavery was required to do work to the value that he or she would have been worth if already a bond-slave in another man's household.

There was no way a man could avoid serving with his relative if either of his parents was in need of help and he did not have the wealth to look after them – not even if he was already another man's bond-slave when the parents' need for care arose. The relative who cared for the parents could claim the parents' son or daughter as his bond-slave by paying the first owner the value of the outstanding time left in their contract. If the son tried to avoid changing owners by fleeing the country or by refusing to move, the man who cared for his

parents could make it public that he claimed the son as his bond-slave in a declaration to five neighbours and – at the first opportunity – at the *þing*. If such a declaration was made, other employers were bound not to give the relative shelter and not to employ him in any way.[10]

Mothers took precedence in this kind of care: if a son was already looking after his father when his mother fell ill, he was obliged to pass the care of his father on to the father's (unspecified) kin, while he himself served as a bond-servant to provide for his mother if he could not provide for both. Even if a son was not first in line to inherit from his parents, he was, nevertheless, obliged to look after them if he could afford to do so. *Grágás* specified that for close relatives 'having enough wealth to look after them' meant that he had enough wealth to provide for his household (consisting of those needy relatives he already provided for and those needy relatives whom he was about to look after) for two years. Similarly, a more distant relative could not refuse to look after the parents if he had enough wealth. However, the amount of wealth required to force the relative to look after distant relatives became larger as their relationship became more remote. Thus, in the case of relatives in the third degree, enough wealth to maintain the parents for three years was required, and, similarly, relatives in the fourth degree required wealth for maintenance for four years.[11]

Parents' obligations towards their children

The law expected parents to provide for their children's upbringing as best they could. The law thought it proper that the father's contribution should be two-thirds and the mother's one-third. However, if the parents had entered into a *félag* – a communal holding of goods – they were to contribute to the maintenance of their children in the proportion in which they had contributed to the *félag*.[12] The law's phrase 'that each man must provide for his children' did not necessarily mean that the parents were supposed to keep them as members of their household or support them financially.

Canon 128 explicitly gave parents the option to sell their children as bond-slaves if they were too poor to look after their children themselves. However, this option was offered as a remedy of last resort. There was another possibility open to the parents: to enter into bond-serfdom themselves (one presumes that bond-slave parents still kept their children with them in their new employment). The canon reads:

> One can do as one chooses: enter bond-serfdom for one's children or hand them over to others in bond-slavery. Every man in this country must provide for his child.[13]

Family members in need of care, be they the householder's parents or children, were to be looked after in a household and were thus provided with a permanent place of residence. In a slightly puzzling statement, *Grágás* states that, if the householder was too poor to look after them all the time, they were rotated among their kin. This statement was probably intended to cover the situation where the householder was too poor to care for his children, while the rules for the care of parents, i.e. the householderís duty to sell himself into bond-slavery, still held true. Normally, they would change carers on the *fardaga,* the long weekend six weeks into the summer (i.e. the last Thursday to Sunday in May or the beginning of June) which coincided with the day that servants were required to take up new employment.[14] However, the law made it clear that if their need arose at a different time the needy person must be provided with care at once and not left to his own devices. If the people in need were the householder's parents, their wealth – if they had any – was to be shared among their carers in proportion to the time they cared for them.[15]

When children were fostered out, there was no requirement that the forster-carers were blood-relatives. However, the law tried to make sure that the children remained in the same geographical area where they had lived before the fostering: five neighbouring farmers could be compelled to look after the children in turn on pain of fines. The fact that these needy children and the needy parents were to be rotated among

carers was to be made public in agreement between the previous carer and the person providing the next period of care. The neighbours were to draw lots to determine who was to look after the children first, while in the case of the needy parents, the son could name the first carer. Not only were money fines of three marks imposed on neighbours who refused to care for the children, but the defaulter was also liable to pay double alimony to the previous carer if he was thus forced to look after the children for a longer period than originally planned.

Single parents

An awareness of the special circumstances of one parent families is not confined to the twentieth century. *Grágás* presumed that cohabitation and the existence of children indicated the existence of a marriage bond and offered a number of rules designed to enforce the rights of the single parent against the former spouse or the former spouse's kin. If either parent was unable to provide for the child his or her obligations towards the children were taken over by the parent's kin. Poverty was one reason for a parent to default on his or her duties, another reason was divorce. The latter was probably more frequent in Iceland than in the rest of Europe in the early part of the period during which the *Grágás* formed the basis of law in the country, for *Grágás* provided much easier access to divorce than canon law. An annulment of marriage could be granted for three reasons additional to reasons allowed by canon law:

1. If one spouse attacked the other and the spouse sustained major injuries, such as the loss of an eye or tongue.[16]
2. If the husband wanted to force his wife to leave the country.[17]
3. If the couple were too poor to look after their children or their parents.[18]

In the last case the initial approach to the bishop was to be made by the spouse whose wealth was threatened by the maintenance of the parents. If the problem was the

maintenance of the children, the parents' kin could also bring the case for the dissolution of the parents' marriage.[19] If a divorce was granted, the raising of the children continued to be a shared responsibility between the parents. When a couple with children divorced or separated they were expected to continue to provide for their children in proportion to their wealth. Single parents could expect a contribution towards the children's upbringing from their former spouses. This contribution was to be measured out, not according to the parents' wealth, but in relation to their ability to work, which was presumably measured by their relative incomes. If the single parent could still not provide adequately for the children their kin was obliged to help them. The responsibility for bringing up the children in a dissolved marriage did not automatically go to the woman. The law shows no clear preference for either parent and affords the possibility of an agreement[20] in which the child went to live with either. Its only concession to biology was the rule which stated that if the child was still breast-feeding at the time of the dissolution of the parents' marriage, the mother should keep the child for a year, regardless of any agreement that the child was to be cared for by the father.[21]

A widowed or divorced mother and a widower father continued to have a claim for help in the bringing up of children against their spouse's kin. If a man died before his children had grown up, and their mother was able to look after them, the father's obligation to provide for the children was to be met by his kin. The father's family was thus required to provide maintenance for the children. This kinship obligation was reciprocal: if the mother died before her children were adults, her kin was obliged to contribute to the children's upbringing if the father needed assistance to look after them. If the surviving parent did not have the means to look after the children in their household, the children were to be looked after by the parents' kin: the care of two out of three children would go to the father's kin and one in three to the mother's kin. In a case where one of the parents had more than enough wealth to provide for him- or herself, but not enough to care properly for the children – and

the children therefore lived with relatives – that parent was obliged to contribute to the maintenance of the children with all his or her surplus wealth.

The hreppr*'s responsibility*

Grágás, as we have so far seen it, described a comprehensive system of responsibilities, which provided for people who had surviving kin able to look after them. This system of care was based on kinship relations, taking its beginnings in the nuclear family. Kin was called upon to assist when a family member became dependent on care and that care could not be provided by the nuclear family. Each individual had inescapable duties towards parents and children, and might be called upon to help provide for more distantly related kin. Blood ties did not exclusively define these kinship obligations. An Icelander had a duty to care for the first generation freed slave if he himself had given the slave his freedom and if the freed man was unable to provide for himself or could not be looked after by his children.

A system of welfare provision based around kinship ties (real or *de jure* as in the case of the freed slave) is clearly not sufficient to provide care for all needy people. It is in its awareness of this problem and in its detailed provisions for the large group of people who could not be provided with care by members of their kin that the compilation of Icelandic law – to my present knowledge – is unique. *Grágás* subdivided Iceland into *hreppr*. These were independent administrative units that existed within the geographical boundaries of the farms of a minimum of twenty free farmers – sometimes referred to as *hreppsmenn* – who were wealthy enough to pay the *þingfararkaup*. In exceptional circumstances the *hreppr* could include fewer than twenty members, but a smaller unit had to be authorised by the *lögretta*.[22] Authorising the size of such a small *hreppr* was the only decision in which the central *alþingi* had any influence over the business of the *hreppr*. In all other matters the *hreppr* were independent. The subdivision of Iceland into *hreppr* was old even by the time of

the codification of the law and the institution may be as old as the earliest settlement of Iceland.[23]

The *hreppr* combined the duties of a charitable organisation with the powers of a court. Although totally independent of the Church, the *hreppr* collected and distributed tithes and other mandatory contributions to the poor and assigned help or care to those poor who were entitled to help according to a previous decision by the *hreppr*.The *hreppsmenn* shared the obligation to provide for poor and needy people resident in the *hreppr* if the latter could not provide for themselves according to the rules laid out above. For those who were not so poor that they needed the *hreppr*'s help, the *hreppr* also administered an insurance system for livestock and houses. Although interesting in itself, the insurance aspect of the *hreppr* will not concern us here.[24]

The administrative structure of the hreppr

Each *hreppr* appointed five *sóknarmenn*, whose responsibility it was to oversee the distribution of the wealth collected by the *hreppr* and to supervise care for those poor who were the responsibility of the *hreppr*.Their office also included the duty to convene the *samkoma* – a compulsory meeting of all members of the *hreppr* which imposed fines on defaulters of the tithes and decided on the distribution of tithes among the poor residents. *Grágás* mentions meetings of the *samkoma* three times a year: around Lent, after the spring-*þing* and in the autumn. The tithe law section in *Grágás*, which is the main source for the following, mentions only one meeting: the one in the autumn. Three of the five *sóknarmenn* also functioned as prosecutors summoning *hreppsmenn* who had not met their obligations to the poor to answer before the *samkoma*. We may surmise that the office of *sóknarmaðr* was not a desirable one: performing the duties of office offered the possibility of conflict with *hreppsmenn* who were unwilling to fill their responsibility for the poor. Perhaps in an attempt to avoid accusations of partiality, the office was distributed by lot or by unanimous vote. Normally the *sóknarmenn* were

landowners, but the appointment of a tenant or indeed a servant[25] could be confirmed by a unanimous vote. However, regardless of status he must have had some wealth, for, in an attempt to ensure that reluctant *sóknarmenn* did not neglect their duties, fines were imposed on them if they did not perform the duties of their office. *Grágás* saw the *hreppr* as the executive for the provision of care for the needy in Iceland and for the distribution of the tithes raised for the poor. The duty to care for another person could be imposed on any Icelander but as was the case in other Scandinavian countries and in medieval England contracts of maintenance could be set up by a person who needed care. As was the case in England these contracts meant that a needy person could buy care from unrelated householders in return for a portion of the inheritance which they left behind. Because rules for these contracts do not vary substantially from country to country, further analysis will not be offered here.

Procedure for bringing a case of care before the hreppr

Any member of the *hreppr* could bring a case before the *samkoma* to draw attention to a needy person. As a first step the man believed to be the one who stood to inherit the most from the poor man was called before the *samkoma.* When he appeared, five neighbours swore an oath that the man summoned was indeed the main heir of the needy person. If this was agreed, the heir was examined about his ability to look after the needy man who had been presented before the *hreppr.*If the heir was unwilling to take on responsibility for the needy poor man, he could plead poverty. This plea was to be proven by the oath of his five closest neighbours. A successful oath did not mean that the defendant was totally absolved of responsibility for care, since the next step was an enquiry into his ability to provide at least a part of the expense involved. If it became clear that the defendant was unable to provide anything towards the care of the needy person, the plaintiff or any other member of the *hreppr* could

summon the nearest kinsman of the defendant so that he could be examined to establish whether he was able to provide for the needy man. This summons did not have to be instantaneous: provisional care could be provided in the *hreppr* for a year before the kinsman was summoned to the *samkoma*. The second defendant could defend himself in two ways to avoid being appointed to care for the needy person: he could either point to another person who was more closely related to the needy person or claim poverty. Both defences were proved by the oath of five neighbours.[27] If the second defendant successfully claimed poverty, the needy person was to remain with whomever was looking after him when the case was first initiated.

Methods of care

As we have seen, *Grágás* sought to exhaust the possibilities for familial care before allowing the poor to become the responsibility of the *hreppr*. But if a resident member of the *hreppr* was in genuine need and all attempts to identify a kinsman who could look after him had failed, the *hreppr* provided care for him or her. The law showed equal concern for those who could look after themselves in their own house and those who could not and tried to provide care for both. The *hreppr* provided care for its poor in one of two ways, according to their need. Those who could still look after themselves were to remain at their farms, while those who could not were assigned to individual households in the *hreppr* for a period of time after which they were moved to another household and thus they were circulated among the households of the *hreppr*. The latter were called *göngumaðr*[28] or *úmagi*[29], the former *þurfamaðr*[30]. Provisions for the poor came out of the tithes that all men who paid *þingfararkaup* were obliged to pay. Tithes were not paid on yields as in the rest of Europe, but on property, and thus should have provided a fixed amount for poor relief every year. Tithes were imposed at the autumn meeting of the *hreppr* on the basis of a sworn declaration of their wealth performed by all men and women over sixteen

years of age. The tithes were approximately one percent of a person's total wealth, and fines were imposed on those who gave a false declaration.[31] The income from the tithes was divided into three roughly equal parts: Bishop's tithe, Church tithe and poor tithe. The poor tithes were divided evenly between the *þurfamenn* resident in the *hreppr*, unless the *samkoma* decided that the year's tithes were large enough to contribute to the maintenance of the poor in a neighbouring *hreppr* and that the neighbours were more needy than their own poor.

The calculation of tithes took place at the autumn *samkoma* which was held four weeks before the end of summer. The contributions to those paupers who could still look after themselves in their homes imposed at the *samkoma* had to have been handed over to the poor before the feast of St. Martin of Tours (11 November). Each *hreppsmaðr* had the responsibility to pay individually named poor people living in his area. If he did not he could be summoned for non-payment before an extraordinary *samkoma* by the poor man himself or by the appointed *soknarmaðr*. The law found it necessary to try to prevent *hreppsmenn* from handing second-rate or stolen goods to the poor by specifying that the contributions to the poor must be wholly owned by the donor and that they must have been paid for in full. Contributions to the poor raised by help of the tithes were intended to enable the poor to look after themselves by their own labour or trade. Among the items that could be requisitioned as part of the tithes we find mention of cloth, wool, sheepskin, food, and livestock of any kind, except horses, which were too valuable for a man to be forced to give up. Luxury items could be given to the poor, too, but the donor had to accept that the *þurfamaðr* might sell these items: if a mantle was given as poor relief it was to be 'of such a quality as one would find in ordinary trade.'[32] If it became necessary to assign full time care for one of the *hreppr*'s poor, the man who stood to inherit the most from a needy man – whether he was a kinsman or not – had the principal responsibility for providing it. *Grágás* reminded him that the paupers who were assigned to him were to be treated as well as his household servants. The *hreppr*'s man

was specifically reminded that his duties included the provision of the pauper's clothes.[33] If the heir who stood to benefit the most was not rich enough to provide for his pauper, the responsibility moved on to the heir who stood to receive the second largest portion of the inheritance. If he was not able to provide, the heir who was third in line should provide, etc. as far as the beneficiary's second cousins. While secondary beneficiaries were obliged to provide aid, they could decline the responsibility if they did not have sufficient wealth.[34] The primary heir had a stronger obligation towards his needy benefactor. If the needy man was placed in care with one of the secondary beneficiaries, the primary heir was obliged to contribute to the needy man's upkeep to the best of his ability. In practical terms this meant, that although the needy man was not a member of the primary heir's household, he was obliged to hand over as much as he could spare from his own income to the carer.[35]

Heavy fines were prescribed for those who did not pay the poor relief required of them by the *hreppr*. If the poor relief tithes were not paid on time or were withheld entirely, the defaulter was fined six marks and had the duty to pay double the amount the *hreppr* had originally asked him to contribute. If a carer allowed any of his charges to go begging he was fined three marks.

Food help available to the needy

The help available to needy people in Iceland was comprehensive. Help could be provided in a voluntary contractual relationship between the needy person and a carer or it could be imposed as a legal obligation to care for a relative or as part of one's duty towards the *hreppr*. Provisions ranged from full residential care, either with relatives or carers appointed by the *hreppr*, through annual assistance funded from the tithes paid by all free men, to occasional gifts of food.

Fasts were to be observed by most Icelanders.[36] Food saved during the fasts was to be given to the poor. The householder

was responsible for the distribution of the food that he and his servants would have eaten during Lent to those members of the *hreppr* who did not pay *þingfararkaup*.[37] A further three meals were to be distributed to the poor in the autumn. The food distributed to the poor was to be meat-based: white food, i.e. fish, was not allowed. For fifteen days of the year[38] hunting was limited to polar bears, walrus, beached whales, fish so close to shore that they could be taken without nets or tackle and moulting birds that could be taken by hand. One fifth of any catch taken on these days and of the catch on other holy days of the year, when more animals were allowed, was to be given to the poor.[39]

Wandering beggars

To receive help from the commonwealth the poor had to have a permanent place of residence. *Grágás* had no sympathy for wandering beggars. In an attempt to define when a man who roamed the countryside became a beggar *Grágás* decided that any able-bodied man was liable to full outlawry if he had received alms and slept where he could find shelter for a fortnight.[40]

Vagrants were outcasts: their kin was not responsible for their children unless the vagrants attached themselves to a household. If a beggar strayed into a meeting of the *þing*, no one present was allowed to feed him. Furthermore, if a man attending the *þing* left his tent open and a beggar sneaked in to eat of his food or if he came into the tent while people were in it and the owner of the tent did not take immediate steps to expel him by calling other men to throw the beggar out, the punishment for the tent-owner was banishment. On the other hand, the tent-owner and his helpers were not liable for any injury sustained by the beggar in the course of his expulsion. Nor could a beggar set up a booth from which to beg for food. Such booths were not protected by the law (as were all other booths at the *þing*), and any one who tried to prevent the demolition of beggars' booths was liable for banishment or, if they died in the process, they were to be denied a Christian

burial. Away from the *þing* a beggar could not call on the law to protect his goods if he were carrying any with him. Anyone who was not a beggar could take the beggar's things if he so wanted, even if the beggar was only transporting goods belonging to another man.

In a chilling aside in the section on fornication, the law allowed the castration of male beggars, even if they died as a consequence of the mutilation. However, it is doubtful whether the rule was intended to extend to all beggars. Its inclusion in the section on who was allowed to prosecute a case of fornication suggests that this was not a general licence to castrate beggars, but that the punishment was seen as appropriate when a male beggar had fornicated with a resident woman.[41] The ordinary punishment for fornication between resident partners was banishment of the man. Female beggars were a little better off. Fornication usually carried the punishment of banishment, and female beggars had no recourse to the courts if their union with a settled man did not produce a child. However, they could initiate a paternity suit against the man if there was a child. The man would not be punished for the fornication, as he would have been if the woman was settled, but if the fornication was proven, the child received those rights due to a son. The man was also required to accept the female beggar in his house until the child was born and the mother had regained her health.[42] *Grágás* does not say how long the law thought this would take. In other canons of the law it is mentioned that women were to enjoy special privileges as mothers for between one and three years. However, given the law's general hostility towards beggars it seems unlikely that a female vagrant would be allowed such a long time to recuperate after childbirth.

The strict rules of the law concerning vagrants applied to those beggars who were beggars by choice. If a needy person was forced into vagrancy or reduced to begging – or even just allowed to do so – despite having been assigned care, the defaulting carer faced fines of three marks.[43] Even stronger sanctions applied to the man who brought a needy man with him to the *alþingi* and allowed him to beg for food or abandoned him there. Regardless of whether the needy man

had been assigned for care to the man who brought him there or was assigned to another, the man who introduced the needy man to the *alþingi* was liable to banishment.[44]

Conclusion

This article has outlined the rules on care for needy people found in the medieval Icelandic law codes known as the *Grágás*. This law code provides a comprehensive system of care for those residents in Iceland who needed it. Not only did the rules describe the responsibility of the kin group, but they also provided for care for paupers who did not have surviving relatives. Care was forthcoming through two channels: the family and the *hreppr*.The former had the primary responsibility for the provision of care and the responsibility revolved around the nuclear family.

Care was also provided for those who had no living relatives able to look after them. Help for this group of Icelanders was provided by the *hreppr*.This unique institution not only estimated the individual's need for care and tried to identify their living kin, but also provided care for a pauper until such kin was identified and had answered to the *hreppr* about their responsibility. If the *hreppr* was unsuccessful in its search for relatives, it would take on the care of the pauper itself. The *hreppr*'s ability to take responsibility for care came from its assessment and collection of church tithes, one third of which were to be used to help the poor. Tithes in Iceland were calculated on the basis of the wealth of the community and thus should have brought in a certain minimum amount every year. The *hreppr* provided care in several ways: full residential care, temporary help to those in need who could still look after themselves and their farms, and occasional food gifts. Temporary aid consisted mainly of gifts that were designed to help the pauper help himself, either through the sale of the gift or by further refinement of raw materials such as wool.

This article has only been able to give a brief sketch of the system of care that *Grágás* provided in Iceland, but even such

an outline has brought one or two surprises. *Grágás* shares its concern for the definition of parental duties with many European laws. But *Grágás* reaches a higher level of sophistication in providing rules and an administrative system for those whose kin was unable to look after them. The unique features of the *Grágás* are, firstly, its rules for the *hreppr*, the secular institution which combined the responsibilities of the church and the community in an effort to care for those with no kin, and, secondly, its provisions for a workable system of care in the community.

The nature of the surviving sources of information on Iceland's past may forever prevent us from knowing if this system worked satisfactorily, but the law's concern for the poor of the land is clear. Future research may clarify whether, in its concern for the poor, the *Grágás* was centuries ahead of other European law codes.

Notes

1 'Iceland' in Phillip Pulsiano and Kirsten Wolf (eds): *Medieval Scandinavia: an Encyclopedia*. Garland Encyclopedias of the Middle Ages, Vol. 1; Garland Reference Library of the Humanities vol. 934. New York and London, Garland Publishing Inc. 1993. Cf. William Ian Miller: *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland*. Chicago, Chicago University Press, 1990: 16, who favours the higher figure. of 50.000-100.000.

2 Bishop Gizurr Ísleifson introduced the Tithe Law in 1096 while new canons to the Christian law concerning fasts were attributed to bishop Magnus Gissursön (1216-1236).

3 *Grágás* Ia 159; II 320, cf. Miller: *Bloodtaking*: 25.
The edition of *Grágás* used throughout this article is the edition by Vilhjálmur Finsen in the three volume 1974 photographic reprint from Odense University Press (V. Finsen, ed. and trans., *Grágás*, Vol. 1, *Grágás, Islændernes lovbog i fristadens tid, udgivet efter Det kongelige Bibliotheks Haandskrift*, Det nordiske Literatur-Samfund. Copenhagen: Gyldendalske Boghandel 1879;*Grágás: stykker som findes i det Arnemagnæanske Haandskrift: Nr. 351 fol., Skálholtsbók og en Række andre Haandskrifter tilligemed et Ordregister til Grágás, Oversigter over Haandskrifterne, og Facsimiler af de vigtigste Membraner*, Kommisionen for det Arnamagnæanske Legat. Copenhagen: Gyldendalske Boghandel 1883). I have used Finsen's sigla to refer to the individual manuscripts of the *Grágás* as follows: Ia (*Konungsbók*, first part), 1B (*Konungsbók*, second part), II (*Staðarholsbók*), and III (*Skálholtsbók*).

4 *Grágás* Ia 44. The fact that attendance at the *alþingi* excused a man from paying *þingfararkaup* and that attendance was subsidised by payments from non-attendants has been seen as an attempt to enforce the duty of all free men to attend the *alþingi* (*Grágás* III:701)

5 One must presume that the eighty-year old had to conform to the definitions of mental capacity found in the section on the appointment of jurors to hear evidence in homicide cases and in questions of the end of guardianship. A juror in a homicide case had to be able to ride a full day's journey, he was to be able to round up his own horse after stopping at a wayside shrine if the horse had had its legs tied together and he should be able to walk alone in paths and highways that were familiar to him. Another, less picturesque, definition of legal competence is found in the situation when a boy wished to take over his inheritance from his unwilling guardian. If the guardian argued that the boy was not mentally sound the question of his sanity was to be settled by the oath of five neighbours.

6 The law acknowledged the very real possibility that the law-speaker might be infirm in its description of the business to be performed on first day of the alfiingi: We shall go to the Law Rock on [Saturday] and move the courts out for challenging [of the judges for interest] at the latest when the sun is on the western ravine crag, seen from the Lawspeaker's seat at the Law Rock. The Lawspeaker is to go first if he is in good enough health; then the chieftains with their judges ... (*Grágás* Ia 45).

7 *Grágás* Ia 224, 246-7; II 68, 83-45.

8 *Grágás* Ib 126. The limitation in the right to deathbed gifts is a f eature of almost all European common law codes.

9 *Grágás* Ia 37; Ib 4, 25; II 139-40.

10 *Grágás* Ib 128.

11 *Grágás* Ib 4, 25.

12 For an presentation of the institution of the *félag* (with particular emphasis on Danish medieval law), see Frederik Pedersen 'The *fællig* and the family: the understanding of the family in Danish medieval law'. *Continuity and Change* 7 (1992) 11-22.

13 *Grágás* Ia 128.

14 *Grágás* Ia 128.

15 *Grágás* Ib 5-6. The law is unclear about whether the division of the parents' wealth was to take place on the parents' death or when care was first provided.

16 *Grágás* Ib 40, II 168, III 53.

17 *Grágás* Ib 44, II 172, III 421.

18 *Grágás* Ib 39-40, II 168, III 35, 420.

19 *Grágás* Ib 39-0, II 168-9, III 35, 420. These reasons for divorce were later superseded by the rules in Ib 236, II 203 and III 457 which brought Iceland's divorce rules into line with the rest of Europe.

20 The law is not clear about who the parties to such an agreement were: between the parents or their kin.

21 Elsewhere the *Grágás* calls for a nursing woman to enjoy certain privileges for a period of two years, see below, note 37.

22 The *lögrétta* was the legislative arm of the *alþingi*. It consisted of

39 *goði* and nine appointed free men, 12 men from each administrative quarter of Iceland (*Grágás* s.v. *Lögrétta*)

23 Cf. *Grágás* 1 234: "All *hreppar* should remain as they are now." Cf. also Jón Jóhanneson: *A History of the Old Icelandic Commonwealth*. Winnipeg, University of Manitoba Icelandic Studies, Vol. 2, University of Manitoba Press, 1974: 86 and *Kulturhistorisk leksikon for nordisk middelalder*. O. Olsen, P. Skautrup, N. Skyum-Nielsen and A. Steensberg. Copenhagen, Rosenkilde og Bagger, (22 vols), 1959-1978. Vol. 18:287-291.

24 The *hreppr* provided insurance against some of the more common misfortunes of peasant society. A member who lost more than a quarter of his herds to disease or who lost his house by fire could receive some compensation from the *hreppr* (Miller: *Bloodtaking*: 19-20.)

25 "griðmaðr" *Grágás* Ib 206.

26 For an analysis of the institution of *fledføring*, see Pedersen 'The fællig and the family':16-17.

27 *Grágás* Ib 11-12

28 *Grágás* Ib, 178,179; II 257,258.

29 *Grágás* Ib 3.

30 *Grágás* 208, 214,228; II 50, 60; III 47.

31 Miller: *Bloodtaking*: 36; *Grágás* Ib 255.

32 *Grágás* I 208: "i varar feldom".

33 *Grágás* 1 234.

34 Ia 37; Ib 4, 25; II 139,140.

35 Ib 3-4.

36 All healthy individuals between the ages of twelve and seventy were required to participate in the fasts. Those who were ill were not required to observe fasts, nor were pregnant women. Breast-feeding mothers were allowed to eat meat during the first Lent after childbirth (*Grágás* Ia 35). If the child was born during Lent the mother could breastfeed for three consecutive Lents, i.e. for two years. Every legally competent man and woman was responsible for observing the fasts. Only when a person found himself stranded on a remote island and unable to get to inhabited areas was he allowed to eat meat during the fasts. But even then the permission was only if he would die of hunger otherwise. Legally incompetent people, such as the insane and wards guardianship, were also required to participate in the fasts, but if they ate forbidden foods or broke a religious fast by eating meat their guardians were punished by the law. The fast-breaker was only to be punished if he or she understood that he had broken the law (*Grágás* Ia 35. One final fast remains: the man who supervised the mowing of the meadows, and therefore did not work, had to fast while this work went on. The men who mowed the meadows were to be given their usual food. The supervisor was warned not to run to work "in order to eat before the others." (*Eigi scal setv maðr lavpa til verks ef hann skylldi fasta. tilþess at hann scyliþa heldir matazk en aþr.* (*Grágás* Ia 35).)

37 *Grágás* Ia 31. One must presume that *Grágás* intended this food for the *hreppr*'s poor, and that those men who did not pay

þingfararkaup because they attended the *alþingi* were not supposed to receive these handouts.

38 Christmas day, the eighth and thirteenth days after Christmas, Easter Monday, Ascension Day, Whitsun day, the feasts of Mary's Purification, Nativity, Annunciation, and Ascension, the feasts of St. John the Baptist and SS. Peter and Paul, "Church Day" (*kirkiv dag*) and the feast of fiorlak (*Grágás* Ia 32).

39 *Grágás* Ib 32

40 *Grágás* Ia 139.

41 *Grágás* Ib 203; II 151.

42 *Grágás* Ib 47; II 178.

43 *Grágás* Ib 3

44 *Grágás* Ib 12