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THE CANON LAW OF EMERGENCY BAPTISM AND OF MARRIAGE IN MEDIEVAL ICELAND AND EUROPE*

AT SOME POINT in the early fourteenth century, in the third week of Lent, an Icelandic man called Þorsteinn of Hléskógar in Eyjafjörður and his wife had a child. Immediately after its birth, the child seemed dead. When a man called Þorgrímr attempted to let the child's blood, it did not bleed. Its devastated parents vowed to finance three masses for the souls of Bishop Guðmundr Arason's mother and father, and as soon as they had solemnized their vow, the child showed signs of life, and it was immediately given emergency baptism. Everyone rejoiced, praising God and Saint Guðmundr. The story ends there. We do not find out for how long the child survived, but it was probably not very long.[1]

This kind of family tragedy must have been common in medieval Iceland, and indeed everywhere before the development of modern medicine. Typically, we do not hear much in the sources about children dying. The story told above is preserved among the posthumous miracles worked by Saint Guðmundr, who was bishop of Hólar in the early thirteenth century. The point of the miracle is that the child lived long enough to be baptized, and thus, happily, it would go to Heaven rather than Hell. The presence of this story in a miracle collection demonstrates that medieval Icelanders worried about the fate of children who died during the first few days of their lives.

Emergency baptisms were regulated in canon law, and medieval people needed to know enough about the regulations to make sure that they

* I wish to thank Jóhanna Katrín Friðriksdóttir and Viðar Pálsson for good advice, and Emily Lethbridge for sensitive editing. I remain responsible for arguments and conclusions.

1 *Biskupa sögur*, ed. by Jón Sigurðsson et al. (Kaupmannahöfn: Hið íslenzka bókmenntafélag, 1858–1878), 615–616 (from AM 657 c 4to).

performed the ritual correctly. In this paper, I argue that we need to be familiar with these regulations and their background in European canon law in order to understand the daily life and religious anxieties of the people we study, and the stories told about them.

For our understanding of medieval life, local law mattered most immediately. The two complete manuscripts of the medieval Icelandic lawbook known as *Grágás* (Konungsbók, GKS 1157 fol., and Staðarhólsbók, AM 334 fol.) both contain what we may describe as a small canon lawbook, usually called *Kristinna laga þáttr*.[2] This lawbook is also found copied into seven other preserved medieval manuscripts.[3] I will refer to it as the Older Christian Law of Iceland. It was, according to the testimony of the manuscripts, put together in the 1120s by the two bishops in Iceland at the time, Ketill Þorsteinsson and Þorlákr Runólfsson, with the advice of their superior, Archbishop Asser of Lund, Sæmundr fróði, and "many other knowledgeable men."[4]

In the 1270s, Bishop Árni Þorláksson of Skálholt compiled a new Christian Law in collaboration with Archbishop Jón of Trondheim, who

2 A foundational study of the manuscripts and their dates is Sveinbjörn Rafnsson, *Af fornum lögum og sögum: Fjórar ritgerðir um forníslenska sögu*, Ritsafn Sagnfræðistofnunar 42 (Reykjavík: Háskólaútgáfan, 2011), esp. pp. 20–22. See also Konrad Maurer, "Graagaas," *Allgemeine Encyklopädie der Wissenschaften und Künste*, ed. J. S. Ersch and J. G. Gruber (Leipzig: Brockhaus, 1864) and Dieter Strauch, *Mittelalterlichen nordisches Recht bis 1500: Eine Quellenkunde*, Reallexikon der Germanischen Altertumskunde: Ergänzungsband 73 (Berlin: de Gruyter, 2011), 234–246. The conventional title, "*Kristinna laga þáttr*", is poorly attested in the manuscripts.

3 Each text is edited in *Grágás: Stykker, som findes i det Arnamagnæanske Haandskrift Nr. 351 fol. Skálholtsbók og en Række andre Haandskrifter*, ed. by Vilhjálmur Finsen (København: Kommissionen for det Arnamagnæanske Legat; Gyldendal, 1883), 1–290. The *þáttr* was also found in a further "old manuscript" (Leirárgarðabók) whose text survives through four early modern copies, see p. 291.

4 *Grágás: Islændernes lovbog i fristatens tid udgivet efter det kongelige bibliotheks haandskrift*, ed. by Vilhjálmur Finsen (Kaupmannahöfn: Fornritafjelag Norðurlanda í Kaupmannahöfn, 1852), 36; *Grágás efter det Arnamagnæanske Haandskrift Nr. 354 fol., Staðarhólsbók*, ed. by Vilhjálmur Finsen (København: Kommissionen for det Arnamagnæanske Legat; Gyldendal, 1879), 45–46. – It is unlikely that this story about the compilation of Icelandic Christian law is entirely reliable, or at least that the Christian law as preserved (only in manuscripts from the second half of the thirteenth century and later) is exactly the compilation that was put together at this early point. Similar origin myths attach themselves to many medieval lawbooks, see, e.g., Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford; Malden, Mass.: Blackwell Publishers, 1999), 43.

was at the time himself compiling law for his own diocese.[5] Árni's lawbook was more closely aligned than the Older Christian Law with general canon law, as may be seen from the rudimentary source references he provided in the margins, where the tag "aff decretalibus," referring to papal legislation, appears several times. The Alþingi approved the new lawbook in 1275 with some modifications.[6]

Behind the Older and Newer Christian Laws of Iceland stands, as is well known, the huge edifice of general European canon law.[7] Previous scholarship has, however, only occasionally explored the sources in canon law of particular statements in written Icelandic law.[8] Instead, the depend-

5 *Norges gamle love indtil 1387*, ed. by Rudolph Keyser et al. (Christiania: Chr. Gröndahl, 1846–1895), 2.341–386; see also *Nyere norske kristenretter (ca. 1260–1273)*, trans. by Bjørg Dale Spørck (Oslo: Aschehoug, 2009), 101–146 and 163–165.

6 "Árna saga biskups," *Biskupa sögur*, ed. by Guðrún Ása Grímsdóttir, Íslenzk fornrit 17 (Reykjavík: Hið íslenzka fornritafélag, 2008), 49. The most recent printed edition of Árni's lawbook is *Norges gamle love*, 5.16–56. A better edition is found in "Kristinréttur Árna frá 1275: Athugun á efni og varðveizlu í miðaldahandritum," ed. by Magnús Lyngdal Magnússon (MA thesis, Háskóli Íslands, 2002). Magnús's modern Icelandic translation is found in *Járnsíða og Kristinréttur Árna Þorlákssonar*, ed. by Haraldur Bernharðsson, Magnús Lyngdal Magnússon, and Már Jónsson (Reykjavík: Sögufélag, 2005). About the approval of the new lawbook in 1275, see Magnús Stefánsson, "Frá goðakirkju til biskupskirkju," *Saga Íslands*, vol. 3, ed. by Sigurður Líndal (Reykjavík: Hið íslenzka bókmenntafélag; Sögufélag, 1978), 150–154; "Kristinréttur Árna frá 1275," ed. by Magnús Lyngdal Magnússon, 4; Magnús Lyngdal Magnússon, "'Kátt er þeim af kristinrétti, kærur vilja margar læra': Af kristinrétti Árna, setningu hans og valdsviði," *Gripla* 15 (2004); Lára Magnúsardóttir, *Bannfæring og kirkjuvald á Íslandi 1275–1550: Lög og rannsóknarforsendur* (Reykjavík: Háskólaútgáfan: 2007), 303–306.

7 Convenient summaries of general canon law are James A. Brundage, *Medieval Canon Law*, The Medieval world (London; New York: Longman, 1995); John C. Wei and Anders Winroth, *The Cambridge History of Medieval Canon Law* (Cambridge: Cambridge University Press, forthcoming).

8 See, generally, Per Andersen, Ditlev Tamm, and Helle Vogt (eds.). *How Nordic Are the Nordic Medieval Laws: Proceedings from the First Carlsberg Conference on Medieval Legal History* (2 ed.; Copenhagen: DJØF Publishing, 2011) and Per Andersen et al. (eds.). *How Nordic Are the Nordic Medieval laws? Ten Years After; Proceedings of the Tenth Carlsberg Academy Conference on Medieval Legal History 2013* (Copenhagen: DJØF Publishing, 2014). Some examples of more specific studies are Bertil Nilsson, *De sepulturis: Gravrätten i Corpus iuris canonici och i medeltida nordisk lagstiftning*, Bibliotheca theologiae practicae 44 (Stockholm: Almqvist & Wiksell International, 1989); Lára Magnúsardóttir, *Bannfæring og kirkjuvald á Íslandi*, 311 and 315; Torgeir Landro, "Kristenrett og kyrkjerett: Borgartingskristenretten i eit komparativt perspektiv" (PhD diss., Universitetet i Bergen, 2010), and, for the field of Roman law, Sveinbjörn Rafnsson, "Grágás og Digesta Iustiniani," in *Sjötíu ritgerðir helgaðar Jakobi Benediktssyni 20. júlí 1977*, Rit 12 (Reykjavík: Stofnun Árna Magnússonar á Íslandi, 1977),

ence of Icelandic law upon Norwegian law has been emphasized. This essay aims to examine the specific relationships between some individual passages in local law, on the one hand, and what the general canon law stated, on the other hand. It is possible, sometimes likely, that the main influence upon Icelandic law came via Norway, but we should take Bishop Árni's explicit source references seriously, at least. The rich presence of European canon lawbooks in the libraries of Iceland's cathedrals also suggests that the influence from general European canon law may have been more direct than previous scholarship acknowledges.

What can we learn from Icelandic law about emergency baptisms, such as the one that aimed to save Þorsteinn of Hléskógar's child? The Older Christian Law of Iceland states that baptisms should properly be performed by priests. The law includes a longish disquisition about travelling to the house of the priest and about what to do if he is not found at home. But if the priest cannot be found, or there is no time to summon him because a newly born child is too weak and dying, it is necessary for a layman to perform an emergency baptism, and the Older Christian Law contains detailed regulations for any such eventuality. The text instructs what words to utter, and that the child should be thrice immersed in water, though the baptism is valid even if water is only poured over the child, just as in European canon law.[9] If there is no fresh water, sea water will do; if there is no sea water, either, then the child may be immersed in snow instead, although not so much that it might catch a cold and come into peril of death. In other words, the Older Christian Law of Iceland allows a child to be baptized with freshwater, salt water, or snow.[10] The Icelanders did not allow baptism in saliva, as was permitted in the Norwegian law codes for Frostathing and Gulathing, for example.[11]

The Younger Christian Law of Iceland, composed by Bishop Árni in the 1270s, is much more restrictive. One should not baptize "except in

2.720–732, and Hans Henning Hoff, *Hafliði Másson und die Einflüsse des römischen Rechts in der Grágás*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde 78 (Berlin: de Gruyter, 2012).

9 R. H. Helmholz, *The Spirit of Classical Canon Law* (Athens, Ga.: University of Georgia Press, 1996), 212.

10 *Grágás: Konungsbók*, 3–7.

11 *Norges gamle love*, 1.132; *Den eldre Gulatingslova*, ed. by Bjørn Eithun, Magnus Rindal, and Tor Ulset, Norrøne tekster 6 (Oslo: Riksarkivet, 1994), 44; See also Landro, "Kristenrett og kyrkjerett," 30; Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 40–41.

water … Saliva makes no baptism. Ice or snow make no baptism, unless one melts it so that it becomes water."[12] Why the difference? What had happened during the intervening century and a half?

What had happened was that in 1206, Pope Innocent III had been asked by Archbishop Tore of Trondheim whether a child who had been baptized with saliva instead of water could be counted as a baptized Christian.[13] Until that point, general canon law had not contained any rules dealing explicitly with the question of whether saliva could be used in baptism. Trondheim lies in the Norwegian law district of Frostathing, and it appears that the situation foreseen by the law had actually come to pass and a child had been baptized in nothing but saliva. Pope Innocent explained that Christ, according to the Gospel of John 3:5, said: "unless a person be born again of water and the Holy Spirit he cannot enter the kingdom of Heaven." Interpreting this biblical verse narrowly, the pope declared that water, and *only* water, would do for baptism.[14]

In the first decade of the thirteenth century, a law professor in Bologna known as Peter of Benevento (Petrus Beneventanus) read through copies of papal letters which were kept in the registers at the papal curia. Peter was a professor of canon law and he was looking for letters with content that might serve as useful legal precedents. He thought the letter to Archbishop Tore contained such a precedent. He thus excerpted it and put it into his collection of decretals, or papal precedents. His decretal collection was then used as a textbook, conventionally known as the *Compilatio tertia*, in the law school of Bologna, the premier law school of

12 "Kristinréttur Árna" ch. 8 (typography simplified here and in subsequent quotations from this edition): "oc eigi scira nema i uatni… Raki gerir onga scirn. Jss eða snær gerir oc ønga scirn nema þat þiðni sva at þar verþi vatn af." See also pp. 83–84.

13 *Die Register Innocenz' III*, vol. 9: *Pontifikatsjahr 1206/1207*, ed. by Andrea Sommerlechner, Publikationen des Historischen Instituts beim Österreichischen Kulturinstitut in Rom, 2 Abt.: Quellen, 1 ser., 9 (Wien: Verlag der Österreichische Akademie der Wissenschaften, 2004), 15, no. 15; excerpted in *Liber extra* X 3.42.5 (Potthast 2696), ed. *Corpus iuris canonici*, ed. by Emil Friedberg (Lipsiae: Ex officina Bernhardi Tauchnitz, 1879–1882), 2.647.

14 *Liber extra* X 3.42.5, ed. *Corpus iuris canonici*, 2.647: "Respondemus, quod, cum in baptismo duo semper, videlicet verbum et elementum, necessario requirantur, iuxta quod de verbo Veritas ait: 'Euntes in mundum universum praedicatae evangelium omni creaturae, et baptizate omnes gentes in nomine Patris, et Filii et Spiritus sancti,' eademque dicat de elemento: 'Nisi quis renatus fuerit ex aqua et Spiritu sancto, non intrabit in regnum coelorum:' dubitare non debes, illos verum non habere baptismum, in quibus non solum utrumque praedictorum, sed eorum alterum est omissum."

Europe.[15] When Pope Gregory IX gave another law professor, Raymond of Penyafort, the assignment of taking what was most useful among the precedents that were used in Bologna and putting together a definite and official collection, Raymond decided to include the letter to Archbishop Tore in the book he produced, which is variously known as the *Decretals of Gregory IX* or the *Liber extra*. This book was promulgated in 1234 and became the second volume in the official *Corpus iuris canonici*. The *Liber extra* came to Iceland at the latest in 1269, when Archbishop Jón Raude of Trondheim gave a copy to Bishop Árni of Skálholt.[16] We know from book inventories made at each of Iceland's two cathedrals that several copies of the *Liber extra* were available there, and not only this book, but also the rest of the official body of canon lawbooks known as the *Corpus iuris canonici*. The libraries also contained several law school textbooks of European canon law and Icelandic lawbooks.[17] The cathedrals were the centers for ecclesiastical jurisdiction in Iceland, and the fact that the Icelandic lawbooks in the bishops' working libraries were surrounded by European lawbooks strongly suggests that they need to be seen in that context.

When Pope Innocent III wrote to Archbishop Tore, his decision was a specific verdict in an individual case, and thus not strictly speaking law. When Peter of Benevento began to teach the precedent in his law school classes, it became as good as law, since the standard textbooks in Bologna were respected as such. Innocent's decision officially became law with the publication of the *Liber extra* in 1234. As such, his rule was accepted all around Europe, also in Iceland, as we have seen.[18]

15 Kenneth C. Pennington, "Bio-Bibliographical Guide to Medieval and Early Modern Jurists," http://amesfoundation.law.harvard.edu/BioBibCanonists/, s.v. "Compilatio tertia."

16 "Árna saga biskups," 13.

17 The 1396 inventory from Hólar is printed in *Diplomatarium Islandicum: Íslenzkt fornbréfasafn*, (Kaupmannahöfn and Reykjavík: Hið íslenzka bókmenntafélag, 1857–1972), 3.612–613 and mentions two copies of the *Liber extra* and two copies of Gratian's *Decretum*, as well as single copies of the *Liber sextus* and the *Clementines*. See also Sigurður Líndal, "Um þekkingu Íslendinga á rómverskum og kanóníska rétti frá 12. öld til miðrar 16. aldar," *Úlfljótur* 50 (1997): 260–267.

18 A couple of late medieval and early modern treatises usefully summarize the developed medieval canon law and theology on baptism: Martinus Bonacina, *Tractatuum moralium de casibus conscientiae ... tomus* (Mediolani: Apud haer. Pacifici Pontij & Ioannes Baptista Piccalea, 1623), 42–43: *Tractatus de sacramentis* disp. 2, quest. 2, punct. 3, no. 3–5; Nicolaus de Plove, "Tractatus de sacramentis" pars 1, cap. 1, par. 5, *Tractatus universi iuris*, (Venetiis, 1584–1586), 14.78, who explicitly rules out baptism in snow: "Et similiter in glacie non est

The example of emergency baptism in snow illustrates the relationship between European and Icelandic canon law. Icelandic law followed the lead of general law. But that influence was neither quick nor uncomplicated. Every one of the Icelandic manuscripts that preserve the rules from the Older Christian Law allowing baptism in snow was written in the late thirteenth century or later, in other words, decades or centuries after that rule had become obsolete and, in fact, against current canon law. Many manuscripts, such as the important Skálholtsbók (AM 351 fol.), copied in the second half of the fourteenth century, contain both the Older and the Younger Christian Laws of Iceland, and thus they include both the old rule allowing baptism with snow and Árni's rule permitting only baptism with water. Readers of such books required considerable skill to navigate these kinds of inconsistencies and contradictions.

Let us return to emergency baptisms of children to see what else we may learn. Lay *men* may perform such baptisms, according to the Older Christian Law.[19] But what if there were no men present, or at least no man who knew the formula of baptism? Might women then baptize? The European canon law originally answered no. A greatly influential collection of disciplinary canons from southern France, compiled in the second half of the fifth century, determined that "However learned and pious she is, no woman should presume to baptize anyone."[20] This statement was included in the lawbooks from an early point and was thus accepted as law, which it continued to be until a priest in Brixen in South Tirolia asked Pope Urban II in the last decade of the eleventh century whether a child who had been given emergency baptism by a woman should count as truly

lotio, nec in niue, eo quod non est aqua fluida lotioni conueniens." For the use of these kinds of treatises as a convenient gateway to the doctrines of medieval canon law, see Helmholz, *Spirit of Classical Canon Law*, 23–24.

19 *Grágás: Staðarhólsbók*, 4: "Ef barn er sva siúkt at við bana se hætt oc nair eigi prestz fundi. Oc a þa karl maðr olærðr at skira barn." Key words in this passage are missing in Konungsbók, since a part of the page has been torn away, see *Grágás: Konungsbók*, 5, n. 2.

20 The collection is known as the *Statuta ecclesiae antiqua*, see *Concilia Galliae A. 314–A. 506*, ed. by C. Munier, Corpus Christianorum: Series latina 248 (Turnholti: Typographi Brepols Editores pontificii, 1963), 173, accepted into canon law and reproduced (and expanded) in many collections, notably in Gratian, *Decretum* (second recension) de cons. D. 4 c. 20, ed. *Corpus iuris canonici*, 1.1367: "Mulier, quamuis docta et sancta, baptizare aliquos uel uiros docere in conuentu non presumat."

baptized. Urban said that this was a valid baptism, and thus he changed the law.[21]

In most of its manuscripts, the Older Christian Law states that a man must baptize, but if he does not know how, it is lawful for a woman to teach him how to do it. She may not herself baptize.[22] Three of the manuscripts state, however, that a woman may baptize in an emergency if no men or boys seven years old or older who know the baptismal formula were present.[23] Árni's Christian Law, as expected, make no distinction between the genders.[24]

This passage in the Icelandic law raises at least two interesting issues. First, the rule that boys may baptize from the age of seven is not, to the best of my knowledge, found in European canon law. This rule appears, thus, to be a Scandinavian invention. It is a reasonable interpretation of general canon law, since that law stipulated that seven is the age of reason,[25] but the point is that the rule itself is only found in the North.

21 Or, strictly speaking, the law was changed when Urban's verdict was included in canon law as a precedent, which it quickly was, see Gratian, *Decretum* (second recension) C. 30 q. 3 c. 4, ed. *Corpus iuris canonici*, 1.1101: "Super quibus consuluit nos tua dilectio, hoc uidetur nobis ex sentencia respondendum, ut et baptismus sit, si instante necessitate femina puerum in nomine Trinitatis baptizauerit." Gratian referred to this passage immediately after quoting the opposing view from the *Statuta ecclesia*, see de cons. D. 4 d.p.c. 20, ed. *Corpus iuris canonici*, 1. 1367: "Nisi necessitate cogente. Unde Urbanus II…" See also Landro, "Kristenrett og kyrkjerett," 30; Bonacina, *Tractatuum moralium de casibus conscientiae … tomus*, 50, Tractatus de sacramentis, disp. 2, quest. 2, punct. 5, no. 5. Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 41, claims, relying on a statement in the Law of Frostathing, that Archbishop Jón Birgisson of Trondheim appears as the legislator ("löggjafi") effecting this change. This is true but misleading. Jón may have been characterized thus in the Law of the Frostathing, but the actual legislator was Pope Urban II.

22 *Grágás: Konungsbók*, 6: "karlmaþr á skirn at veita barninv. enn ef hann kan eigi orð til eþa atferli. oc er rett at kona kenni honvm." Similarly in Skálholtsbók, Belgsdalsbók, Arnarbælisbók, AM 158 b 4to, AM 50 8vo, and AM 173 c 4to, see *Grágás: Skálholtsbók etc.*, 5, 100, 150, 196, 234, and 276.

23 *Grágás: Staðarhólsbók*, 5: "Skira scal kona barn ef eigi ero karlar til." Similarly, Staðarfellsbók and Leirárgarðabók (as known through paper copies), see *Grágás: Skálholtsbók etc.*, 58 and 297.

24 "Kristinréttur Árna" ch. 8: "Enn ef barn er með litlom mętti [fæ]dt oc nær eigi presti. þa scal scira huerr sem hia verðr staddr. iafn vel faðir eða moðir ef eigi ero aðrir menn til."

25 Charles Donahue, Jr., *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007), 20.

This is the kind of practical, detailed rule that the canon law allowed, or indeed encouraged local bishops to set down.[26]

But perhaps more interesting is the role of women. Clearly, the original compilation of the Older Christian Law of Iceland did not allow women to baptize, even in an emergency. Later, it was discovered that this did not reflect general canon law, so owners and readers corrected their copies of the lawbook (which, in itself, demonstrates that owners were keen to have up-to-date law, suggesting that the books were, in fact, used as sources of law).[27] This conclusion warns, again, against assuming that the Older Christian Law of Iceland as preserved in the manuscripts was, in its entirety, composed in the 1120s.

I want to give a final illustration from the law of emergency baptism. The Older Christian Law of Iceland foresees the possibility that no one but the parents may be present when a sickly child is close to death. Might one of its parents perform an emergency baptism? The reason that this question is asked is that a complication arises from the canonical incest prohibitions of the Middle Ages. Canon law prohibited a wide circle of blood relatives from marrying each other, and also extended the same prohibition to spiritual kin.[28] Anyone involved in a baptism becomes spiritually related to everyone else: child, parents, god-parents, priest, etc. That prohibition appears, for example, in the Christian Law of Bishop Árni.[29] So, if a child's father baptizes the child, he becomes spiritual kin of the child and also her mother.[30] Their continued relationship would be

26 Anthony Perron, "Local Knowledge of Canon Law, ca. 1150–1250," in *Cambridge History of Medieval Canon Law*.

27 Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 41–46, identifies, again, the Trondheim archbishop Jón Birgisson as the agent responsible for this change.

28 Joseph H. Lynch, *Godparents and Kinship in Early Medieval Europe* (Princeton, N.J.: Princeton University Press, 1986); Joseph H. Lynch, *Christianizing Kinship: Ritual Sponsorship in Anglo-Saxon England* (Ithaca, N.Y.: Cornell University Press, 1998); John Witte Jr. and Gary S. Hauk, *Christianity and Family Law: An Introduction* (Cambridge: Cambridge University Press, 2017).

29 "Kristinréttur Árna," ch. 28: "Þat er fýrir boðit af gvðs halfo at noccor maþr hafi guþsifia sinn at likams losta. … oc þvi eiga prestar guþsifiar uið aull þau bornn sem þeir scira. oc uið oll þeira feðgin. … Hefir maþr gvðsifia sinn at licams losta. þa scolu þau sciliaz oc gangi til scripta. oc gialldi hvart þa .iij. merkr byscopi." See also pp. 103–104.

30 Gratian, *Decretum* (second recension) C. 30 q. 1 d.p.c. 7, ed. *Corpus iuris canonici*, 1.1099: "Filia dicitur spiritualis non solum eius, qui accipit, sed etiam eius, qui trinae mersionis uocabulo eam sacro baptismate tingit."

incestuous, in a strict reading of the law. Early medieval European canon law was indeed very strict about spiritual kinship and often prescribed that married couples must separate if they are or become spiritually related. What did Icelandic law say?

Different manuscripts of the Old Christian Law give different answers. Konungsbók states that "if a father himself baptizes his sick child, he shall separate from his wife. If he does not, he becomes subject to *fjörbaugsgarðr*."[31] In contrast, the other complete manuscript of *Grágás*, Staðarhólsbók, prescribes that "if a father baptizes his sick child, he shall *not* separate from his wife for that reason."[32] Similarly, three other medieval manuscripts, as well as a later passage in Konungsbók, do not force the parents to separate,[33] while two other manuscripts contain the same formulation as Konungsbók, forcing the parents to separate.[34] Arnarbælisbók originally said that the parents must separate, but then the word *eigi* ("not") was added above the line; the addition looks like it was made by the original scribe.[35]

How are we to interpret this confusion? I think it is quite clear that the Older Christian Law must at first have stated that parents should separate

31 *Grágás: Konungsbók*, 6: "En ef faþir scirir sialfr barn sitt sivct. oc scal hann skilia séing við konv sina. Ef hann skilr eigi séing við hana oc varðar honum fiorbavgs Garþ"; cf. *Laws of Early Iceland: Grágás, the Codex Regius of Grágás, with Material from Other Manuscripts*, trans. by Andrew Dennis, Peter Foote, and Richard Perkins, University of Manitoba Icelandic Studies 3 and 5 (Winnipeg: University of Manitoba Press, 1980–2000), 1.25. Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 39–46, also discusses the development of Icelandic law on this point.

32 *Grágás: Staðarhólsbók*, 5: "Ef faðir scirir barn sit siúkt. oc scalat hann skilia sæing við kono sina fyrir þa sök."

33 Staðarfellsbók (AM 346 fol.), Belgsdalsbók (AM 347 fol.), and AM 50 8vo, ed. *Grágás: Skálholtsbók etc.*, 58, 100, and 234. Further rules for emergency baptisms appear again towards the end of Konungsbók, ch. 261, which states that the parents need not separate, see *Grágás: Konungsbók*, 215.

34 AM 158 b 4to and AM 173 c 4to, ed. *Grágás: Skálholtsbók etc.*, 196 and 276.

35 AM 135 4to, ed. *Grágás: Skálholtsbók etc.*, 150. I thank Guðvarður Már Gunnlaugsson of Stofnun Árna Magnússonar í íslenskum fræðum, Reykjavík, for checking this matter and for sending me a photo of the relevant page. Skálholtsbók does not say anything about whether a father who has administered emergency baptism to his child must separate from the mother or not, cf. *Grágás: Skálholtsbók etc.*, 5. The paper manuscripts, including AM 181 4to that reproduces Leirárgarðabók, state that the parents should separate in this situation, but the modern editor has added the word "eigi," probably because the formulation otherwise resembles that in Staðarhólsbók, cf. n. 15: "Tilføiet af os efter Gisning; maaskee ogsaa har der i det ældre Haandskrift staaet skalat þann skilia," see *Grágás: Skálholtsbók etc.*, 297.

if one of them baptizes their child, but that it was discovered that this was wrong according to general canon law, and the passage was thus reformulated in some manuscripts.[36] Árni's Christian Law says, as expected, that the parents need not separate.[37] The textual situation is similar to that discussed above in the context of women administering emergency baptism. So, when did European canon law start to say that parents could continue to live together after this kind of emergency baptism?

The pivotal text was a letter that Pope John VIII wrote in 879 to Bishop Anselm of Limoges in France. A layman called Stephen had sought the help of the pope. Stephen had baptized his son, who was very sick, since he could not bring him to a priest quickly enough. Bishop Anselm had ordered Stephen to separate from his wife, because of the spiritual kinship that was created between the couple when their son was baptized. The pope ruled that Anselm had been wrong to do so, and that Stephen should stay married to his wife for as long as they lived.[38]

Given that a pope had decided already in 879 that parents need not separate if one of them baptized their child, why did the Old Christian Law of Iceland, composed centuries later, at first say the opposite? A papal statement did not, however, automatically become law. The jurists of Europe paid no attention to this particular precedent until the second half of the eleventh century.[39] John VIII's decretal did not become *widely*

36 Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 39–46, ascribes key importance with regard to this development to a ruling which Archbishop Jón Birgisson of Trondheim, according to the Law of Frostathing, had issued on emergency baptisms. Since there are no substantial verbal echoes in Icelandic law, which in any case did not accept all of the archbishop's ruling, there is no reason to ascribe the development to Norwegian influence, when Icelandic clergy had direct access to the European legal tradition, e.g., in the cathedral libraries.

37 "Kristinréttur Árna," ch. 8: "Beriz sva at at moðir eða faðir sciri barn iþeima nauðsýniom. þa scolo eigi þess kýns gvðsifiar scilia hiu scap þeira."

38 The letter is edited by Erich Caspar in *Epistolae 7*, Monumenta Germaniae Historica (Berolini: Apud Weidmannos, 1928), 156; it is listed as JE 3258 in Philipp Jaffé and Wilhelm Wattenbach, *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum 1198* (2 ed.; Lipsiae: Veit, 1888) and as J^3 6796 in Philipp Jaffé et al., *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII 3* (3 ed.; Gottingae: Vandenhoeck et Ruprecht, 2017). Its appearance in the first recension of Gratian's *Decretum* is at C. 30 q. 1 c. 7, see *Decretum Gratiani*, ed. by Anders Winroth (2018), gratian.org.

39 Twenty-two appearances of this text in canonical collections pre-dating Gratian's *Decretum* appear in Linda Fowler-Magerl's database *Clavis canonum*, www.mgh.de/ext/clavis (incipit: "Ad limina*"); none of these appear in manuscripts predating the second half

known until Gratian's *Decretum* began to circulate at the middle of the twelfth century. It thus makes sense that the earliest version of the Old Christian Law of Iceland did not know this law, but that some Icelander (or Icelanders) noticed the discrepancy after Pope John's verdict had been publicized in Gratian's *Decretum*. The texts of the Christian Law in Icelandic were then corrected. This proves two things. First, that the Old Christian Law of Iceland (as already pointed out) was a living text that was changed when needed. What the manuscripts from the late thirteenth century and later preserve is not the text of the 1120s, but a later text of which parts (i.e. individual passages) may go back to the 1120s: we simply cannot know without closer examination, if even then.[40] Second, it shows that Icelanders kept up with the development of canon law in Europe. It was not just for show that the bishops of Skálholt and Hólar acquired copies of European lawbooks at what must have been great cost. They and their clergy read and understood them, and used them to revise local law. Of course, it is likely that they discussed these matters with and were influenced by foreigners, including the archbishop of Trondheim, but it is not, strictly speaking, necessary to posit such influence.

This contention becomes even clearer if we move from the law of baptism to the law of marriage.[41] The Older Christian Law of Iceland did not

of the eleventh century. Cf. Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections before 1140; Access with Data Processing* (Hannover: Hahn, 2005), 100; the one apparent earlier appearance mentioned here is in a collection that, in fact, only survives in manuscripts from the second half of the eleventh century, so this instance of the text cannot securely be dated earlier.

40 Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 25–82, discusses many additions to the Older Christian Law. Note his verdict on p. 76: "Komið hefur í ljós að í handritum kristinréttarins er ekki einungis kristinrétturinn eins og hann virðist hafa verið settur í tíð biskupanna Þorláks og Ketils einhvern tíma á árabilinu 1122–1133. Í handritunum ægir saman innskotum sem ýmist eru eldri eða yngri að uppruna en kristinrétturinn sjálfur." See also Sveinbjörn Rafnsson, "The Penitential of St. Þorlákur in its Icelandic Context," *Bulletin of Medieval Canon Law* 15 (1985).

41 The law and practice of marriage in medieval Iceland have been much discussed in scholarship, and many scholars have, in the process, situated Icelandic law against the background of developments in general canon law, although usually relying on secondary literature, notably James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), without referring directly to the sources of canon law. See, to mention only a few representative examples, Roberta Frank, "Marriage in Twelfth- and Thirteenth-Century Iceland," *Viator* 4 (1973); Jenny M. Jochens, "Consent in Marriage: Old Norse Law, Life, and Literature," *Scandinavian Studies* 58 (1986); Birgit

include marriage law. Instead, the secular lawbook *Grágás* contains a *Festa þáttr* that regulated betrothals and marriages.[42] The rules here are typical of what legal historians often call "Germanic marriage." There is much about agreement between families, about bride prices and dowries, and about exactly which men should decide whom their daughters, sisters, or mothers should marry. It is all very secular, which is in no way surprising if one compares to the European context. Before the twelfth century, European society had not yet come to a decision whether marriage was a matter for church courts, and thus canon law, or for ordinary courts, and thus subject to secular law. This meant that in many regions, such as in Scandinavia, marriage was regulated in secular law, not in canon law.[43]

This state of affairs changed in the twelfth century when it became generally recognized that marriage was one of the sacraments of the church, and that it was thus regulated by canon law. Theologians and canon lawyers collaborated on working out a legal system for Christian marriage, which became very different from the Germanic system. Among the key figures was Gratian of Bologna, the author around 1140 of the *Decretum*, which became the first volume in the Corpus of canon law.[44]

Sawyer, *Kvinnor och familj i det forn- och medeltida Skandinavien*, Occasional Papers on Medieval Topics 6 (Skara: Viktoria, 1992); Jenny M. Jochens, "'Með jákvæði hennar sjálfrar': Consent as Signifier in the Old Norse World," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1993); Agnes S. Arnórsdóttir, "Two Models of Marriage? Canon Law and Icelandic Marriage Practice in the Late Middle Ages," in *Nordic Perspectives on Medieval Canon Law*, ed. Mia Korpiola (Helsinki: Matthias Calonius Society, 1999); Auður Magnúsdóttir, *Frillor och fruar: Politik och samlevnad på Island 1120–1400*, Avhandlingar från Historiska Institutionen i Göteborg (Göteborg; Historiska Institutionen, 2001), 171–210; Agnes S. Arnórsdóttir, "Marriage in the Middle Ages: Canon Law and Nordic Family Relations," in *Norden og Europa i middelalderen: Rapport til det 24. Nordiske Historikermøde*, ed. Per Ingesman and Thomas Lindkvist, Skrifter udgivet af Jysk Selskab for Historie 47 (Århus: Aarhus Universitetsforlag, 2001); Agnes Arnórsdóttir, *Property and Virginity: The Christianization of Marriage in Medieval Iceland 1200–1600* (Aarhus: Aarhus University Press, 2010), esp. 67–77; Björn Bandlien, *Strategies of Passion: Love and Marriage in Medieval Iceland and Norway*, trans. Betsy van der Hoek, Medieval Texts and Cultures of Northern Europe 6 (Turnhout: Brepols, 2005), 151–188; Gunnar Karlsson, *Ástarsaga Íslendinga að fornu, um 870–1300* (Reykjavík: Mál og menning, 2013), e.g., 105–106 and 185–188.

42 As pointed out by Sveinbjörn Rafnsson, *Af fornum lögum og sögum*, 19.

43 Brundage, *Law, Sex, and Christian Society.* See also Witte and Hauk, *Christianity and Family Law*.

44 The formation of the law of Christian marriage in the twelfth century is often discussed

The innovations reached Iceland in the thirteenth century. We see the new Icelandic system in the Christian Law of Bishop Árni from the 1270s. Árni's chapters on marriage make up an able summary of the canonical system of marriage law as it had been worked out in the previous century and a half. Some of Árni's formulations even look like direct translations from the sources of canon law, as, for example, his definition of what marriage is, apparently translated from Gratian's definition.[45] Árni's words "[N]u er hiuscapr karlmanz oc cono loglict sam band" appear to echo Gratian's "Sunt enim nuptie sive matrimonium viri mulierisque coniunctio."[46]

We see Árni absorbing and conveying the new European marriage system also in other passages. In the early Middle Ages, the choice of marriage partner was something for families, and particularly their patriarchs, to decide. What the putative bride and groom thought – and especially the bride's preferences – was less important. In this kind of law, marriage is a business transaction. An example from *Grágás* makes this quite clear: "If the man who has become betrothed to a woman has doubts about the marriage, it is not punishable by law, but the brideprice (*mundr*) that had been agreed on shall be reclaimed. And according to the terms/contract (*máldagar*) which was agreed on at the betrothal should he want to free his hands."[47]

When Gratian and other canon lawyers in the twelfth century worked out a new legal system regulating marriage, they were uncomfortable with the old system for several reasons. First, they did not like that it defined marriage as beginning when the parties had sex. Second, they had read many good canonical sources that emphasized that the bride and groom

in scholarship. Brundage, *Law, Sex, and Christian Society* remains the most convenient survey.

45 Scholarship has, in other contexts, identified other examples of direct translations into Norse from the sources of Latin canon law, see, e.g., Sigurður Líndal, "Um þekkingu Íslendinga á rómverskum og kanónískum rétti," 269, and Lára Magnúsardóttir, *Bannfæring og kirkjuvald*, 83 and 393.

46 "Kristinréttur Árna," ch. 25, see also pp. 100–101; Gratian's *Decretum* C. 27 q. 2 d.a.c. 1, ed. *Decretum Gratiani*, gratian.org. Gratian's definition derives from Justinian's *Institutes* 1.9.1, but this provenance is not signaled in the *Decretum*.

47 *Grágás: Konungsbók*, 2.32–33: "En ef sa ifaz raða er ser hefir cono festa oc varðar eigi við lög. En mund scal heimta sva sem mæltr var. Oc með þeim maldogom sem mælt var at festom ef hann scylde af hende leysa." Cf. *Laws of Early Iceland*, 2.57. On *máldagar*, see Agnes Arnórsdóttir, *Property and Virginity*, esp. 56–60.

must agree to the marriage for it to be valid. The reason why these sources emphasized consent was that their authors were early popes and church fathers (for example Saint John Chrysostome or Saint Augustine) who lived under Roman rule. Roman law stipulated that the consent of bride and groom was necessary for a valid marriage, so these writers accepted the consent theory of marriage. It was Gratian who first synthesized the two approaches in a way that was typical for both his ingenuity and his respect for tradition. He combined the two ways of beginning a marriage, requiring both consent and sex. When bride and groom had consented, they had entered what Gratian called "initiated marriage"; we might call it betrothal. Once they had had sex, they had "perfected" their marriage. An initiated marriage could be dissolved under certain circumstances, such as when one of the parties wanted to enter a monastery, while a perfected marriage could never be dissolved.[48]

Gratian's synthesis would, with some adjustments – notably by the theologian Peter Lombard (d. 1160) and Pope Alexander III (1159–1181) – be valid for the future and it would enter most western legal systems. This synthesis is also what we find in Bishop Árni's lawbook, which allowed betrothed couples who had not consummated their union to separate in order to enter a monastery.[49] This is exactly Gratian's rule, which was settled law in European canon law when Bishop Árni wrote his book.[50]

Even more important was the emphasis on consent that Gratian had made essential. When he insisted on the consent of bride and groom at the beginning of marriage, Gratian also excluded parents and other relatives from having any say in the matter. This was very radical for his time. With few exceptions, most previous experts in canon law had, like the compilers of *Grágás*, looked upon marriage as a contract between families, not as an agreement between bride and groom.[51]

48 Anders Winroth, "Gratian," in *Christianity and Family Law: An Introduction*, ed. John Witte Jr. and Gary S. Hauk (Cambridge: Cambridge University Press, 2017).

49 "Kristinréttur Árna," ch. 25: "oc ma þetta samband engi maþr scilia. þo at eigi se brullaup gert ef loglig festing er á. nema annat hvart þeira gefi sic i claustr aðr enn þau hafi samt komit at licams losta."

50 Winroth, "Gratian," 141.

51 Bishop Ivo of Chartres (d. 1115) was a pioneer in strongly emphasizing consent in many of his letters sharing canonical advice, see Christof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge Studies in Medieval Life and Thought 4th ser. 76 (Cambridge: Cambridge University Press, 2010), 213–214.

In contrast, Árni knew current canon law and specified that "good men" must be able to hear the woman say yes.[52] I think the idea that "good men" attending the wedding must *hear* her consent is a Scandinavian invention, for I do not know of anything comparable in European canon law. But the emphasis on consent was certainly something that Árni took from Gratian and his interpreters.

Of course, if a lawbook stipulates something, that far from guarantees that people will obey that law. Scholars have often doubted whether Árni's emphasis on consent made any real difference in Icelandic society, which remained as patriarchal as ever. The secular lawbook known as *Jónsbók*, accepted a few years after Árni's Christian Law, states, for example, that a father has the right to disinherit a daughter who gets married without his agreement. Saga literature shows that in many of the stories that Icelanders told each other during the later Middle Ages, the will of the bride mattered little; in fact, late medieval sagas centering on courtship and marriage are often ruthlessly and violently misogynistic.[53]

Archival records of court cases do, however, demonstrate that Gratian's and Árni's purportedly theoretical constructions did have consequences in real life, at least sometimes. When the English friar John Craxton was appointed bishop of Hólar and came to Iceland in 1429, he ordered that copies of important letters should be kept. These copies are found in the *Bréfabók Jóns biskups Vilhjálmssonar*.[54] It preserves many judicial decisions the bishop made in his church court, and these records demonstrate that the bishop observed not only the rules of Árni's Christian Law, but also the rules of the general canon law.[55]

52 "Kristinréttur Árna," ch. 23: "heýra scolu oc goðir menn iaýrði meýiar þeirar eþa kono sem fest verðr. ... fýrir þvi at þat er forboðat af gvðs halfv at noccor maþr festi meý eða cono nauðga." See also pp. 98–99.

53 Jóhanna Katrín Friðriksdóttir, *Women in Old Norse Literature: Bodies, Words, and Power* (New York: Palgrave, 2013), 107–133.

54 Reykjavík, Þjóðskjalasafn Íslands, Bps B. II 3. Marriage cases in this volume have been examined in Agnes Arnórsdóttir, *Property and Virginity*, esp. p. 134.

55 That Icelandic bishops observed written law in their judgments is argued by Lára Magnúsardóttir, *Bannfæring og kirkjuvald á Íslandi 1275–1550*, e.g., 173, and by Lára Magnúsardóttir, "Icelandic Church Law in the Vernacular 1275–1550," *Bulletin of Medieval Canon Law* 32 (2015).

A marriage case from 1429 in the *Bréfabók* is particularly interesting.[56] It contains summaries in Icelandic of some of the testimony in the case, as well as the bishop's verdict which, unusually for this volume, appears in both Icelandic and Latin. The case concerned the marriage between Þorleifr Þórðarson and Þorgerðr Böðvarsdóttir. The bride first testified that she never had wanted to marry Þorleifr; she only wished to stay without a husband for all her life. She had uttered "that little word yes" (*þat litla jayrdæ*) only because others had persuaded and threatened her, and because she was afraid of her father.

Þorleifr, the putative groom, admitted that he had first asked Þorgerðr's father Böðvar if he might marry his daughter, and only later asked Þorgerðr herself. She had then neither said yes nor no. But at the wedding itself, she had said that "yes, her father should decide." Clearly, Bishop Jón had interrogated both parties carefully about exactly what Þorgerðr had said, showing that he put great weight, as he should, on whether she had given her free consent, or not.

What follows next in the interrogation is puzzling. "Then the lord bishop asked him (Þorleifr) whether he had (*hafdæ*) her or not. And Þorleifr answered that he had not *fæst* (fastened/betrothed/married) her."[57] The first sentence as written makes little sense. The bishop appears to be asking the putative groom whether he had either betrothed or married Þorgerðr. That was exactly the issue that the court, not Þorleifr, was meant to decide.

Others have had problems with this text, too. The editor of this volume of the *Diplomatarium Islandicum*, Jón Þorkelsson, felt obliged to add the word "*fæst*" after "*hafdæ*," which he must have interpreted as an auxiliary verb that required a main verb to follow. I do not see that this makes the text any easier to understand, however.

To interpret Bishop Jón's text correctly, we must refer to the legal context. Since the text does not make good sense, we should instead focus

56 The documents appear on fol. 13r–v of the original *Bréfabók*, and are edited in *Diplomatarium Islandicum*, 4.394–396, nos. 433–435B. See also Anders Winroth, "Canon Law in the Arctic," *Texts and Contexts in Medieval Legal History: Essays in Honor of Charles Donahue*, ed. Sara McDougall, Anna di Robilant, and John Witte Jr. (Berkeley, Calif.: Robbins Collection, 2016), which contains new, corrected editions of both versions of the bishop's verdict. The case has been examined in previous scholarship, most recently Agnes Arnórsdóttir, *Property and Virginity*, 167–168.

57 "æi sidr spurdi herra biscupenn hann huortt han hafdæ hana (fæst) ædr æi. en Þorlæifr sagdizst ecki hafua fæst hana." See *Diplomatarium Islandicum*, 4.394.

on what the text ought to say. Can we know what the bishop *should* have asked? I think we can. In canon law, if the consent of the two parties is followed by sexual intercourse, the marriage becomes indissoluble. That theory is also carried out in practice. Church court records from all over western Europe demonstrate that canon law courts were typically unwilling to dissolve consummated marriages, whether or not the parties clearly had consented to the marriage. In other words, sexual intercourse counted *de jure* as a presumption of consent in medieval canon law.[58] Thus we actually know what Bishop Jón should have asked Þorleifur: did you have sexual intercourse? Could the question, as it appears in the *Bréfabók*, carry that sense? Could *hafdæ* have the same sense that the verb "to have" may carry in modern English? Did the bishop ask Þorleifr whether he "had" Þorgerðr in a sexual sense? No such sense of the verb *hafa* seems to be attested in the standard dictionaries of Old Norse, most of which, however, were compiled during the Victorian period, and thus they might not be expected to include such "vulgarity."[59] I suspect a search of Old Norse literature will turn up examples. A probable one is found in *Skírnismál* 35: "Hrímgrímnir heitir þurs, er þik hafa skal," in Carolyne Larrington's translation: "Hrimgrimnir he's called, the giant who'll possess you."[60]

For what it is worth (and perhaps it is worth something, given Bishop Jón's nationality), the English verb "to have" could certainly mean "to have sexual intercourse with" in both Old and Middle English. The online edition of the *Oxford English Dictionary* provides several medieval examples (although this sense of the word was, unsurprisingly, not included when the entry for the word "have" was originally published in 1901).[61]

Whatever we should make of that *hafdæ*, clearly the bishop had found that Þorgerðr had not freely consented to the marriage, and most probably

58 Donahue, *Law, Marriage, and Society*, 43.

59 John Simpson, *The Word Detective: A Life in Words from Serendipity to Selfie* (London: Little, Brown, 2016), 209–237, discusses how attitudes towards sexual vulgarity developed during the long period when the three editions of *Oxford English Dictionary* were produced.

60 I am grateful to Professor Richard North, University College London, who kindly pointed out this parallel. *Eddukvæði*, ed. by Jónas Kristjánsson and Vésteinn Ólason, Íslenzk fornrit (Reykjavík: Hið íslenzka fornritafélag, 2014), 1.387; *The Poetic Edda*, trans. by Carolyne Larrington (Oxford: Oxford University Press, 2014), 62. See also Stephen A. Mitchell, *Witchcraft and Magic in the Nordic Middle Ages* (Philadelphia: University of Pennsylvania Press, 2011), 53, who interprets the passage in *Skírnismál* similarly.

61 *Oxford English Dictionary*, oed.com, s.v. "have," sense II 13 a.

he had also found that the couple had not consummated the union, for in the end, the bishop decided that their putative marriage was null and void. Each party was free to marry whomever they wanted.[62]

The case of Þorgerðr and Þorleifr demonstrates two things. It shows that Þorleifr and Böðvar thought and acted in old-fashioned patriarchal ways; they had agreed to the marriage, and the father had then brow-beaten (or worse) Þorgerðr to agree. But the case also shows that the lawbooks of Gratian and Árni had some influence in Iceland, since even Þorleifr had felt obliged to ask Þorgerðr if she consented to marry him. Gratian's embrace of the consent theory shaped how Icelanders lived their lives.[63] The bishop fully applied the law that he could find in both lawbooks. Bishop Jón's ruling made perfectly clear that he would excommunicate anyone who did not respect his decision, although that might not have been very effective, given that the saga literature of Iceland is full of people who took excommunication very lightly.[64]

In conclusion, we have seen how Árni's Christian Law of the 1270s ably reflects general European canon law of his time. This is not surprising. By this time, canon law was a highly sophisticated system of law with claims of universal validity.[65] It was easily accessible in well-organized books, and we know that those books resided in the cathedral libraries of Iceland (although the actual copies seem to have disappeared without a trace).

The relationship between the Older Christian Law of Iceland and European canon law, in contrast, is more difficult to pinpoint. One of the problems is that it is difficult to say exactly what European canon law was in the 1120s. The law had not yet been made systematic and universal, and it did not yet reside in a small number of books with official validity, as it did later when Árni was bishop. Canon law was found in a high number of more or less well-organized collections, but little attempt was made

62 Cf. Agnes Arnórsdóttir, *Property and Virginity*, 167–168, whose conclusion ("the marriage was not declared illegal") about this case seems to contradict the bishop's verdict ("Þui sundr skilium wer oc sundr slitom oc sundr sægium þeirra hiona bandh").

63 Agnes Arnórsdóttir, *Property and Virginity*, 168, makes the point that "knowledge of the consent theory shaped the marriage litigation" in this case.

64 Elizabeth Walgenbach, "Excommunication and Outlawry in the Legal World of Thirteenth-Century Iceland" (PhD diss., Yale University, 2016).

65 Helmholz, *The Spirit of Classical Canon Law*, makes this point eloquently.

to resolve the many contradictions that existed between individual laws of different background and outlook. The bishops and priests who were involved with compiling the Older Christian Law of Iceland had surely learned the basics of canon law when they studied to become clerics. Their lawbook looks like they freely formulated what they thought was important in that law without following a continental model. The comparison I would like to suggest would be if a group of modern scholars who possess driver's licenses would sit down together and compile a code of traffic law. What these scholars might come up with would draw on their memories of learning the basics of this law, often many years ago, and also on their concrete experiences of driving. The result would, by and large, be correct, but not in every detail. And it would certainly not look like the official Code of traffic law (if such a thing even exists). I suspect that the Older Christian Law of Iceland came about in a comparable way.

In this paper, I have only been able to scratch the surface of the relationship between Icelandic canon law and European canon law by focusing on details in two areas of law. I have largely left out other Scandinavian Christian laws for simplicity's sake, although we must remember that both versions of Icelandic Christian Law were closely related to contemporaneous Norwegian Christian law.[66]

Much remains to be done in exploring the relationship between canon law in Iceland and in Europe. It should be done and this would help us better understand medieval Icelandic law, and not only its Christian Law sections. The last scholar to examine comprehensively and systematically the relationship between Icelandic canon law, as written down in the two Icelandic canon lawbooks, and European canon law, was Grímur Jónsson Thorkelin for his editions of the two Icelandic Christian laws published in 1775 and 1777.[67] Thorkelin's edition of Árni's Christian Law is especially

66 For relations between the Older Christian Law and Norwegian law, see most recently Sveinbjörn Rafnsson, *Af fornum lögum og sögum*; for relations between Árni's Christian Law and Norwegian law, see the references in "Kristinréttur Árna," 78–122, and see also *Nyere norske kristenretter*.

67 *Jus ecclesiasticum vetus sive Thorlaco-Ketillianum constitutum An. Chr. MCLXXIII: Kristinnrettr in gamli edr Þorlaks oc Ketils Biscupa ex mss. Legati Magnæani cum versione latina, lectionum varietate notis, collatione cum jure canonico, juribus ecclesiasticis exoticis*, ed. and trans. by Grímur Jónsson Thorkelin (Havniæ: Typis Frider. August. Stein, 1775); *Jus ecclesiasticum novum sive Arnaeum constitutum anno Domini MCCLXXV: Kristinnrettr in nyi edr Arna Biskups ex mss. Legati Magnaeani cum versione latina, lectionum varietate notis,*

full of references to Gratian's *Decretum* and other parts of the *Corpus iuris canonici*. Thorkelin was also the last person to publish a translation of Árni's Christian Law into a European language other than modern Icelandic, namely Latin; we clearly need a new translation of this text in a more widely understood language, such as English.[68] Árni's Christian Law remains a closed book to experts on European canon law without the ability to read Old Norse, but their help would be useful in working out fully how Árni absorbed and adapted that law. The Older Christian Law is included in the translations of *Grágás* and thus easily accessible to scholars, but there is still work to be done here on the relationships among manuscripts that preserve this law, and on how this law related to contemporary European law.

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collatione cum jure canonico, conciliis, juribus ecclesiasticis exoticis, ed. and trans. by Grímur Jónsson Thorkelin (Hafniæ: Typis Hallagerianis, 1777). This is not to deny that the sources of specific points of law have been examined in several studies, see note 8 above.

68 Also argued by Lára Magnúsardóttir, "Icelandic Church Law in the Vernacular," 145.

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SUMMARY

The Canon Law of Emergency Baptism and of Marriage in Medieval Iceland and Europe

Keywords: *Grágás, Kristinna laga þáttr, Kristinréttur Árna biskups Þorlákssonar*, canon law, Gratian, *Corpus iuris canonici*, Bréfabók of Bishop Jón Vilhjálmsson, emergency baptism, spiritual kinship

In this article, the Icelandic Church Law on emergency baptism and marriage is considered in the context of how general European law on the same subjects developed in the Middle Ages. The result is that while the *Kristinréttur* of Bishop Árni Þorláksson from 1275 is a good reflection of contemporary European canon law, the relation between the *Kristinna laga þáttr* of *Grágás*, allegedly compiled in c. 1123, and contemporary canon law, is more difficult to pinpoint. Differences among the several manuscripts of this *þáttr* may, however, be explained with reference to developments in European canon law. The article also examines a marriage case adjudicated in 1429 by Bishop Jón Vilhjálmsson of Hólar, demonstrating that the bishop, as far as we are able to judge, followed not only valid Icelandic law but also European canon law.

ÁGRIP

Lykilorð: *Grágás, kristinna laga þáttr, kristinréttur Árna biskups Þorlákssonar*, kanóníska réttur, Gratianus, *Corpus iuris canonici*, Bréfabók Jóns biskups Vilhjálmssonar, skemmri skírn, guðsifjar

Í greininni er íslenskur kirkjuréttur varðandi skemmri skírn og hjónaband skoðaður og settur í samhengi við þróun lagagreina um sömu atriði í almennum kirkjurétti í Evrópu á miðöldum. Niðurstaða rannsóknarinnar er annars vegar

sú, að kristinréttur Árna biskups Þorlákssonar frá 1275 endurspegli evrópskan kirkjurétt frá sama tíma. Á hinn bóginn er erfiðara að rekja nákvæmlega sambandið milli kristinna laga þáttar *Grágásar* – sem talin er vera rituð um 1123 – og laga kirkjunnar sunnar í Evrópu á 12. öld. Ólík lesbrigði handrita í þættinum má hins vegar skýra með því að skoða breytingar í evrópskum kirkjurétti. Greinin tekur að lokum til skoðunar dómsmál um hjónaband sem Jón Vilhjálmsson Hólabiskup úrskurðaði í árið 1429. Málið sýnir að eftir því sem næst verður komist dæmdi biskupinn ekki aðeins eftir íslenskum lögum heldur einnig evrópskum kanónískum rétti.

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