

LAWS AND FLAWS IN THE CONSTITUTION OF

THE ICELANDIC FREESTATE

This paper deals with a society of the Middle Ages. It is an anthropological analysis of the constituent elements that built up this society and defined it as politically autonomous and culturally unique. The paper is also an attempt to explain why this social formation could not persist, by exposing its inherent structural weaknesses.

The point is that from the very settlement of Iceland, at least two sets of contradictions were latent in the social system, but it was only as time passed and certain external and internal pressures increased that these contradictions and their mutual interaction became fatal to the Freestate. One contradiction was primarily related to a pattern of action and consisted in the opposition between self-help and law. Another was primarily a matter of thought-systems and related to the distinction between Christianity and paganism. When the state came into being these oppositions did not interfere with one another, but they soon collided and the resulting social and conceptual conflicts undermined the autonomy of the state from within, so to speak, and laid it open to the intrusion of a foreign colonial power.

The actual course of the argument is as follows: first, we make a short excursion into the historical origin of the Icelandic Freestate, and then proceed to an outline of the actual formation of the state. Subsequently we describe the major points in the development of the law, which is seen to be a dominant category in the defining parameters that enclosed the reality of the state. Finally we give a short account of the decline and fall of the Freestate, and conclude with some remarks of a more general nature.

Historical origin.

Iceland was first discovered by Irish hermits in the eighth century, as far as is known from archaeological and contemporary literary evidence. Apart from the evidence of archaeology and place names, it is difficult to tell how important the Celtic element became to Icelandic society, through the monks and through Celtic slaves captured by the Norsemen. The majority of the monks left Iceland to escape the heathen Norsemen, just as many Norsemen had left the Nordic countries to escape a spreading Christianity. In such movements we can see the conflict between Christianity and more traditional world-views that loomed large in Europe in the middle-ages, and that posed, in Iceland, a latent cultural dilemma, marking the rise and fall of the Freestate and impinging itself upon the social lives of the Icelanders for centuries. The dilemma was not solved, but rather deepened, by the official legislative introduction of Christianity in the year 1000.¹

Even as late as 1527 we find an example of the deep-rootedness of this opposition: the two bishops (and they were the last Catholic ones) could not reach an agreement upon a certain point and they agreed to let it be decided finally by single combat (holmgang), which is a heathen practice par excellence. Even though the bishops took care to let the actual fight be conducted by substitutes, the fact remains that the highest religious office-holders had to resort to a heathen practice, which had officially been abandoned in 1006. Although clearly illegal, their action still had a kind of legitimacy when need arose. When

other legal means failed holmgang was institutionalized as the means of laying the solution in the hands of the pagan gods that gave people their strength.

In this small case, we have also an example of the other inherent contradiction in Icelandic society, that between self-help and law, of which further evidence will be given later. At this point I will confine myself to a warning against taking paganism as a representative of anti-law, and Christianity as law in any general sense. This would be wrong, and distorting to the argument.

The Norsemen came to Iceland in the 860's, originally by chance en route for the previously discovered Faroe Islands, and then, in the voyage of the Norwegian viking Floki, with the intention of establishing a settlement. Floki only stayed for one winter, and left discouraged by the severity of the climate, naming the land Iceland in recollection of his troubles. After this the first true settlers arrived, and the time of the landtakings began. The settlement is described in the Land namabok, the book of the landtakings, which is one of the oldest documents from this early period. There were definite rules as to how much land could be claimed by each settler, with both men and women, providing they were free born, having the right to do so. Men, however, could claim as much land as they could go around on horseback in a day, while women could only claim as much as they could drive a heifer around in the same time.

The motives of the Norse aristocracy for settling in Iceland were various, but prominent among them was a desire to escape the growing authority of the Norwegian monarchy. First among the settlers was Ingolf, who settled where Reykjavik is today. The time of the landtakings is normally considered to be the period from 860 till 930, when the Althing came into being.

The formation of the state.

The prime marker of the Freestate is the Althing. It is not only the political event which made it a state, it also forms a prime symbol of cultural identification, the potency of which can hardly be overestimated. The constitution of the Althing is, then, both an event and an ideological charter, and this dual character corresponds to the ambiguity inherent in the concept of the 'formation of the state'. In the following pages we shall explore these two issues, broadly described as concerning events and structural relationships respectively. The interrelationship of these elements is crucial to the argument throughout the paper.

When the settlers first came to Iceland, they were primarily defined by their home of origin. From the literature, - the historical documents as well as the sagas - we know how important it was to establish personal identities by recording both the genealogical and geographical origin of the man or woman concerned. We may surmise that this concern with origin for the first generations of immigrants resulted in a pattern of fragmentation as a charter for conceiving of Iceland, but there was also a certain unifying principle in the fact that the settlers, or most of them, shared a set of religious categories derived from a common Scandinavian paganism.

An important set of symbols deriving from this is found in the temples that were established throughout Iceland. The temples were all built as a result of private initiative and for private means, and obviously only the wealthier among the immigrants could afford this. Wealth was

a prerequisite, not only for the actual building of the temple, but also because the founders automatically became temple-priests and needed a continuing income for celebrating the religious feasts. On the other hand there was a kind of tax to be paid by the less wealthy people who attended the temple. As a consequence of this pattern of religious adherence the people were divided into two categories: first, the religious leaders, the godar, and second, a group of followers, connected to the leaders by bonds of religious and economic interest. These bonds created political units, defined not by borders but by centres.

The godar soon became pivotal to the social life in general, and while the religious institution upon which their power was based was in one sense an expression on the ideological level of a shared and unifying principle, it soon became a further means of fragmentation, because each of the godar and the units they represented were small kingdoms of their own, and conflicts between them resulted in frequent fights between the congregations. As there were no boundaries, there was also a latent power-game between the godar, who wanted to attract as many followers as possible, since the outcome of conflicts was to a large extent dependent on the number of armed men that belonged to the unit.

This situation was untenable. The settlers who had come to Iceland to escape fighting in their homeland soon found themselves engaged in permanent struggles with their next-door neighbours. It was decided, then, to establish a set of laws applying all over Iceland to put an end once and for all to the expedient of taking the law into one's own hands. It is not clear who actually took the initiative, but apparently it was a kind of collective demand, and the thoroughness and care involved in the project leaves no doubt as to the long-term policy which it expressed.

A man by the name of Ulfljotr was appointed legal commissioner and, as such, he spent three years in his native country of Norway, where he studied the Gulathinglaw, and consulted with the legal experts there. Ulfljotr returned with the first Icelandic constitution, often named the 'law of Ulfljotr', of which the most important element was the institution of the Althing, or general assembly.

Before the Althing could start work, the Icelanders had to decide on a convenient locality for its annual meetings, and to this end the foster-brother of Ulfljotr, Grim Geitsko, was sent travelling around the island to explore the possibilities. After three years he chose a certain place within the boundaries of the original landnam of Ingolf, later named as the plain of Thingvellir². It was indeed an appropriate choice: favoured by history as the land of the first settler, and extremely favoured by geography in its topographical features, being a sunken plain, enclosed by steep mountain slopes, and entered through gorges. Furthermore it was enriched by a running river that meant grass for the horses, and in it an islet (a holmr) fit for single combat. History and topography thus favoured the choice but contingency also played a part. For a certain period, the land in question had been owned by a man who had murdered a freed slave. The slave's name, Col, survives in the place name of Colsgjá - Col's gorge - which according to the legend was where his body was first found. For this deed the landowner was outlawed by the community, and his land became common property, since the slave had no free relations who could inherit it (cf. Kålund 1877:94). In this social contingency we can detect a strong symbol of the Althing: lawlessness turned into law, self-help subordinated to common judgement. As we shall see later, the contradictions inherent in this were not solved by the constitution of the Althing, but for

the moment and as the constitutive event in the history of the Icelandic Freestate, the emergence of the Althing in 930 A.D. is of singular importance.

According to the constitution the island, that from now on we may call a country or nation, was to be divided into 12 Thinglag, each consisting of three godidoms or temple units. The priests attached to the chosen temples were to be chief-godar, and, by contrast to the original godar, the three chief-godar of each thinglag were to be given clearly defined political rights and obligations. One particular obligation involved presiding over a Spring Thing and a Harvest Thing to take place 8 weeks before the Althing and 'not later than 8 weeks before winter', respectively. At the Spring Thing, a court was settled to deal with law suits of various kinds. The court consisted of 36 members, appointed by the three chief-godar of the thinglag, 12 by each. The Harvest Thing appears to have had a less formal character, since no courts were established here. Hence, no law suits could be dealt with, and on the whole the main function of the Harvest Thing seems to have been to provide a setting where the news from the latest Althing could be spread among the inhabitants of the thinglag.

Supreme to the twelve thinglag and the Spring Things was the Althing, which was to be held every year at midsummer. The three godar were under obligation to go there, and with them every ninth farmer of each of the three godi-doms. The remaining farmers (still counted among the wealthy ones) were to contribute a certain fee for the journey of the group. In this way the obligations were spread out in a relatively just manner, and, in theory at least, it was only once in every nine years that a man had to go to Althing, apart from the godi who had to go every year. From the literature we know, however, that in certain circumstances the godi might ask more thing-men to go with him than he was entitled to. Despite the law, it was still looked upon as an advantage to be able to back specific claims by force.

Clearly the chief-godar were now conceived of as representatives of larger units, but they were also still their own masters, and - since the godi-doms were still defined by centres and not boundaries - any farmer or peasant could change his affiliation with the godi, as he wished, though only once a year. In this way it was possible for a godi to attract a larger number of thing-men than his fellow godar and since the godar could claim no more than every ninth of the farmers of his unit to go with him to the Althing, the relative importance of any single godi could easily be seen from the number of his followers at the Althing.

The institution of the Althing comprised two main bodies, a legislature and a judiciary. In this the Icelandic constitution was unique both in relation to the Norwegian law upon which it was modelled, and in relation to the law in general in Medieval Europe. The refinement of the law to this degree is a matter of specific Icelandic achievement, and the singularity of the Icelandic Freestate was partly defined by the uniqueness of its law.

The judicial power was in the hands of 36 men, appointed by the 36 chief-godar. They were to deal with the lawsuits which it was not possible to settle at the Spring Thing. The legislative power, on the other hand, was solely in the hands of the Althing, or rather of the Logretta, the institution which was responsible for the making and refining of the laws. The Logretta consisted of the 36 chief-godar themselves and a chairman appointed by them, usually chosen from their own number. The chairman was called the Law-speaker, because he had to

declare the laws from the lawmountain; but also in another respect he was indeed the speaker of the law, having to memorise the laws over the years, since they were not written down until 1117. It goes without saying that the Law-speaker gave his personal imprint to the laws, even though he was only considered to be repeating them. The Logretta not only had to do the legislative work, it also had to administer certain grants, dispensations and, apparently, clemencies for convicts sentenced by the judicial authority. No matter what the case, the decision made by the Logretta, as well as by the court, had to be unanimous to be valid.

The division of state functions into legislative and judicial power was, indeed, a political achievement without parallel in contemporary Europe. However, once the power had been split up and was no longer encompassed by a single structure, the very bounding of the discrete domains left one domain completely absent - that of the executive. It was left to the plaintiffs themselves to execute the verdicts, and in this sense the very opposition between self-help and law was built into the law itself. No sentence could be enforced unless it could be backed by some kind of physical force. If a certain godi was sentenced to pay, say, blood money to the kin of a victim of his, he could in fact choose not to do so if he was powerful enough. In the beginning the anarchical tendencies inherent in this were not directly disruptive to the society, since a man was always subject to common judgement also, and the power of any godi was still dependent on his ability to attract followers. These might well choose to leave him if they found his behaviour too much in conflict with common values.

This short outline of the first constitution of the Icelandic Freestate gives rise to the question of whether it was a state, properly speaking. This matter of terminology is really of secondary importance, however, for what stands out is a well-defined political system which forms a coherent whole and which acts and reacts within a specific environment. The Freestate, through its institutions, set a frame for conceiving of the collectivity as a unit in opposition to other units of the same logical type. It was a self-contained political system, whose prime symbol and political centre was the Althing.

The Althing was the centre of the state in many ways. We have already discussed it as a political centre, whose creation was the constitutive event in the history of the Freestate. Socially, however, it was also the definite focus of the community that once a year found itself attracted to the Althing, which then was the nation for a couple of weeks. In general terms, the Althing was on top of the hierarchy of political institutions. From the moment of the political event that made the Althing emerge, the people of Iceland were no longer just Norwegians once or twice removed, they were Icelanders.

From the viewpoint of information theory, the Althing was certainly also the centre of information, and as such it represented the main cohesive factor in the society, when loosely employing the terms of argument advanced by Deutsch (1966). From the literature, whether 'true' historical documents or not, we know that the informative element of the Things was very important on many levels. We also know that the true culture heroes of the Freestate were the men who knew how to use the information available at the Althing. First, of course, among the loci of information was the office of the Lawspeaker, who theoretically might have been the only one who knew the laws in their entirety. But the laws did not constitute the only relevant body of information. There was also much personal, social, economic and

political information to be gathered from the structure and events of the Althing. 'Leaders' were the men (and sometimes women) capable of manipulating the symbols that were created at the emergence of the Freestate, by using the information on various levels and tying it down to a more fundamental ideological charter so that their manipulations seemed 'right'. Symbols are means of communication, and to communicate the specific Icelandic reality a new set of symbols was created simultaneously with the political institutions, and corresponding to these. This then was the basis of the Icelandic autonomy: a particular way of treating information through a whole set of self-referring symbols (cf. Deutsch 1966:214-15). Again the Althing was the most inclusive symbol in a hierarchy of symbols. It was a dominant symbol, to use the terms of Turner (1964), and in this sense the national ideology was vested in the Althing.

We are now employing the term ideology as a deep-structural fact. It is here conceived of as a p-structure³ for cultural identification, seen as a continuous process of self-definition, expressed in a variety of s-structures. In this sense the notion of cultural identification is closely linked to the concept of ethnicity as understood by Ardener (1972). And this is where the actual label-state, nation or whatever-we choose to attach to the Icelandic Freestate becomes of minor importance. What matters is that Iceland was a self-defining unit, from the very moment of its first constitution, the law of Ulfljotr. It was a definition-space (cf. Ardener 1975), where geographical, historical, political and social parameters encompassed a specific Icelandic Reality.

Later developments of the law.

As we now take the point of view that the Althing, and the law connected with it, was the dominant element in the Icelandic Freestate, the later developments of this law will now be outlined in brief. Through this procedure we may gain some insight into the structural weaknesses of the constitution, weaknesses that were later to lead to its fall. The constitution of Ulfljotr remained unchanged for some thirty years only, till 963, when a chief-godi from the Westlands, named Tord Gelle, suggested a new law, or rather, as it turned out, a new constitution. The change was advocated mainly with a view to the difficulties in dealing with cases of murder within the framework of the old law, but it also radically affected the composition of the total set of constitutive laws. This indicates that killing was a main source of disintegration, not only of the small local communities but of the society at large.

According to the old legal rules, homicide was always a matter to be dealt with, in the first place, by the Spring Thing. It had also to be the particular Spring Thing out of the 12 Spring Things of the country that was closest to the scene of the crime. The reason for this practice was that proximity would facilitate obtaining the truth from witnesses and others able to give information. But as Gelle himself had experienced, this procedure, although possibly true in an ideal world, had some unintended and unpleasant consequences in the real world. The plaintiff of a foreign thinglag did not have a fair chance of getting justice if the defendant was powerful within his own thinglag. Once more we get an impression of the anarchical tendencies that were from the outset part of the law, and we see the contradiction between self-help and law forcefully expressed in cases of killing and subsequent actions, legal and otherwise.

Gelle's suggested solution to this, one which was agreed upon by

the Logretta and hence acknowledged as a new defining parameter of the state, was firstly that the Freestate should be subdivided into Four Quarters, with specified geographical boundaries. Each Quarter was divided into three thinglag with the exception of the Northern Quarter which, because of its peculiar topographical features, claimed four. Moreover, now that the principle of bounding had been introduced through the division of the country into Quarters the thinglag also tended to become established with fixed boundaries. Since the number of godar was now 39 instead of the original 36, due to the establishment of a fourth thinglag in the Northern quarter, the Icelanders were threatened with a breach of the duodecimal system to which they felt committed through their cultural heritage. They solved this by restricting the Northern Quarter to only 9 members at the court, regardless of the presence of 12 godar each entitled to elect a representative. In the case of the Logretta, of which all the godar had to be members, the problem was solved by raising the number of members to 48 instead of the original 36, allowing a further three members each to the Southern, Western and Eastern Quarters.

The new institution of the Quarter Thing did not exist for long, but the principle was maintained through a division of the Althing into Quarter Things. The intermediary level of the Quarter Thing was maintained in all lawsuits, although it did not take place at a specific time and locality outside the Althing. The Quarter Courts, subordinate to the Althing in respect of time and space as well as in judicial practice, were to consist of 9 members, precisely one quarter of the 36 members of the Althing court. The importance of unanimity of decision, enshrined in the first constitution, was slackened in the case of the Quarter court, since it was decided that six out of the nine members could pass valid judgement.

We might summarize the new elements in the Icelandic constitution as follows: The country was divided into four Quarters, and this introduced a principle of boundaries where a principle of centres had been prevalent before. Due to this principle the Quarter Thing could persist as an institution even when transposed to the plain of the Althing. The Quarter Thing was not defined as a centre in the same way as the Spring Thing had been. One consequence of this, or maybe even the reason for the introduction of this new principle, was that at the level of the Quarter Thing it was no longer the principle of most power to the fittest that reigned supreme, but a principle of some kind of equal representation irrespective of the number of armed men that could be mobilised by each godi. The new legal practices were manifestations of changes in the conception of law, and its relation to the ever more frequent conflicts. It probably does not, however, reflect any fundamental change in the structural relationships that constitute the ideological charter behind the law, since it was still a matter of adjustment, not real transformation. The contradictions persisted in the structure of the law, although a more elaborate legal practice may have made it easier to cope with specific events, at least for a time.

At the beginning of this paper we mentioned two sets of contradiction that seem to have been operative in the Freestate. One of these was a matter of action, consisting in the contradiction between self-help and law; when the first Icelandic constitution was established (Ulflotr's law) we saw how this contradiction was maintained through the failure to institutionalize an executive power alongside the judicial and the legislative power. Gelle's law, originally conceived to cope with homicide, exposes the same inherent weakness: it introduced an intermediate level

of judicial power, but no executive one. It was still left to the parties concerned to execute the sentences between themselves. In 1004 a third law (Nial's law⁴) was introduced, which introduced the principle of majority in the final decision where previously the principle of unanimity had been unquestioned - a recognition that justice might indeed be ambiguous.

Before proceeding any further, we must note that Christianity had been accepted as the state religion in the year 1000. Any belief that this formal introduction of a new religion would terminate the conflicts that arose out of this ideological discrepancy was doomed to disappointment. The adoption of Christianity was, in fact, a major display of the art of compromise, but even though it was very skilfully undertaken by the political personalities involved, the compromise turned out unsatisfactorily for both parties, as ever. We cannot here go into details about the chain of events which eventually led to the adoption of Christianity, involving as it did all the ingredients of a political drama including the taking of hostages by the Norwegian King. The case was brought before the Althing in the year 1000. At a certain point it looked as if no compromise was possible, the Christians and the heathens being opposed to each other to the point at which the state was splitting into two. In fact, the two parties were convinced that no solution was possible, and two Lawspeakers were appointed by the two parties, to represent and reproduce the two divergent sets of laws that were to obtain in Iceland. The outcome of this would have been two states with distinctive laws and with distinctive heads, the two Lawspeakers, but without distinctive boundaries. This solution seemed untenable, however; the ideological 'either/or' would have reflected only the views of the extremists on both sides and would, in any case, have threatened the unity upon which the nation was founded. As it happened, however, the 'both/and' solution, which was the final outcome of the dramatic incidents at the Althing of that year, threw the autonomy of the Freestate into jeopardy, though perhaps in a more subtle way. What happened was that the Lawspeaker appointed by the Christians negotiated with the Lawspeaker elected by the Heathens, and they reached an agreement that the latter was to make a compromise, since none of them liked the idea of creating two states within the same boundaries. The mediator, Thorgeirr, then had to produce a solution that would satisfy both parties, and considering the degree of excitement that prevailed at the meeting, and the amount of violence already involved, it was no easy task for him. Strangely enough he did succeed. From the sources we know that he first convinced the people that splitting the state into two would be disastrous. Then he suggested that Christianity should be generally accepted with only one or two exceptions: the practices of exposing newborn babies and of eating horsemeat should be allowed; sacrificing to heathen gods was also permissible, provided it was not witnessed by anyone prepared to testify in court.

In this extraordinary way the ideological contradiction between the two systems of thought was finally acknowledged as part of the Icelandic reality, but this did not put an end to the conflicts that arose from it. On the contrary, the cases of conflict seemed to increase. This was also partly the outcome of certain demographic and economic features in the country. The population had increased rapidly over the years and was now nearing a maximum, given the amount of land available. The whole of the island was now under plough. In fact, in the period of the Freestate, much more of the land was under cultivation than later on. Even today the land is not exploited to the same extent as it was in the Freestate. In later periods people tended to keep closer to the coastal area instead of fighting the hard winters of the central lands. Because

of the increase in population and the increase in amount of land under plough more and more wealthy men were without formal political influence. This seemed so much more unjust because they were defined as Icelanders, and owed their position to their work within this society, whereas the earlier office holders who were still reigning were originally defined by their social origin and rank in Norway. In addition the political offices were originally heathen offices (the godar) and this now seemed somewhat inappropriate to many. Hence the social conflicts seemed to result from more deep-rooted problems than was realised before, and as a result of this a new legal institution came into being.

The invention was the Fifth Court, created in 1004. It was a kind of supreme court to which were deferred such cases as could not be unanimously decided upon by the Quarter Courts. The Fifth Court consisted of 48 members but only 36 were to take part in the verdicts of specific cases. To bring the number up to 48, another 12 godis were created, and the new godar were to elect 12 members of the Fifth Court, while the old godar were to appoint the same number of men as they did to the other courts, namely 36. This meant that some of the new godar obtained an office, which distributed the power among more people. Even more significant was the decision that still only 36 were to take part in the voting in specific cases. It was decided that each party, plaintiff and accused alike, should have the right, and indeed the obligation, to exclude 6 members from the assembly. In that way the persons most involved could always be excluded from the final decision, an acknowledgement of some kind of conflict between private and public interests that had hitherto been negated ideologically. Also, it was decided that the decision of the Fifth Court should be valid if held by a simple majority of its members. The law now overtly points to the latent conflicts within the society, and it is admitted that there can be no single justice.

As for the Logretta, the newly appointed godar were not to be members, as the old godar automatically were. Hence, the legislative power was still in the hands of the office-holders who had obtained their office through ascription (the offices were normally inherited from father to son), while the judicial power was delegated to men who had obtained office by personal achievement (the 12 new godar were elected from among influential and wealthy men who were renowned for political skill). This difference between legislative and judicial power points to a conception of the law as by definition anchored in tradition, whereas judgement must be a more pragmatic device for dealing with cases of conflicting interests. This point is worth noting because it illustrates the idea held by Crick (1976) that any legal system is characterised by a dual dimensionality: it consists of a primary set of rules that relates to different types of actions and deals with particular events, and a secondary set of rules that belongs to a different logical type and concerns questions of precedent, interpretation and changes in the law (Crick 1976:99). In terms of levels, the first set of rules expresses a deep-structural, generative and semantic relationship. In these terms, we find the judicial power in the Freestate to be mainly administering the first set of rules, while the legislative power, the Logretta, is a prominent expression of the second set of rules.

The Logretta did not remain totally unchanged, however, since a principle of advisers was introduced. Each godis was given the right to bring with him two advisers, so that the number of men partaking in the sessions of the Logretta now amounted to 144, 48 original members and 96 by-sitters. But it was still only the original 48 members who had franchise, and even though some authors want to see in this the

principle of democracy finally entering the Icelandic constitution (e.g. Gudmundson: 1924), that would still be far too generous a conclusion. The power was still exclusively in the hands of a few wealthy people, and all the common people were at the mercy of the big land-owners, as they had always been. When the last major change in the Icelandic law took place the total population was about 75,000 people, which is no small number compared to the 200,000 inhabitants of Denmark at the time. Even though the members of the Althing were in a sense elected as representatives, it was still only the interests of a certain class that were directly represented.

After this only one more change in the legal system remains to be mentioned, the recruitment of the bishops as members by ascription of the Althing when the two dioceses were established in 1056 and 1106, respectively. This was no major change in the constitution, but can be seen as the last of a series of events, generated by the structural contradiction between two sets of ideological relationships, leading finally to the fall of the Freestate. Also we should note that the practice of holmgang was finally forbidden in 1006. Until then holmgang had, in fact, fulfilled the function of a supreme court and had been a legitimate way of deciding the cases that the Quarter Thing could not decide unanimously. But whereas with holmgang the supremacy derived from the pagan gods, the Fifth Court was decidedly human. holmgang was considered superfluous after the establishment of the Fifth Court, but as we know, the practice continued for many hundred years.

The laws were first put into writing in 1117-18 and from then on it became apparent that there was inconsistency in their interpretation. We know from later sources that many versions of the law existed, and even though this is a feature of a state in a steady process of disintegration, we may also see it as an expression of the inherent contradictions that had had other reflections in the society before their written codification. Obviously, when the rendering of the laws had been solely a matter of the memory of one man, the Lawspeaker, and the recollection of his annual speech at the law-mountain by a number of godar with their own interests to defend, there must have been wide variations in the actual legal practice from one Spring Thing to the next as well as from case to case within the same Thing. The principle of unity could still be maintained in theory, but once the laws had been written down, and the discrepancies were there for all to read, the belief in a common practice and one supreme justice received a severe blow. Before, the reality had been characterised by a unified ideal view and a diversified practice, but now the situation was wholly fragmented. Even the basic legal rules became a matter of personal interests, since interpretation was obviously a matter of choice. In the existing balance of power the emphasis was now on power, where previously balance had been stressed.

The law as a dominant conceptual category.

We have referred to a conception of law as basically consisting of two sets of rules relating to two different levels of reality, and referring to two different logical types. We shall now elaborate this point, with an eye to the effects of law in other parts of the social setting. By way of introducing the matter we shall start inquiring into the reverse of law - lawlessness.

Lawlessness obtains at two levels, as does law, First, at the

level of the social surface, it refers to the actions that are considered illegal by common standards. These are acts that are met with negative sanctions, or general moral condemnations. With elaboration of the laws and the enforcing of common standards, law-breaking becomes increasingly common as a matter of definition. In that sense the process of elaborating on the laws points to an increasing lawlessness in a double fashion, and the whole process becomes one of selfreinforcement, while the basic contradictions remain unsolved. The strongest possible negative sanction on behalf of the community was outlawing, which was usually done in serious cases of murder⁵. The outlawed person lost all civil rights, all property, and could be killed by anybody. A slightly milder form of outlawing was expatriation. Even though outlawing and expatriation in effect seemed much the same for the convicts, the two practices entailed different conceptual connotations, outlawing being based upon a stronger feeling of cultural defence than expatriation, which latter was largely a matter of protecting personal and social interests. Those of the expatriated who either did not leave the country or came back while they were still under sentence of expatriation⁶, and the outlaws who managed to save themselves by fleeing to uninhabited places, were collectively labelled 'outlying men' (udliggermand), and as time went on the category came to include runaway slaves and various kinds of supernatural beings, trolls, elves, etc. This category looms large in folk tales of a slightly more recent date (cf. e.g. Jørgensen 1924), as well as in the contemporary writings. In the old days, the main load of the semantic category of 'outliers' seems to have been one of real persons.

However this may be, the emerging category of lawlessness by itself points to the existence of the deeper of the two levels of law. That the possibility of outlawing people existed at all indicates that there was a strong feeling of the law as providing a basic charter for conceiving of the society. We see, therefore, that law and non-law alike contain elements at two levels.

In the present context it is worth noting that the category of lawlessness came to be associated with a particular region, later named Udadslavamarcken ('the lava field of misdeeds'). This is a rather large area of wasteland in 'the middle of the island', which belongs neither to one nor to the other Quarter, but lies on the borders of the Northern, Southern and Eastern Quarters. Strictly speaking Udadslavamarcken might be placed within the thought-of boundaries of the Northern Quarter, but as it was merely wasteland the boundaries were never sharply drawn. The outlaws could find some kind of refuge there because they were left alone. Of course it was difficult to survive on wasteland without any livestock, but there seem to have been tracts of less arid land in which they could live, and according to the literature, whether sagas or folk-tales, there was quite a community of outlaws. This may have been a product of imagination, since many outlaws seem to have found refuge with distant relatives, or with friends. They could do this and remain safe, as long as they were not discovered. Due to the difficulties of communication in those days the odds were not so bad as they would now seem. But socially, at least, they did disappear, and it was said of them that they lived in the lava field of misdeeds. In this way, the 'wild' of the Icelanders became a matter of spatial specificity, just as 'lawlessness' is a well-bounded conceptual category. The 'wild' is essentially anti-social and when it merges with the supernatural in the shape of all those uncontrolled spirits and trolls (opposed to the pagan and Christian pantheons alike) we get an impression of a powerful symbol of the non-cultural which by mere opposition acted as a defining parameter

in the Icelandic definition-space.

If the absolute centre of this definition-space is the Althing, we find in the Udadslavamark a kind of anti-centre, where all the evil and disintegrative forces are located. In this way 'law' becomes opposed to the 'wild', as society to non-society, and this is the major evidence for the law being a dominant category in the self-definition or cultural identification of the Icelanders.

In another way, too, the law is reflected in the spatial organization of Iceland. Where the picture of centre/anti-centre is mainly related to the basic semantic category of law, the spatial reflections which we are now to point out relate to the law in a slightly different way, being mainly an expression of the organization of the legal institutions. Haugen (1969) has analyzed the use of the directional terms east, west and so on, and found that they are not mere reflections of the directions as defined by the compass. We shall not repeat his analysis here but point to the fact that the directional terms are used as reflections of the Quarters. This tendency is sufficiently clear to allow us to maintain that the division of the country into Quarters had far reaching implications for the conception of space of ordinary people. In this sense the Althing may be seen as a kind of micro-cosmos, reflecting the larger country.

Significant in the organization of the Althing, too, was the relationship between the place of the old law-mountain, and the oxararholmr where holmgang took place. It is tempting to see here a parallel to the centre/anti-centre relationship that seems to have obtained for Iceland as a whole, expressed in the relationship between the Althing and the field of misdeeds. Of course, the topographical features of the plain of Thingvellir were given by nature at least in rough outline (though apparently the river was artificially led through at a place where it had not been originally, according to Jónsson (1922:8)), but it is certain that one reason for choosing this plain in the first place was that it displayed an extraordinary fitness with the cultural models in force. Even though the basic features of space are given by nature, once it is used by man it becomes loaded with culture and the 'semantics of space' becomes an object of social anthropology.

In respect of the division of time, the law also enters as a dominant category, in that the Icelanders always conceived of the years as 'winters', that is the period in between two sessions at the Althing. This may also be related to the practice of using the moon instead of the sun as basic time-divider (cf. Gudmundson 1924:88-89). Clearly, the law was reflected in many social and cultural categories, and was indeed a dominant conceptual category within the Icelandic Freestate.

The Fall of the Freestate.

As already indicated, despite a steady process of refinement, general respect for the law seemed to decline considerably as time went by. In the second half of the twelfth century the dissolution reached a point of no return. The disintegrative forces were internally of two kinds, and there was an increasing pressure on the state from external systems. We shall briefly explore these sets of disintegrative factors, starting with the internal ones.

From the outset we can loosely divide the internal problems in two:

first, there was the contradiction between the Church and the traditional chiefs, and the gradual out-weighing of the latter by the former; second, there was continuous strife between the chiefs themselves, a veritable power-game between particular kin-groups which was partly a reaction to the increasing power of the Church. First of all the bishops became members of the Althing, thereby driving a wedge into a system which was at least theoretically in balance. Through this wedge, the Church gradually gained more and more influence by constantly putting traditional values under question. In the beginning the bishops seem to have held back, but as time went by they could no longer passively watch the moral deficiencies of their fellow-Icelanders, and they started to condemn certain practices. First among the deeds now banned by the Church was the frequent practice of taking mistresses or 'wives to the left hand'. From unions of this kind a considerable number of illegitimate children were produced and there was no social stigma attached to the fact of being born out of wedlock. Illegitimate children were full members of the household, and even in cases where the mother was a slave, a child received full membership of the paternal household and was considered to be equal to legitimate children. They were not 'the same' however, because they were distinguished by the fact of having different mothers. We know for instance from Nial's saga that among the sons of Nial was one who was born of Nial's mistress, a thrall-woman, but in every case which later on involved the sons of Nial, he was in a sense first among the brothers. Furthermore, there appears to have been a very harmonic relationship between the wife and the mistress in this particular case, and from this saga, as well as from other evidence, we get an impression of a totally unproblematic social practice. Even the christened godar took advantage of this 'right', which suddenly became one of the main targets for the priests. We should note here that once Christianity had been introduced priestly services gradually became a function of religious specialists, where they had formerly been in the hands of the godar, who also held the political power. The priests now became more and more numerous, and as they took over the religious functions, one cornerstone of the power of the godar disappeared and a split between religious and secular affairs was introduced. This split, which had in some sense already been a latent contradiction, now became a direct source of conflict because it received a very tangible expression; there were now two groups of people that could actually fight each other. The very fact of the increasing intrusion of the church in the affairs of the godar led to considerable strain between the two groups, and this in turn induced the second set of internal problems that eventually led to the fall of the Freestate.

This second factor in the disintegrative process is found in the increasing frequency of fights between the godar themselves. They fought mainly to gain absolute power within a region, and once more we can blame the law itself for making it possible at all to concentrate the power in a few hands. From the beginning the godi-offices had been subject to inheritance, but as a democratic principle it had always been possible to achieve a godi-office by different means, whether by being appointed as the successor of a particular man without appropriate heirs, or simply by buying it. Now the chiefs started to expel one another and to buy or steal all possible godi-offices so that they might gain more power. By holding the offices they were the ones to appoint the members of the courts, and they had to concentrate their efforts if they were not to be outmanoeuvred, by each other or by the church. The result of this 'armament race' was that towards the

end of the Freestate each Quarter was ruled by one or two families, who were legally able to take the law into their own hands.

These two sets of internal constitutional problems relate to the contradictions that were mentioned in the introduction. The conflict between the Church and the chiefs personalized the contradiction between Christianity and paganism in an unexpected way. Until this time it was principally a matter for philosophically minded individuals. The second set of destructive forces relates to the opposition between self-help and law, but this opposition was now concentrated in single persons, who could legally take the law into their own hands. Since these persons were also the ones to fight the church, we can see an increasing convergence of the two sets of contradictions. When external factors were allowed to play their part the internal interference was fatal.

In respect of the relationship between the Freestate and those social systems outside it, two points should be noted. First, the Norwegian king was increasingly annoyed by the independence of Iceland, partly due to his own problems in balancing the Church. We should note here that within the organization of the Church, the Icelandic religious offices were under the supervision of the bishop in Nidaros, who thus had a larger 'people' than had the king. And it was mainly through the Church that the king gradually gained influence on Iceland, where the conflicts made the weaker among the inhabitants look among themselves for a leader.

However, this might not have been destructive to the same degree had it not been for another reason that concerned the means of communication. When the settlers first came to Iceland they came by boat, of course, and for the first century, at least, big cruises and merchant expeditions were still part of life in Iceland. It was considered to be an important element in the training of young men, to let them go, say, to Norway. At least one member of each generation was supposed to go abroad. In the beginning the goal was often to see relatives or to administer inherited land in the country of origin, but also the mere adventure, and the possible fights that might result, were considered to be of educational value. As time passed, however, the original fleet wore out. As there was no timber available on Iceland it was impossible to restore the fleet on home ground, and few men were wealthy enough to be able to go to Norway and see to the building of a new boat. This decline in the possibilities for Icelanders to communicate out of the country at their own wish had consequences at many levels. The commerce now came into Norwegian hands, to the extent that in sources from the thirteenth century, no references to Icelandic-owned boats are found at all, while they had been few even in the twelfth century (Jones 1964:38).

In the first century of the Freestate the Icelanders themselves had been the out-going people, and the definition space created was maintained partly through this monopoly of communication, which allowed them to define and readjust their reality as conceptual problems emerged. But when they were gradually closed off and when extra-societal communication became a privilege and a power of Norwegian merchants, their fate was sealed. It became impossible to receive information from outside which could outbalance the 'noise' generated within the system.

Even if autonomy is based upon a set of self-referring symbols, independence is not sustained by isolation.

The result of the interplay of these different factors was a

vulnerability to foreign powers, and in 1262 the Norwegian king took over the rulership with the help of traitors who saw some short-term benefits for themselves in securing the power for the king. In the first place it was only the Southern and Western Quarters that gave in, but in 1264 the more stubborn Eastern and Northern Quarters were overcome as well.

After a few hundred years of existence the Icelandic nation became subject to foreign power, and so it remained until this century. Within its short lifespan the Icelandic state exposed a series of different social situations, but essentially they were variations based upon a unique cultural theme, which through the transmitted literature is a powerful symbol of Icelandic identification even today.

In this paper I have focussed upon a single important theme in the Icelandic Freestate, that of law. I have tried to demonstrate how inherent contradictions threatened the nation from its very constitution. Not much need be added here, since history itself provided the conclusion: the fall of the Freestate.

This sketchy analysis is by no means exhaustive. It cannot alone explain the fall of the Freestate. I am convinced, however, that by studying the law and extracting from it some general points we gain an important insight into some of the structural weaknesses that influenced the course of history. Different analyses would yield different answers, and together they would complete the picture.

The point is that anthropology, being related to its subject in both a metaphoric and a metonymic way (Crick 1976:169), is as complex as the reality it seeks to understand and sometimes even explain. As metaphors anthropological models yield understanding by translating cultural features into anthropological discourse. As metonyms the models are themselves to be described by reference to the nature of their content; like any other cultural practice they are part of the human discourse about humanity.

In this sense no analysis can ever be 'the last' - but given a specific reality some analyses would seem to present themselves as among the most urgent. In the case of the Icelandic Freestate an analysis in terms of law seemed to be of prime importance.

Kirsten Hastrup.

NOTES

This paper is dedicated to Niels Fock, whose fiftieth birthday provided the reason for its creation. However, the thoughts presented here are part of my current research on the Icelandic Freestate. They are to be seen as a first sketch, indicating some possibilities for treating historical material anthropologically. The paper is relevant to my conception of certain fundamentals of anthropology (as e.g. the 'field') with which I have dealt elsewhere (Hastrup 1975, 1976). My main historical sources are Bruun (1928), Gudmundsson (1924), Kälund (1877, 1879-82), and Njardvik (1973).

Thanks to Mrs. Olga Vilstrup for correcting some of my linguistic errors; those that remain are, of course, my own.

1. A general orthographical note should be made here. For a rendering in English of Old Norse categories, I rely mainly on Jones (1954). As for the native terms used in the text, I must admit that they are

to some extent Danish versions, partly due to the limitations of a Danish typewriter.

2. The number 'three' appears to be of symbolic importance, rather than of necessary historical truth. Most of the significant events in the history of the Freestate seem to have been a matter of 'three years', as for instance also the landnám of Ingolf.

3. The conception of p-structures, as paradigmatic structural relationships, and s-structures, as syntagmatic chains of events, derives from Ardener (1973).

4. It is so named since, according to Nial's saga (98; 1970:6-8), Nial was the one who originally conceived of the Fifth Court. This is, however, a matter of dispute.

5. There was a distinction between 'murder' and 'killing' in Iceland. Murder was illegal and always considered appalling, whereas killing was a legitimate act in various cases, as for instance in the killing of new-born children prior to their 'naming', after which killing them would be considered as murder. (Gudmundsson 1924: 99). Also in cases of blood-revenge killing was legitimate. In all cases of killing, the killer had to cover up the victim; failure to do this would make his deed classifiable as murder, and outlawing would ensue, indicating that the uncovered corpse was a threat to the whole of the society (ibid.:119).

6. Expatriation need not be for life; it could be a matter of, say, 'three winters'. (Gudmundsson 1924:62).

Editors' Note: This paper has been cut considerably by the editors, with the author's permission, in order to shorten it for the Journal. Any misrepresentations thereby introduced are of course the editors' responsibility.

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