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Exploring the Literary Function of Law and Litigation in Njal's Saga

Henry Ordower

A. Introduction

The Icelandic Saga is a kind¹ of prose narrative depicting conflicts among powerful families during the two centuries after 870 A.D.² that mark the first Norwegian settlement of the area. Anonymous third person narrators, who generally seem disinterested in the events they describe,³ are characteristic of the family saga. Like narrators of modern novels, they often prefer to let the saga characters speak directly rather than to report the characters' comments in indirect speech.

The seemingly objective narrator, with his use of direct speech, occasionally has led readers to conclude that the family sagas accurately record historical events.⁴ Supposedly this history was transmitted orally until it began to be committed to parchment in the late 12th century.⁵ In the scholarship of recent decades, however -- especially native Icelandic scholarship -- the claim has been made that the family sagas were fictional (not historical) accounts composed in a written form.⁶ There have even been attempts to identify the author of these otherwise anonymous works.⁷ Although few scholars still hold to the theory that the family sagas constitute accurate reportage of historical events, a sizable number continue to argue that the family sagas have their genesis in an oral tradition.⁸

The conflicts and feuds described in the family sagas reach their climax in the courtroom as well as on the battlefield. Every family saga depicts at least several attempts to settle differences through lawsuits, mediation, and arbitration. Often a humiliated weaker party is forced to yield the right of self-judgment to the stronger. The legal system and judicial process form part of the stock material from which the family sagas are constructed. Of all family sagas, *Njal's Saga* contains the greatest quantity of legal matter.

Scholarship on *Njal's Saga*,⁹ recognizes that lawsuits and other legal elements are central to the saga, and there is little argument on the overall significance of law for the work as a whole. Some scholars have looked to *Njal's Saga*¹⁰ for historical information about Icelandic law and procedure of the saga age.¹¹ Others have catalogued all the legal "errors" in *Njal's Saga* in order to demonstrate the author's woeful ignorance of Icelandic law and his dependence upon written sources for whatever legal knowledge he managed to acquire.¹²

Although legal elements are structurally common to all family sagas and certainly formulaic to a considerable degree, I believe that the author of *Njal's Saga* employed legal material for a variety of artistic purposes and with specific literary and social objectives in mind. Whether or not he was fully conversant with the intricacies of Icelandic law, during either the saga age itself or his own contemporary Sturlung age,¹³ he exploited the jurisprudential matter masterfully. Legal elements, in conjunction with other features of the saga, serve to define the characters of the saga, advance the plot, and express the author's critique of saga age society -- and his own society as well.¹⁴

Any character involved in the legal process emerges with an enriched personality, occasionally in ironic contrast to previous direct characterizations. Frequently, lawsuits advance the plot and build dramatic tension. But while characterization and plot partly justify the abundance of legal detail, law more importantly provides social commentary about both the saga age represented and the Sturlung age of the author himself. By illustrating the impotence of the judicial system upon which community peace is so dependent, the author expresses his despair, apparently offering a plea for political or legal reform. If the latter desire is as strong as I believe it to be, it also might explain why the author intentionally seems to have distorted procedures with which he indeed was familiar in order to lend greater emphasis to his social commentary by rendering events more dramatic.

The following section of this article briefly summarizes some of the previous scholarship on *Njal's Saga*. In particular, it focuses on the works discussing the significance of the saga's legal material. The article then investigates, explores, and elaborates upon the importance of legal elements to characterization, plot movement, and social commentary in *Njal's Saga*.

B. The Critical Background

Lehmann and von Carolsfeld¹⁵ opine that the author of *Njal's Saga* relied on written sources, especially the *Grágás*,¹⁶ for the legal

elements of the saga but that he appeared in fact not to understand the law. The author's jurisprudential dilettantism manifests itself, for example, in his failure to tailor the legal formulas contained in the written sources to specific factual circumstances. Instead the author of *Njal's Saga* simply used the formulas in full as they appeared in the legal manuscript.¹⁷

Lehmann and von Carolsfeld also contend that, at least in some cases, the author intentionally departed from legal procedures familiar to him. When discussing Gunnar's lawsuit against Hrut on behalf of Unn (chs. 21-23), Lehmann and von Carolsfeld explain that it is unnecessary for Gunnar to follow Njal's advice in order to initiate the action against Hrut through a special procedure at Gunnar's home. The author already accepted the availability of an alternative procedure, publication at the Allthing,¹⁸ to initiate the lawsuit for return of Unn's property when Mord Fiddle¹⁹ sued Hrut on Unn's behalf (ch. 8). Using the procedure suggested by Njal, Gunnar must speak the formulas at Hrut's place of residence. The journey to Hrut's residence and the physical danger of summoning a man on his own property with his own forces at hand could have been avoided had the earlier procedure used by Mord Fiddle been employed. Lehmann and von Carolsfeld interpret the choice of the more complicated and dangerous course of action as follows:

Clearly the author seized the stefna procedure the second time in order to avoid repeating himself. The peculiar masquerade arises from a simple whim of the author to add variety.²⁰

While Lehmann and von Carolsfeld do not analyze in detail the varied literary functions of legal matters in *Njal's Saga*, they seem to establish definitively that the legal elements of the saga are not historically accurate. In so doing, Lehmann and von Carolsfeld lend considerable support to those scholars, the book prose adherents, who view the family sagas as primarily fictional rather than historical narratives.

Lönnroth²¹ takes issue with Lehmann and von Carolsfeld's conclusion that the author of *Njal's Saga* was amateurish in his use of legal formulas. Lönnroth defends the *Njal's Saga* author by demonstrating that in earlier scenes the legal formulas indeed correspond to the facts. He concludes that rote recitation of formulas reflects the author's pedantic preening rather than amateurism. According to Lönnroth, the lengthy segments of procedural haggling display the author's clerical didacticism. The author seizes the opportunity to instruct his reader about the law -- and perhaps to demonstrate just how knowledgeable he is.²²

While Lönnroth agrees with Lehmann and von Carolsfeld that

Njal's Saga is not historically accurate, he does not accept the inference that the author of *Njal's Saga* relied on written sources rather than oral tradition. Since Lönnroth espouses the view that the saga assembled numerous elements from oral sources, he seeks to identify the formula structures typifying oral literature.²³ Thus, he relegates the legal proceedings principally to the role of one among the several building blocks that characterize the sagas as they developed from oral tradition. As such, the legal proceedings are in part historically accurate, but the author employs them in a more or less formulaic manner in the course of composing the saga. In general, under Lönnroth's analysis, the author draws upon stock legal descriptions in the same manner as he draws upon stock characters to fill in the gaps in the narrative.²⁴

Neither Lehmann and von Carolsfeld nor Lönnroth addresses the skill with which the author of *Njal's Saga* exploits his legal material. Even Einar Ól. Sveinsson in his analysis of *Njal's Saga*,²⁵ although generally quite sensitive to the literary skillfulness of the author of *Njal's Saga*, acknowledges, but does not explore, the author's literary craft in managing and manipulating the legal material. "No one else could have succeeded as he did in transforming the legal paragraphs and formulas of chapter 142 into effective and impressive saga material."²⁶ Later, in addressing the reaction of a reader ignorant of Icelandic law and the saga's legal errors, Einar adds: "[t]he reader . . . probably is often impressed and amazed at how much life has been injected into the dry matter of jurisprudence through the wizardry of the author."²⁷ But Einar does not go so far as Lehmann and von Carolsfeld, who ascribe a purely literary function to the legal material and then relegate that function to the author's mere whim.²⁸

Kersbergen²⁹ seeks a more direct literary function to the complicated trials of the Gunnar portion of the saga. She refuses to accept the Lehmann and von Carolsfeld theory of authorial whim. Kersbergen suggests that the author intentionally made matters convoluted in order to downplay incidents that conflict with the saga's image of Gunnar.³⁰ Similarly, Kersbergen views the Fifth Court episode (ch. 97)³¹ as an interpolation having a literary function. She rejects the episode as an historical source because she finds unlikely the emphasis on Hildigunn's arrogant refusal to marry less than a chieftain. Kersbergen thus views the episode as a stereotypical love story, less a history than a standard marriage motif.³²

Gottzmann sees law within the saga more substantively as it relates to individual rights.³³ In Gottzmann's view, the emphasis on the individual explains why revenge operates even where no apparent legal right to retribution exists. For example, it was appropriate to avenge Gunnar even though he was an outlaw. According to

Gottzmann, the saga is indeed tendentious. She concludes that the saga's author intentionally places jurisprudential problems in the foreground because these "expose most clearly the strengths and weaknesses of the internal Icelandic social structure."³⁴ Gottzmann concludes that the legal theme is intended as social commentary, both historical and as lived contemporaneously by the saga writer.³⁵

C. Characterization

Each major character in *Njal's Saga* becomes enmeshed in the saga's numerous legal disputes. The reader arguably learns more about these personalities through their legal interactions than through direct authorial descriptions of them. I begin my demonstration of this claim with the female character, Hallgerd, whose full potential as a character is only revealed through her dealings with the law.

Women generally do not participate in the legal process. Mord sues for his daughter Unn's divorce (ch. 7), Gunnar accepts legal responsibility for his wife Hallgerd's various trespasses (chs. 36, 38, 41, and 49), and men control the property their wives bring to the marriage. Women exert their power and influence when they run the household, initiate disputes, and goad the men to act.³⁶ Thus, it is significant when Hallgerd, whose father is available to arrange her engagement, takes a direct role in the formalities of that event. Lehmann and von Carolsfeld point out that, according to the written sources, it might be acceptable for Hoskuld to confer with Hallgerd about her engagement. However, she would not be permitted to speak the engagement formula for herself despite express approval of the procedure by the Lawspeaker,³⁷ Thorarin Ragi's-Brother Oleifsson.³⁸ It is likely that the author of *Njal's Saga* knew well that the procedure was improper but chose to deviate for dramatic effect. By permitting Hallgerd to speak the legal engagement formula of her own betrothal to Glum, the author of *Njal's Saga* discloses the full breadth of her independence, pride, and willfulness. Even her father no longer dares to handle her marriage without consulting her first and securing her assent by having her speak the formula, thereby compelling her to assume the consequences of her own choice (ch. 13).

Analogously, were it not for his legal dealings, Hrut Herjolfsson would seem a rather uncomplicated figure. The saga characterizes him directly as "a handsome man; he was tall, strong, and skilled in arms, even-tempered and very shrewd, ruthless with his enemies and always reliable in matters of importance"³⁹ (ch. 1). He certainly proves he is skilled in arms when he embarks on raiding journeys during his sojourn in Norway (chs. 5-6), and he shows great restraint and generosity in dealing with the children who mocked his handling of the dispute with Mord Fiddle (ch. 8). Yet, Hrut displays a

darker side in his legal entanglements. He is relentless in pursuit of his Norwegian inheritance (chs. 3-6), even to the degree of becoming Queen Gunnhild's lover. Thus, he curries favor in the Norwegian court in order to secure royal aid toward his goal. And Hrut is hardly a hero in challenging an old man, Mord Fiddle, to a duel, possibly contrary to the law,⁴⁰ in order to avoid returning his former spouse Unn's dowry to her (ch. 8).

If one were to envision the ideal saga hero, Gunnar Hamundarson would fit the image nearly perfectly. Gunnar "was a tall, powerful man, outstandingly skilful with arms. He was extremely well-bred, fearless, generous, and even-tempered, faithful to his friends but careful in his choice of them. He was prosperous (ch. 19)." Gunnar's conciliatory nature reveals itself repeatedly in his approach to legal conflicts. He willingly offers to pay damages to Otkell and readily accepts arbitration even when he may not be in the wrong, as in the ambush prosecution (ch. 66). Only in Gunnar's lawyering do his shortcomings manifest themselves, and then only to make him more lovable. The reader finally has found an activity that Gunnar cannot master. He is human after all!

When Gunnar wishes to help Unn recover her dowry, he elicits Njal's assistance, and Njal sends him on a complex mission; Hrut is to be tricked into helping Gunnar to initiate proceedings against Hrut himself (chs. 22-23). But even with Njal's help, Gunnar proves to be thoroughly inept in legal matters. He cannot advance the lawsuit successfully⁴¹ and resorts to his physical prowess to help Unn by challenging Hrut to a duel (ch. 24). He reveals himself, in a way far more effective than direct description, to be a man of action rather than words, strength rather than intellect.

Mord Valgardsson is at his most malicious and devious in legal matters. His role in litigation complements the saga's direct descriptions of him. Compare Mord's handling of legal process with the initial commentary on him: "He had a malicious cunning, and his advice was always calculated to cause trouble" (ch. 25). Always scheming, he falsely accuses Gunnar of violating the settlement in order to justify Thorgeir Otkellsson's attack on Gunnar (ch. 67).⁴² But (at least to modern sensibilities) no episode in the saga parallels Mord's depravity in destroying the case against Njal's sons for the killing of Hoskuld Hvitane-Priest. By taking part in the prosecution when he was himself one of Hoskuld's killers, he causes a procedural error which, according to the saga, makes it impractical to continue the prosecution (chs. 111-121).⁴³ Also, Mord's readiness to yield the legal right of self-judgment to Hogni Gunnarsson shows the depths of his cowardice (ch. 79).⁴⁴

Mord, together with Njal, Eyjolf Bolverksson, and Thorhall

Asgrimsson, are the four outstanding lawyers who play key roles in the principal litigation of the saga.⁴⁵ The saga portrays Mord and Eyjolf in an unfavorable light and Njal and Thorhall in a favorable one. Unlike Mord, Eyjolf is not demonic. His willingness to assume Flosi's defense only after receiving compensation and the deceptive tactic he uses to win the case probably account for the opprobrium with which the saga treats him.⁴⁶ In the course of the saga, Thorhall never manipulates the law in a devious manner. Rather his role primarily is to counteract the legal machinations of Eyjolf.

If, however, deviousness and manipulation of legal process are grounds for condemnation of a character, one might expect the saga to condemn Njal as well. He seems at least as manipulative and devious as Mord and Eyjolf. It is curious and somewhat ironic that the saga continually portrays Njal as a wise, benevolent, and trustworthy counselor while at the same time heaping scorn on Mord and Eyjolf. Although devious manipulation of legal process is common to unscrupulous lawyers in the saga, it appears that evil motives must accompany the questionable behavior if the author is to condemn it.

Njal is initially described by the author as follows: "He was so skilled in law that no one was considered his equal. He was a wise and prescient man. His advice was sound and benevolent and always turned out well for those who followed it. He was a gentle man of great integrity; he remembered the past and discerned the future, and solved the problems of any man who came to him for help (ch. 20)." Although his conduct in legal proceedings is sometimes questionable, the direct depiction of Njal remains consistent with his initial favorable characterization.

Njal frequently manipulates the law to attain his own ends or the ends of someone he favors. Njal is devious in jurisprudential affairs. His advice to Gunnar in the Hrut-Unn property matter is anything but straightforward (chs. 22-23). He abuses his role as the trusted counselor when he provides bad advice to numerous claimants in order to advance his plan for a Fifth Court.⁴⁷ By providing such advice, Njal frustrates existing judicial process. He creates a legal impasse that compels adoption of his recommendation for establishment of the Fifth Court and accordingly secures both a chieftaincy⁴⁸ and a favorable marriage for his foster son Hoskuld (ch. 97).⁴⁹

If it is not sufficiently reprehensible that Njal betrays the trust others place in him when they come to him for advice, consider the devious manner in which he takes Hoskuld as a foster son. Knowing that Thorgerd Glumsdottir, Hoskuld's mother, the widow of Thrain Sigfusson (whom Njal's sons killed), would refuse an offer by Njal to foster her child Hoskuld, Njal arranges for Ketill Sigfusson to foster Hoskuld. Then with Hoskuld's consent, but not Thorgerd's, Njal

takes over the fostering responsibility from Ketill (chs. 93-94).⁵⁰

But Njal's motives are pure; he acts for the general good and maintenance of peace. Worthy Gunnar is aided, and the Fifth Court is beneficial. Njal takes Hoskuld as his foster son because he hopes to avoid future bloody conflicts and to compensate further for the killing of Thrain.⁵¹ Njal lacks Mord's evil motives and Eyjolf's quest for personal enrichment. His actions vis-à-vis the law are applauded by the author of *Njal's Saga* rather than condemned. While Njal's conduct in legal matters helps characterize him, one gets the impression that the author viewed Njal's most underhanded actions through rose-colored glasses in order to describe him with consistent approbation.

D. Plot Advancement and Dramatic Tension

The Icelandic family sagas employ a variety of devices to explain events and advance or retard the plot as necessary in order to create, enhance, or adjust dramatic tension. Among these devices are dreams, prophesies, signs, and weather disturbances. But *Njal's Saga* relies especially heavily on legal proceedings as its device of choice. In *Njal's Saga*, legal claims without an identifiable foundation arise frequently to move the plot along, and litigation contributes meaningfully to dramatic tension.

Consider the two inheritance claims. Through an inheritance claim, the author provides the impetus for Hrut Herjolfsson's journey to Norway (ch. 2). Hrut is introduced by the saga without mention of his genealogy on his father's side. The reader is not aware that he has relatives or any other connection with Norway. The inheritance claim suddenly appears to disrupt rather routine wedding preparations leading the plot to Hrut's marital difficulties, as well as to his conflict with Gunnar. Similarly, an inheritance claim and an unusually simple procedural error positions Gunnar for the first ambush (ch. 60). Asgrim Ellida-Grimsson's inheritance claim appears without earlier introduction in the saga. Lack of foundation for the claim may not be surprising in itself, but the procedural error accompanying the lawsuit is. The saga implies that Asgrim was a skillful lawyer. It states that the procedural error was unusual for him (ch. 60). But if Asgrim was at all skillful, he hardly would have made so basic an error as naming the wrong number of neighbors as jurymen. Thus the episode appears contrived to allow Gunnar to intervene on Asgrim's behalf as well as to explain Gunnar's journey to visit Asgrim unaccompanied by Njal's sons. His return from that journey affords his enemies the opportunity for their ill-fated ambush.

Unless one assumes that the events the saga describes are historical, it appears that the author seizes legal proceedings to lay the foundation for future saga conflicts. At Hallgerd's wedding to Gunnar,

Thrain Sigfusson divorces his wife Thorhild and immediately marries Hallgerd's daughter Thorgerd. The grounds for divorce are flimsy. Thrain's wife Thorhild composes a verse critical of Thrain's flirtation with Thorgerd at the wedding feast. Thrain immediately names witnesses, declares himself divorced, and asks for Thorgerd's hand in marriage, thereby proving that Thorhild's criticism was justified.⁵² Hallgerd soon appeals to their relationship as in-laws to persuade Thrain to kill Thord Freedmansson, the foster father of Njal's sons (ch. 41). Although Thrain refuses, he is present at the killing (ch. 42), which in turn leads to the animosity between Njal's sons and Thrain. That animosity ultimately results in Thrain's death, and more remotely, in the death of Njal's sons. Although the immediate cause of Thrain's death is insults to Njal and his sons from Hallgerd at Thrain's farm, Skarp-Hedin's comments as he sets out to kill Thrain draw an unmistakable link between this new episode and the earlier death of Thord Freedmansson (ch. 92).⁵³

Similarly, Hrut's divorce from Unn and his refusal to return the dowry plays a material role in the movement of the plot while also serving to contradict in part his previous characterization. It puts Hrut into conflict with Gunnar (chs. 22-24), but this conflict seems almost trivial compared to other conflicts in the saga. The importance of the Hrut-Gunnar episode lies instead in the shift in plot focus it introduces. Characters who played central roles in the introductory chapters now retreat to the background. Hrut becomes a peripheral figure. Gunnar steps to the fore, displaying his physical splendor and his generosity toward Unn. He cows the once hero Hrut with the duel challenge,⁵⁴ just as Hrut had done to Mord Fiddle (ch. 8). Gunnar henceforth and until his death claims a central role in the saga.

The *Njal's Saga* story has three climaxes: (1) the attack on Gunnar, resulting in his death, (2) the burning of Njal and family, and (3) the battle at the Allthing. Unsuccessful prosecutions anticipate and build the dramatic tension leading to each climax.

In the Gunnar segment, a series of failed lawsuits gradually builds the animosity toward Gunnar that ultimately results in his death. Otkel's prosecution of Gunnar for the burning of the storeroom disintegrates for want of support. Otkel settles without compensation. Since Otkel is not removed from the saga immediately, the reader anticipates the escalation of tensions that generally accompanies uncompensated claims (ch. 51). Skamkel's animosity toward Gunnar is a function, at least in part, of the unsuccessful prosecution. That animosity and the accidental injury result in Otkel's death (chs. 53-54). Geir the Priest then prosecutes Gunnar for the slaying of Otkel,

but this, too, fails. Gunnar agrees to arbitration and a monetary settlement and escapes the prosecution with his honor fully intact (ch. 56).

The failure of judgment against Gunnar only renders his enemies more firm in their resolve. They ambush him, but he is again victorious. They lodge an unsuccessful claim against him for the injuries he caused during the ambush. They attempt a second ambush and another legal prosecution of Gunnar, but again both fail. Upon Njal's advice, Gunnar agrees to arbitrated settlements with increasing penalties, including temporary exile in the last settlement. Gunnar accepts the settlements, yet the tension builds with each failed prosecution (chs. 62-63, 66, 72, 73-74). Of course, by all rights Gunnar should be free from prosecution for both ambushes, since he acted in self-defense.⁵⁵ As Gunnar wins each battle and each legal skirmish, the reader feels the growing determination of Gunnar's enemies to procure his defeat. The battles in the courtroom complement the battles in the field contributing to the drama of the episode.

The pace of narration decelerates as the story line moves from the Gunnar segment to the arson segment. Rather than building dramatic tension by the rapid succession of stacking battle upon battle and lawsuit upon lawsuit with only the bare essentials of legalistic detail, the author chooses to develop events at a more leisurely pace. The staccato motion in the Gunnar segment yields to the nearly casual plot movement of the arson episode. Instead of the chain of failed prosecutions that characterizes the Gunnar segment, a single failed prosecution leads equally effectively to the death of the hero in this next major portion of *Njal's Saga* (chs. 121-123).⁵⁶

Njal's sons' slaying of Hoskuld appears as an unusually heinous trespass. Hoskuld dies as a Christian martyr asking forgiveness for his killers (ch. 111). The crime cries out for justice and retribution through revenge or, at the very least, a judgment against Njal's sons. Again the judicial system proves inadequate to provide a satisfactory result. Dread pervades the atmosphere at the Thing. The characters visit the various chieftains' booths at the Thing trying to muster support. Each chieftain whom the defense solicits comments upon Skarp-Hedin's unlucky appearance (ch. 119). Flosi's group prepares the prosecution, but the reader knows that Mord has arranged for all to come to nought.⁵⁷ Some dramatic relief emanates when Mord deals the prosecution the decisive blow (ch. 121), but the tension and frustration of Flosi and his supporters remain at a peak. Njal seeks to delay the ultimate confrontation by arranging arbitration and settlement. Without Njal's sons being declared outlaws,⁵⁸ this settlement is too fragile to survive. Flosi's insult of Njal and Skarp-Hedin's counter-insult finally break the tension (chs. 122-123). The

attack and burning seem mere details; the real drama ended with the lawsuit.

In the next major segment of *Njal's Saga*, the prosecution of the arsonists, the author again retards the motion of the plot. From the brisk advancement of the Gunnar episode, to the leisurely progress leading to the arson, the plot now proceeds with almost plodding tedium. The reader follows seemingly endless and meaningless procedural machinations as the prosecution again collapses, this time under the weight of procedural complexity and manipulation. The author builds dramatic tension by allowing Thorhall to neutralize each of Eyjolf's procedural ploys. Meanwhile, he increases the reader's anxiety by describing Eyjolf's plan to upset the court's jurisdiction over Flosi. Eyjolf's final trick is certain to frustrate the prosecution and lead to a new tragedy. Further discussion of this prosecution continues in the following section.⁵⁹

E. Social Critique and A Plea for Law Reform?

Judging from the family sagas, the Icelanders of the saga period devoted inordinate quantities of time and energy to initiating, gathering support for, and prosecuting legal actions. At the same time it would appear that little was settled in the courtroom.⁶⁰ Lawsuits and prosecutions are so very central to the plot line in *Njal's Saga* that the reader would expect one party to win the odd case here or there. Yet, not a single legal proceeding in the saga runs its course to a judgment. Whenever a settlement is forthcoming, it results from arbitration⁶¹ or, occasionally, from force or the threat of force.⁶²

In *Njal's Saga* we observe a failed judicial system.⁶³ While intricate pleading rules were not unique to saga age Iceland (England's legal system certainly suffered from that same shortcoming), the judicial process in *Njal's Saga* is dysfunctional. All prosecutions disintegrate before judgment, generally as the result of such procedural flaws as Gunnar's clumsy omission of witnessed statements (ch. 24), Mord's intentional destruction of the cause of action against Njal's sons (ch. 121), and Eyjolf's legalistic trickery.⁶⁴ Procedural complexity leads to the manipulation of law, rather than the call to it to produce equitable outcomes.

The wise and noble Njal reveals to us a legal system on the point of collapse. Yet Njal does not eschew legalistic tactics. Thus, although he seeks court reform by establishing the Fifth Court,⁶⁵ Njal then risks considerable bloodshed by providing intentionally unsound legal counsel to frustrate the lawsuits then in progress. Njal here seeks less the improvement of the law than a chieftaincy for his foster son Hoskuld (ch. 97). While the reader tends to abide Njal's manipulations, for they serve virtuous ends, the deteriorating system provides similar

opportunities to those less benevolent than Njal. The intention of the author may well be to bring precisely this understanding to his public.

Lack of necessary but esoteric legal knowledge, failure to follow a known procedure precisely, and outright trickery by the cleverest legal characters, immobilize the judiciary and prevent it from playing a meaningful role in resolution of the serious disputes in *Njal's Saga*. The reader shares Thorhall Asgrimsson's anger with Eyjolf's manipulation of the legal process: "[T]ell them that they should not let themselves be tricked by lawyers' quibbles, for this time Eyjolf's cleverness has failed him" (ch. 142).⁶⁶

Observing that the recurrent failure of the judicial process in *Njal's Saga* leads to repeated tragedy, the reader more than empathizes with Thorhall's frustration when the prosecution of the arsonists collapses. Like Thorhall, the reader loses confidence in the available judicial process. Thorhall's immediate, violent reaction seems intended to shock (ch. 145). While the reader anticipates that grave consequences will flow from Eyjolf's legal "trickery," the blood revenge is so swift and immediate, that Thorhall's personal tragedy, his loss of faith in the law, overshadows the direct human tragedy of the victims of the battle at the Thing.

Upon learning of Njal's death, Thorhall became enraged. "[H]is whole body swelled up; a stream of blood spouted from his ears and could not be staunched. . . . 'My only wish now is to take vengeance'" (ch. 132). Yet he contains his rage, suppressing his wish for revenge in favor of a peaceful, judicial resolution. He seems a true believer in Njal's admonition: "With laws shall our land be built up but with lawlessness laid waste" (ch. 70). However, failure of the legal system peacefully to resolve this dispute compels Thorhall to abandon his reliance on the judicial process and to resort to violence--his first response and the response of too many Icelanders -- for satisfaction of claims.

The battle at the Allthing ensues. The site for peaceful resolution of disputes through law becomes the scene of violence and bloodshed. The juxtaposition of warfare at the Thing grounds indeed must have had a powerful impact on the Sturlung age Icelanders who were the audience for the tale.

The author of *Njal's Saga* seems to have been a law reformer bemoaning the problems of the judicial system of his own age through his descriptions of the failure of that process in the saga age. The parallels would have been obvious to the reader (or listener) of the Sturlung age. Taken together, the legal trickery and other shortcomings of the legal system displayed in *Njal's Saga* appear to express a common theme. The author exposes the serious dangers lurking as a result of this dysfunctional legal system. Possibly he hopes

thereby to avert the disaster that will inevitably flow from it. He is critical of the society -- most probably his own society of the Sturlung age⁶⁷ -- that has permitted its judicial system to disintegrate. Reform is essential. The author's critique is especially effective because it deceptively appears as a merely objective description of events transferred to another age.⁶⁸

Nevertheless the author of *Njal's Saga* does not leave his public without hope. Hall Thorsteinsson of Sida forgoes compensation for the death of his son Ljot, who was killed when trying to separate the combatants in the Allthing battle. Hall's act is unprecedented in the world of the family saga where family honor is so important. To leave a close relative unavenged and uncompensated would normally be shameful, subjecting to derision the person responsible for revenge.⁶⁹ Like the battle at the Allthing, the author exploits the juxtaposition and turns Hall's act into an act of ultimate self-sacrifice. For the sake of peace in the land, Hall is even willing to compromise his own family's honor (ch. 145). Hall's sacrifice is complemented by the author with the final reconciliation of Kari and Flosi (ch. 159), the two remaining major characters with a blood score to settle.

F. Conclusion

Not all scholars would agree with the foregoing reading of *Njal's Saga*, but neither is it irreconcilable with the views of others. Einar, for example, accepts the importance of events contemporaneous with composition of the saga but rejects the notion that the saga might be tendentious.⁷⁰ Although Einar refuses to acknowledge a purely Christian message to the saga, he observes the presence of Christian influence. He contends: "[F]undamentally, the life view of the saga is native, but it has undergone a unique development because of the warm breeze from the south."⁷¹ Lönnroth, on the other hand, views the saga as a product of the clerical mind.⁷²

It is true that much of the Christian aura surrounding saga events is difficult to explain satisfactorily, except as subsequent interpolation, without conceding that the author may have been preaching or at least arguing in favor of Christian ethics. Hall of Sida's willingness to allow his son's death to remain uncompensated (ch. 145), Hoskuld Hvitaness-Priest's prayer for forgiveness of his killers (ch. 111), and Flosi's and Kari's receipt of absolution followed by their reconciliation (chs. 158-59) express the author's preference for the Christian approach to resolving human conflicts. If, as it would appear, the author sought to advance Christian ethics, why reject the possibility that legal failures similarly served an educational and propagandistic purpose!

Such a view of the *Njal's Saga* author's purpose explains in

part why he presents legal proceedings in such detail. While I am in accord with Lönnroth that the proceedings serve a didactic function,⁷³ the author by no means is trying to demonstrate how much he knows. He is not a pedant imparting information for its own sake. Einar persuaded us long ago that the author of *Njal's Saga* is far too skillful for us to render such a judgment against him. For, on several levels the arson trial is among the most effective and memorable portions of the saga. As the reader wades through the seemingly endless point-counterpoint of the trial, dramatic tension builds. The author skillfully defers the inevitable bloody climax. The reader waits anxiously, as Mord (with Thorhall's assistance) barely manages to counteract each of Eyjolf's efforts to lay waste the trial with procedural maneuvering. Like his cleverly legalistic heroes, the author manipulates his reader. Anticipation and dread grow as the author exposes the devastating shortcomings of a legal system that allows the protracted presentation of a case, requires strict adherence to complex formulas and procedures, and yet, even for those who succeed in mastering the trial techniques, is unable to render a verdict to resolve the dispute.

Njal's Saga exposes the futility of relying on a paralyzed legal system that ultimately forces adversaries to resort to revenge. It is easy to see why a segment of the Icelandic Commonwealth's populace would be more attracted to the Norwegian Crown's functional rule of law than to the dysfunctional democratic one already in place. Perhaps the author is observing that Iceland compromised its freedom for the rule of law Norway seemed to offer.⁷⁴

Many thanks to Ilene Ordower, my spouse, who encouraged and ultimately persuaded me to return to an earlier interest and write this article, which lay dormant for many years. Ilene's critique of the various drafts of this article made the final product what it is. Thanks also to my colleague, Dennis Tuchler for reading and commenting upon an earlier draft of this article.

1. Not all literary specialists would agree that the family saga constitutes a discrete literary genre. For a brief general overview of the Icelandic saga, see Stefán Einarsson, *A History of Icelandic Literature* (Baltimore, 1957), or Peter Hallberg, *The Icelandic Saga*, Paul Schach trans. (Lincoln: U. of Nebraska Press, 1962).

2. Traditionally, historians attribute the initial impetus for the emigration from Norway and settlement of Iceland to Harald the fair-haired's unification of Norway under a single crown. Rather than submitting to Harald's rule, many Norwegian nobles chose to emigrate.

3. Some scholars have advanced the view that the disinterest is a mere stylistic characteristic. The author clearly favors some characters and causes over others, while maintaining a seemingly objective stance with respect to his material. See, for example, Lars Lönnroth, *Njals Saga: A Critical Introduction* (Berkeley: U. of California Press, 1976), and see also Carola L. Gottzmann, *Njals saga, Rechtsproblematik im Dienste soziokultureller Deutung* (Frankfurt am Main: Peter Lang Verlag, 1982) for an exploration of

the development and resolution of legal conflicts in a social context from the period. This article extends Lönnroth's and Gottzmann's views and demonstrates that the disinterest is only apparent. The author is very much involved in his subject matter.

4. The term "saga" probably best translates to English as "history," but it conveys much the same ambiguity concerning the reality of the events described as the German word "Geschichte," the French "histoire," or the earlier English usage of the term "history." Compare the Oxford English Dictionary's first definition of "history:" "[a] relation of incidents (in early use, either true or imaginary; later only of those professedly true)," 5 *Oxford English Dictionary* (Oxford: Oxford U. Press, 1933, 1961), p. 305, column 2.

5. The earliest manuscripts of the family sagas date to the early 13th century. Scholars generally agree that the sagas were written (or at least transcribed from oral tradition) during the period commencing in the late 12th and ending in the late 13th century. *Njáls Saga* being among the latest is regarded as having been composed around 1280.

6. In order to demonstrate the lack of historicity, so-called "book prose" adherents carefully examined place names, topographical descriptions, and other written sources for inconsistencies. See, for example, Sigurður Nordal's famous study of *Hrafninkel's Saga*: "Hrafnkatla," 7 *Studia Islandica* (Reykjavík, 1940), English translation by Frank Stanton Cowley, ed., *Hrafnkels Saga Freysgoða: A Study* (Cambridge: Harvard U. Press, 1932). They sought to identify influences from other written sources to demonstrate that saga authors did not simply transcribe from oral sources but independently composed their stories with borrowings from other written sources.

7. See, for example, Peter Hallberg, "Snorri Sturluson och Egils saga Skallagrimssonar. Ett försök till språklig författarbestämning" 20 *Studia Islandica* (Reykjavík, 1962).

8. Lars Lönnroth, for example. See *supra* note 3, and text *infra*, at note 23.

9. *Njal's Saga* is the name of the saga in the standard English edition, which is the Penguin Books translation by Magnus Magnusson and Hermann Plásson, *Njal's Saga* (Harmondsworth: Penguin, 1960, 1974 reprint). English language quotations in this article from *Njal's Saga* are from this translation, and Icelandic language quotations use the standard Icelandic text, Einar Sveinsson, ed., *Brennu-Njáls Saga* (Reykjavík, 1954). The Icelandic title translates as "Burnt Njal's Saga," and the earliest English translation by Sir George Webb Dasent was titled *The Story of Burnt Njal* (1861). Scholars frequently and fondly refer to *Njáls Saga* by the diminutive "Njála."

This article will identify references to and quotations from *Njal's Saga* and the Icelandic *Brennu-Njáls Saga* with chapter numbers corresponding to the standard texts. Both the Icelandic and English texts use the same chapter divisions. These references are embedded in the text in the form of a chapter number in parentheses, (Ch. 23) for example.

10. This is a brief note about aspects of the Icelandic language. Icelandic is a highly inflected language containing certain letters that do not appear in English. The letter "þ" is an unvoiced "th" in English; the letter "ð" approximates a voiced "th" in English. Proper nouns inflect along with other words. The English text adopts the accusative singular case of names because it generally approximates the root form of the name. Many place names and nicknames in Icelandic are translated in whole or part. For example, Höskuldr Hvítanessgoði is Hoskuld Hvítaness-Priest in English.

11. See, for example, Vilhjálmur Finsen, *Om den oprindelige Ordning af nogle af den islandske Fristats Institutioner* (Copenhagen, 1888) at p. 100 et seq. and Finnur Jónsson, "Om Njála," 19 *Aarbøger for Nordisk Oldkyndighed og Historie*, ch. 2 (Copenhagen, 1904) at p. 89 et seq.

12. Karl Lehmann and Hans Schnorr von Carolsfeld, *Die Njálssage insbesondere in ihren*

juristischen Bestandteilen (Berlin, 1883). This monograph will be referred to by the authors' names as Lehmann and von Carolsfeld.

13. The Icelandic Commonwealth lasted from about 930 A. D. when the first Allþingi was seated until Iceland became subject to the rule of the Norwegian crown in 1262-64. The part of this era during which the family sagas were composed has come to be known by the name of one of the powerful families of the time, the Sturlungs. Essentially contemporaneous stories of the events taking place during the family saga composition period make up the *Sturlunga Saga*. *Sturlunga Saga* appears in an edition by Jón Jóhannesson, Magnús Finnbogason and Kristján Eldjárn (Reykjavík, 1946), English translation by Julia H. McGrew (New York: Twayne Publishers, 1970-74).

14. The Sturlung age was extremely volatile. The various chieftancies (*see infra*, note 48) became concentrated in ever fewer hands. As the dominant families sought to consolidate their power, bloodshed ensued. After 1200 the system of quarter courts declined rapidly as an effective judiciary, and revenge and warfare became the order of the day. (On the quarter courts and their control by chieftains who were resident in the given quarter, see Lehmann and von Carolsfeld, *supra* note 12, p. 109; on the jurisdiction of the quarter courts generally, see William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: U. of Chicago, 1990), pp. 16-19.) The period was even bloodier than the saga age. The Norwegian king attempted to bring Iceland under his rule. When use of armed force in 1220 failed, he searched out other methods to gain a foothold. He secured control of some chieftancies in which he installed his Icelandic followers. The crown, with the assistance of the Icelandic church, gradually became an arbiter of disputes in Iceland. Ultimately, the king subverted the deteriorating system of self-rule, and Iceland voluntarily yielded its independence in favor of the stability the Norwegian crown had to offer.

15. *See supra* note 12.

16. *Grágás* (English: Grey-Goose) is a collection of Icelandic laws from the period of the Icelandic Commonwealth which includes both the age in which the action of the family sagas takes place and the later Sturlung age during which the family sagas were committed to parchment. The earliest manuscripts of *Grágás* date from the middle to late 13th century, but Vilhjálmur Finsen in his 1852 edition assumes that the 13th century manuscripts were based on manuscripts dating from the middle of the 12th century.

One should not assume that the *Grágás* accurately records the laws of medieval Iceland. Unlike modern statutes, which a legislative body adopts in their written form, *Grágás* is a compilation of existing laws taken from oral tradition. No legislature enacted the laws in the precise formulation in which the manuscripts transmit them--unless one were to assume that human memory could preserve the law texts *verbatim* through lengthy periods without a written record. Moreover, the compiler of the laws may well have had personal and political goals in mind as he set about recording the laws from the oral sources.

For an English language analysis, *see* Andrew Dennis, Peter Foote and Richard Perkins, *Laws of Early Iceland: Gragas. 3 University of Manitoba Icelandic Studies*, (Winnipeg, 1980).

17. Lehmann and von Carolsfeld contend, for example: "... that the form of the *þýsing* is a thoughtless copy of the formula in the lawbooks without adaptation to the instant case," *supra* note 12, p. 105, translation by author.

18. The Allthing [Icelandic: Allþingi] was the annual national meeting of chieftains and their adherents. The meeting took place at Thingvellir [þingvellir] (the Thing grounds)

where the Lögberg (the law rock) is located, some thirty miles from modern Reykjavík, the capital of Iceland. Allthing also refers to the parliament itself and generally to the courts that met to hear cases during the meeting. The courts for the four quarters of Iceland met during the Allthing. In addition to the Allthing, there were district meetings and court sittings in the spring which also were referred to as þing [things]. See, generally, Jesse L. Byock, *Medieval Iceland, Society, Sagas, and Power* (Berkeley: U of California Press, 1988) at 65-66 and William Ian Miller, *supra* note 14, especially chapters 1 and 7.

19. In Icelandic Mörðr is nicknamed "gígja" which translates as "fiddle."

20. Lehmann and von Carolsfeld, *supra* note 12, p. 48, translation by author.

21. Lönnroth, *supra* note 3, pp. 243-45.

22. *Id.* at 248. Lönnroth infers that the author may have known the formulas so well that he was comfortable dictating them to a scribe. Lönnroth continues:

If this was the situation, it is easy to understand that he decided to give his audience a very thorough lesson in legal procedure, partly at the expense of narrative structure. As every professor should know, nothing breeds unnecessary lecturing as much as a good opportunity to unburden oneself of esoteric learning. *Id.*

23. See, for example, Albert B. Lord, *The Singer of Tales* (Cambridge: Harvard U. Press, 1960) for a general discussion of the formulaic theory of oral epic poetry.

24. Lönnroth, *supra* note 3, pp. 61-82.

25. Translated as *Njalds Saga: A Literary Masterpiece* (Lincoln: U. of Nebraska, 1971) hereinafter "Einar."

26. *Id.* at 27.

27. *Id.* at 34.

28. See text *supra*, at note 20.

29. Anna Cornelia Kersbergen, *Litteraire Motieven in de Njala* (Rotterdam, 1927).

30. Kersbergen writes:

... it does not seem unlikely to me that something other than simply a personal inclination brought the author to these complicated trials. Perhaps through Njal's advice, he intended to create a closer link between Gunnar's Saga and Njal's Saga, or perhaps the oral tradition included all kinds of material which did not agree with the image the writer had formed of Gunnar, and he hoped, without it being noticed, to push these to the background by adding so much detail. (*Id.* at 12, translation by author).

31. See discussion of this episode *infra*, text at note 47.

32. Kersbergen, *supra* note 29, at 46.

33. Gottzmann, *supra* note 3, at 294.

34. *Id.* at 306-7, translation by author.

35. Gottzmann writes:

[When] this individualistic-liberalistic element within the legal theme leads to the nearly total destruction of two important families, then the saga certainly is supposed to shed light upon one of the most central social-cultural problems, which played a role both in the period depicted (around 1000) and the period of the compilation (around 1280). The

Icelandic cooperative, social structure was shaken fundamentally by the inadequate legal order and the lack of a sense of community that resulted from it. (*Id.* at 307, translation by author).

36. Compare Theodore M. Andersson and William Ian Miller: *Law and Literature in Medieval Iceland: Ljósveitinga Saga and Valla-Ljóts Saga* (Stanford: Stanford U. Press, 1989), p. 20.

37. The Lawspeaker [lögsögumaðr] was the only significant office holder in saga age Iceland. He was the legal expert for the country, and his major occupation was to recite the laws at the annual meeting of the Allthing. He served a three year term and recited one-third of the laws at each of the three meetings during his term. The legislative council, lögrétta, and the parties to a lawsuit also consulted with him from time to time when there was uncertainty about the law. See, generally, Byock, *Medieval Iceland*, *supra* note 18, pp. 64-65.

38. Lehmann and von Carolsfeld: That Hallgerd is permitted to handle her own engagement here, and that the Lawspeaker expressly could sanction it as legal, cannot be understood from the perspective of the law books," *supra* note 12, p. 39, translation by author.

39. See *supra*, note 9 for translation information.

40. While duelling did not become illegal until somewhat later, after the introduction of Christianity (see text, *infra*, at note 67), Hrut makes it clear in ch. 22 that duelling was not the appropriate means of resolving legal disputes, so that Mord could have revived the claim.

41. Jeffrey Slusher offers a slightly differing approach to this episode in his interpretation of *Njal's Saga* in the present volume. See Slusher, "Runic Wisdom," 3 *CSLL* at p. 24. With Njal's assistance, Gunnar proves more adept in defending against the prosecution for Otkell's killing (ch. 56).

42. The falsity of the accusation becomes clear in ch. 70.

43. Lehmann and von Carolsfeld aver that, according to the written legal sources, initiation of the prosecution by one who himself took part in the killing would not void the prosecution of those he summoned and was an error easily correctable at the court. See *supra* note 12, p. 98. Again it appears that the author of *Njal's Saga* either was not knowledgeable about the law or chose to ignore it in order to advance the plot.

It is likely that the author was aware of at least some of the problems with the saga's legal premises. To serve his esthetic and his social criticism, he seems intentionally to have built them into the saga. The fact that he repeatedly has his characters reveal that errors are curable leads to the conclusion that the author was in fact a knowledgeable jurist. With my conclusion, accord Lönnroth but contrast Lehmann and von Carolsfeld; see *supra*, respectively at notes 21 and 17.

44. The saga permits Mord to redeem himself in part by handling the prosecution of Flosi Thordarson, the leader of the arsonists.

45. The saga also bills Mord Fiddle as an excellent lawyer, but the litigation with Hrut over Unn's divorce in which he is involved seems of far lesser significance to the story than other lawsuits.

46. Imagine criticizing a lawyer today for accepting a fee for services rendered. Lehmann and von Carolsfeld assert that the action against Eyjolf for accepting a bribe in taking the fee is not supported by the written legal sources. There was nothing untoward about accepting a fee for assuming a defense. The *Njal's Saga* author seems to have made a legal error, unless he injected the mistake intentionally to enhance the reader's

animosity toward him. Lehmann and von Carolsfeld also point out that Eyjolf's advice to Flosi is flawed in that one could not shift to another chieftain's district in a secret proceeding like that Eyjolf recommends. *See supra* note 12, pp. 108-09.

47. Other sources do not attribute the establishment of the Fifth Court to Njal. The account in *Njal's Saga* appears wholly fictional. See Ari Þorgilsson: *Íslendingabók*, published in Jakob Benediktsson, ed., *Íslendingabók. Landnámabók, 1 Íslensk Fornrit (Reykjavík, 1968)*, and discussion in Lehmann and von Carolsfeld, *supra* note 12, p. 128.

48. *Goðorð* (nominative plural is the same as the singular) were the limited number of formal chieftaincies which existed during the Commonwealth period. The owner of a *goðorð* was a *goði* who was free to sell or gratuitously transfer his chieftaincy. In addition to his secular duties of calling the Thing to order and naming the judges, the *goði* was originally the priest of the pagan temple as well. Njal was unable to find a chieftain willing to sell his chieftaincy to Hoskuld.

49. *See also text infra*, at note 65.

50. Lehmann and von Carolsfeld express the view that transfer of the fostering responsibility, even in accordance with Hoskuld's direct wish, would be contrary to the nature of the legal relationship. Fostering is essentially a fiduciary responsibility so that substitution of fiduciaries without the agreement of all parties, including Thorgerd, is improper. *See supra* note 12, p. 92.

51. It is odd that Njal does not foresee the ultimate disaster when his sons kill Hoskuld.

52. Lehmann and von Carolsfeld inform us that the engagement and the immediate marriage are both legally and socially erroneous. There was no reason for Thrain to ask Hoskuld for Thorgerd's hand, as Hallgerd had the right to act in that role. Moreover, customarily the engagement period was considerable, so that the rapidity with which the marriage follows the engagement is a breach of normal conduct. *See supra*, note 12, p. 40.

53. The scene is among the most entertaining in the saga. The sound of Skarp-Hedin's axe bumping the wall awakens Njal who finds his sons and Kari dressed for battle. Njal asks Skarp-Hedin where he is going.

"To look for sheep," he replied.

"You said that once before," said Njal, "but then you hunted men."

Skarp-Hedin laughed and said, "Do you hear that? He's not so innocent, the old man."

Kari asked, "When was the other time you said that?"

"When I killed Sigmund the White, Gunnar's kinsman," replied Skarp-Hedin.

"What for?" asked Kari.

"He had killed Thord Freedmansson, my foster-father," said Skarp-Hedin. (ch. 92).

54. The duel challenge is not a permissible legal procedure, as Hrut well knows. *See ch. 22*. The author undoubtedly shares this knowledge, see discussion *supra* at note 43. The duel challenge, once again, serves a literary and social criticism function. While the reader may feel that Hrut is merely getting his due, the law once more has broken down. Even the people who wish to avoid bloodshed are prepared to resort to violence when -- as Gunnar feels here -- they cannot rely on the judicial system to serve the ends of justice.

55. Compare discussion in Lehmann and von Carolsfeld, *supra* note 12, pp. 68-71, supporting this position on the basis of material in the *Grágás*.

56. Some *Njal's Saga* scholars have theorized that *Njal's Saga* is an amalgamation of several discrete sagas. In addition to the Christianization episode, chapters 100-105, and the Brian episode, chapters 154-157, which scholars commonly trace to other sources, they hypothesize the existence of separate Gunnar's and Njal's sagas. See the translators' notes to the English edition, *supra* note 9, pp. 216 and 341; see also note 2, p. 255 and note 6, p. 439 of *Brennu-Njalds Saga*, *supra* note 9, concerning the Christianization and Brian episodes. Of course, the existence of separate sagas would account for the radical change in pacing and style that occurs following Gunnar's death. Note, however, that the pace decelerates again following the burning of Njal, so that one might conclude that the repeated change in pace results from a conscious decision concerning narrative technique.

57. According to Lehmann and von Carolsfeld, Mord could not destroy the case against Njal's sons in this manner. See *supra*, note 43, and text *infra* at note 71.

58. Outlawry carried with it penalties of forfeiture of property and temporary exile. The law allowed the outlaw some time to prepare for his exile. Upon expiration of the grace period, anyone was permitted to kill him without legal penalty for the killing or entitlement to revenge. Gunnar agreed to exile and outlawry in the last of his settlements (ch. 74). When he failed to leave the country (ch. 75), he became fair game. Since the Icelandic judicial system lacked an enforcement mechanism, interested parties were forced to rely on their own devices to enforce the judgment. Killing Gunnar proved no easy task (chs. 76-77). Not all forms of outlawry were identical; some carried milder penalties than others. On Icelandic penal law during the saga age, see Andreas Heusler, *Das Strafrecht der Isländersagas* (Leipzig, 1911).

59. See text *infra*, at note 66.

60. Of course, many would say the same of modern American legal proceedings. Only a small minority of legal disputes become lawsuits, and only a small portion of those go to judgment.

61. Parallels to modern American jurisprudence are striking.

62. Consider the two duel challenges. Hrut challenges Mord Fiddle in ch. 8, and Gunnar challenges Hrut in ch. 24. And see *supra*, note 54.

63. Compare text *supra*, at note 35.

64. See, for example, chs. 143-44.

65. Other sources do not support this account of the establishment of the Fifth Court. See *supra*, note 47.

66. It is stimulating to discover that some things remain constant; litigation still centers frequently on resolution of procedural rather than substantive matters.

67. Judging from *Sturlunga Saga*, the collapse of the judicial system during the Sturlunga age was nearly complete. The *Sturlunga Saga* is gorier than the family sagas. Bloodshed is ubiquitous. See *supra*, note 14.

68. This perception of the author's apparent objectivity is familiar to saga scholarship. Compare Lönnroth's discussion of the saga as assuming a stance with respect to events that transpire in the course of the narrative. Lönnroth, *supra* note 3, pp. 82-99. Lönnroth points out:

[o]ur impression of "objectivity," then, must at least in part be illusory. If we look more closely at the narrative technique inherent in the action patterns and structural components, we discover a variety of traditional devices whereby the narrator leads us to accept his point of view.

Id. at 82.

69. Compare Njal's reaction when Flosi offers him the opportunity to leave the burning house because he has no disagreement with Njal. "I have no wish to go outside," said Njal, 'for I am an old man now and ill-equipped to avenge my sons; and I do not want to live in shame'" (ch. 129).

70. Einar, *supra* note 25, p. 181 et seq.

71. *Id.* at 184-85.

72. Lönnroth, *supra* note 3, pp. 104-64.

73. *Id.* at 243.

74. Iceland became part of Norway around 1262, and *Njal's Saga* generally is dated to the latter part of the 13th century. If the dating is accurate, the author would have known this history when he composed the saga. The Norwegian crown introduced a new legal system to Iceland based on Norwegian law, specifically introducing the lawbook called *Járnsíða* around 1271. See Vilhjalmur Finsen's introduction to *Grágás. Skálholtsbók* (Copenhagen, 1883, reprinted Odense, 1974), p. iii. And compare Lönnroth, *supra* note 3, p. 165 and p. 188 concerning the Fifth Court and 13th century law reform.