

ICELAND AS A WESTERN COUNTRY

HOW TO CLASSIFY MEDIEVAL CHURCH LAW IN THE VERNACULAR

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Resumen: Al sometimiento de Islandia al rey de Noruega en 1262-1264 le siguió una legislación en la que tuvo importancia un libro de derecho sobre la Iglesia y los asuntos espirituales escrito en la lengua vernácula de cada país. Dicha ley se implementó en Islandia en 1275, junto con un libro de derecho secular independiente en 1281. Ambos libros se mantuvieron en vigor hasta mediados del siglo XVI. Parece que la causa de que Islandia se diferenciase de otros países de la Europa occidental, donde los asuntos espirituales se regían por la Ley de la Iglesia de Roma, fue que se regía por una ley de la iglesia que se alejaba tanto de la ley secular como de la ley de la Iglesia de Roma. Esto se ha considerado como una indicación de la rivalidad constante entre las autoridades religiosas y las seculares, que presentaban a la Iglesia como una institución que reaccionaba de forma exagerada y opresiva a la cual se oponían los laicos. Sin embargo, si se compara la ley de la Iglesia de islandesa con el derecho de la Iglesia de Roma, se observa que la Iglesia en Islandia se sometía completamente a las leyes de la Iglesia de Roma y por tanto se muestra, que a pesar de su lenguaje complicado, la Iglesia islandesa era una representación específica de la Iglesia romana. El reconocimiento por el rey de una jurisdicción separada entre asuntos temporales y espirituales se recogió en un concordato noruego en 1277. Esta cooperación se evidenció claramente en casos judiciales posteriores.

Palabras Clave: Concordato de Noruega - Derecho Canónico en lengua vernácula – Derecho Canónico islandés del siglo XIII

Abstract: Iceland's subjection to the king of Norway in 1262-64 was followed by a legislation in which a law book for Church and spiritual matters was composed in the vernacular for each country. Such law was implemented in Iceland in 1275 along with a separate secular law book in 1281. Both books remained in force until the middle of the 16th century. A church law that

was separate, both from the secular law and that of Roman Church appears to set Iceland apart from other Western European countries where spiritual matters were governed according to the Latin law of the Roman Church. This has been viewed as an indication of constant rivalry between the religious and secular authorities, usually presenting the Church as an overreaching and even oppressive institution against which laity struggled. But a comparison of Icelandic Church law with the Latin Canon law shows that the Church in Iceland submitted entirely to the authority of the Roman Church and thus shows that the Icelandic Church law was, despite its obscure language, a specific representation of the law of the Roman Church. A Norwegian concordat from 1277 shows the king's recognition of separate spiritual and temporal jurisdictions. This cooperation is readily apparent in later court cases.

Keywords: Norwegian Concordat - Canon Law in the Vernacular - 13th Century Icelandic Church Law

INTRODUCTION¹

Around the year 1480 an Icelandic bishop, Ólafur Rögnvaldsson at Hólar diocese (1460-1495), dealt with a serious case of incest.² Hearsay regarding the situation had come to the attention of

¹ Printed primary sources: PONTOPPIDAN, E., *Annales ecclesiae Danicae diplomatici, oder Kirchen Historie des Reichs Dannemarct*: Copenhagen 1741, pp. 786-281; SIGURÐSSON, J., ÞORKELSSON, J. ET AL. *DI: Diplomatarium Islandicum. Íslenzkt fornbréfasafn sem hefir inni að halda bréf og gjörninga, dóma og máldaga, og aðrar skrár er snerta Ísland eða íslenzka menn 834-1589 I-XVI*: Copenhagen and Reykjavík 1857-1972; JÓNSSON, M. ET AL. *Járnsíða og Kristinréttur Arna Þorlákssonar: (Smárit Sögufélags)*, Reykjavík 2005, pp. 143-190; HALLDÓRSSON, Ó., *Jónsbók. Kong Magnus Hakonsson lovbog for Island*, Copenhagen 1904; THORKELÍN, B. *Jus ecclesasticum novum sive Arnæanum constitutum anno Domini MDCCLXXVII. Kristinn retrr inn nyi edr Arna biskups*, Copenhagen 1777; LYNGBALD MAGNÚSSON, M. *Kristinréttur Arna frá 1275. Athugun á efni og varðveizlu í miðaldahandritum*, University of Iceland 2002; ÞORKELSSON, J., *Morðbréfabæklingar Guðbrands biskups Þorlákssonar 1592, 1595 og 1608, með fylgiskjöllum*, Reykjavík, 1902-1906; KEYSER, R. and MUNCH, P.A. *Norges gamle love II*, Oslo, 1848, p. 23; STORM, G. *Norges gamle love V*: Oslo, 1895, pp. 16-56.

Secondary sources: BAGGE, S. «Kirkens jurisdiksjon i kristenrettssaker før 1277» in *Historisk tidsskrift* 60 (1981) pp. 133-159; BERMAN, H.J.: *Law & Revolution II. The Impact of the Protestant Reformations on the Western Legal Tradition*, Harvard University Press 2003; HELMHOLZ, R.H., *The Spirit of the Classical Canon Law*, London, 1996; KUTTNER, S., *St. Jón of Hólar: Canon Law and Hagiography in Medieval Iceland, in The History of Ideas and Doctrines of Canon Law in the Middle Ages*. London 1980.; LANDAU, P. «The Importance of Classical Canon Law in Scandinavia in the 12th and 13th Centuries» in TAMM, D. & VOGT, H., *How Nordic are the Nordic Medieval Laws? Medieval Legal History I*. Copenhagen 2005; MAGNÚSDÓTTIR, L., *Bannfæring og kirkjuvald á Íslandi 1275-1550. Lög og rannsóknarforsendur*, Reykjavík 2007; MAGNÚSDÓTTIR, L., «Case(s) of Excommunication», in PER ANDERSEN, P., LETTO-VANAMO, P., MODÉER K.Á., VOGT, H., *Liber Amicorum Ditlev Tamm - Law, History and Culture*, Copenhagen 2011, pp. 185-197; SEIP, J.A.: *Sættargjerden i Tunsberg og kirkens jurisdiksjon*, Oslo, 1942; SIGURJÓNSSON, A., *Vestfirðingasaga 1390-1540*. Reykjavík 1975; VODOLA, E.: *Excommunication in the Middle Ages*. Berkeley 1986.

the bishop during a visit to the area. This prompted an inquest. The result was that a man, Bjarni Ólason, confessed to having had sexual relations with his daughter Randíður, while she was between the ages of 12 and 14. Due to the severity of the crime, Bjarni was taken into the custody of the bishop. Since the case demanded outlawry the king and Church would divide his property between them. Therefore, procedures of this church court case demanded the involvement of the king's sheriff and lay courts as the king's part was distributed to relevant lay parties.³ Later, the legality of the methods used by the bishop to secure Bjarni's confession was challenged in an effort to upset the judgement.

How are the relatively extensive, and quite detailed Icelandic sources of these cases that were dealt with by the highest ecclesiastical courts in the country to be interpreted? What were the motives of the clerical judges, the status of the laymen in face of the law by which they were judged, and what is the importance of the courts' process? These questions will not be answered without knowing the law and the institutions that represented them and the historical context in which they were made.

1. CHURCH COURT CASES FROM THE 15TH CENTURY

During the time Bjarni's case played out, the same bishop was dealing with lay church-owners over who should bear the costs of episcopal visitations.⁴ The bishop wrote to his archbishop for advice.⁵ The church courts were indeed quite busy in the late 15th century. Members of a large extended family who were all after shares of the same huge inheritance waged a war against one other in various courts of law; if one of the heirs could prove that another whose claim to inheritance preceded theirs was not rightfully the heir, that individual would come a step closer

² The case goes by the name Hvassafellsmál. The sources for the case are printed in the Icelandic Diplomatarium, as goes for almost all other medieval legal cases. The publication will here be referred to as DI: SIGURÐSSON, J., ÞORKELSSON, J. ET AL. Diplomatarium Islandicum. Íslenskt fornbréfasafn sem hefir inni að halda bréf og gjörninga, dóma og máldaga, og aðrar skrár er snerta Ísland eða íslenska menn 834-1589 I-XVI, Copenhagen and Reykjavík, 1857-1972. For further publication on sources regarding this case, see also ÞORKELSSON, J., *Morðbréfabæklingar Guðbrands biskups Þorlákssonar 1592, 1595 og 1608, með fylgiskjöllum*, Reykjavík, 1902-1906. Study on the case as well as its research history, see MAGNÚSARDÓTTIR, L., *Bannfæring og kirkjuvald á Íslandi 1275-1550. Lög og rannsóknarforsendur*, Reykjavík, 2007. (Translation of title: Excommunication and Church authority in Iceland 1275-1550. Law and research basis), p.187-217.

³ See in particular DI p. 365-366.

⁴ This debate is referred to as hálfkirknamál and its sources are printed in the DI. For critical research history see MAGNÚSARDÓTTIR L., *Bannfæring og kirkjuvald...* cit. p. 187-217.

⁵ DI VI pp. 404-407.

to the fortune.⁶ One method was to challenge the legitimacy of his parents' marriage on grounds of consanguinity which if proven rendered the offspring illegitimate and not proper heirs.

Although the line of succession was set forth in the secular law,⁷ the Church courts could interpose their rules as to who was qualified to be in that line. In order to move oneself further up the list, reference to both the temporal and spiritual law was needed. Some couples, who were known to be related by the fourth degree, tried to secure their marital status by appealing directly to the Pope for an exception. When exceptions were granted, and possibly accepted by the king, it was still possible for adversaries to contest an inheritance claim by pointing out that although the Pope had legitimized the marriage, he had not said anything about the legitimacy of any children that had been born beforehand.⁸ There are numerous examples of such cases in the sources as well as similar ones that contain much little known information. These legal sources provide rich information not only about the people who were the subjects of prosecutions but also about the individuals who provided the gossip upon which grievances were based in the first place. These latter actively participated in legal cases as did lay and spiritual authorities from the highest to the lowest stations.

2. DOUBTS ABOUT CHURCH AUTHORITY

Research on cases that were dealt with by Iceland's Church courts in the late medieval period has been unsystematic and rare. Therefore, the significance of court cases such as those touched on above is not fully realized. One generally acknowledged fact is that in the 15th century the two offices of bishops in Iceland, as other Church offices, rested on a law book from 1275, the *New Christian Law* or *Árni's Christian Law*, upon which bishops' rulings and court procedures were likewise based.⁹ Lay authority equally rested on a separate law book, *Jónsbók*, from 1281.

⁶ The race for this inheritance lasted much longer than the term of one bishop and took many forms, murder among them, and cases were tried in various courts of law. The different kinds of sources are printed in the DI. Although many studies have been made on specific details, the only attempt to research the case as a whole is SIGURJÓNSSON, A., *Vestfirðingasaga 1390-1540*. Reykjavík, 1975. With reference to his studies the case goes by the name erfðamál or erfðadeilur Vestfirðinga.

⁷ The line of inheritance is described in considerable detail in the "erfðatal" chapter of *Jónsbók* – law book of the king: *Jónsbók. Kong Magnus Hakonsson lovbog for Island*: HALLDÓRSSON, Ó. Copenhagen 1904.

⁸ MAGNÚSDÓTTIR, L., *Bannfæring og kirkjuvald...* cit. p. 104.

⁹ The New Christian Law translated into Latin as *Jus Eccles. Norweg.* by Árni Magnússon in PONTOPPIDAN, E., *Annales ecclesiae Danicæ diplomatici, oder Kirchen Historie des Reichs Dännemarct*: Copenhagen 1741, pp. 786-281, and again some decades later when it was published bilingually; THORKELIN, B. *Jus*

At the time the *New Christian Law* was put together in the late 13th century, Icelanders had recently entered into a contract with the Norwegian king, moving away from a political system without king and central authority. There seems to be a lack of a convenient term to describe Iceland's political situation, but this was not a simple matter of submission to or integration into the Norwegian state because Icelanders insisted on having their own laws. At the time, the king was himself in the midst of shaping his kingdom into the tradition of Western governmental and legal system that included being liaised with the Roman Church.¹⁰ New legislation was generated for Norway, and a special version was created for Iceland. The temporal and spiritual institutions promulgated their respective laws separately in both countries – there was the king's law and the Christian law.

There are generally no reservations regarding the authority of the king after 1281, but historians typically express considerable doubts about the validity and limits of spiritual authority. The idea is that the Church never managed to fully legitimize its authority but continued to push for even more than the law book granted throughout the Middle Ages. This is thought to have caused hostility and resistance on part of the laity and therefore historians tend to examine the medieval secular and the spiritual authorities, in Iceland primarily, as conflicting, and they doubt – although not entirely deny – the legitimacy of the Church as a part of government. They see the period characterized by an indecisively constituted government subject to continuous frictions that continue uninterrupted throughout the time which the *New Christian Law* was in effect. Various historians have, of course, approached documents and cases with a different point of view, but the general understanding of Iceland history continues to be that of a medieval Church in conflict.¹¹

ecclesasticum novum sive Arnæanum constitutum anno Domini MDCCLXXVII. Kristinn retrr inn nyi edr Arna biskups, Copenhagen 1777.

It was then printed in its entity in STORM, G., *Norges gamle love V*: Oslo, 1895, pp. 16-56 and published without variants in modern Icelandic: JÓNSSON, M. et al. *Járnsíða og Kristinréttur Árna Þorlákssonar: (Smárit Sögufélags)*, Reykjavík 2005, pp. 143-190. The most accurate critical version of the over one hundred manuscripts is yet to be published, but is used here: LYNGDAL MAGNÚSSON, M., *Kristinréttur Árna frá 1275. Athugun á efni og varðveizlu í miðaldahandritum*, University of Iceland, 2002.

¹⁰ For a short overview of the importance of church and state relationship in political and legal development see BERMAN, H.J.: *Law & Revolution II. The Impact of the Protestant Reformations on the Western Legal Tradition*, 2003, Introduction pp.1-28 and Conclusion. pp. 374-382.

¹¹ To name some: KUTTNER, S., *St. Jón of Hólar: Canon Law and Hagiography in Medieval Iceland in The History of Ideas and Doctrines of Canon Law in the Middle Ages*. London, 1980 and LANDAU, P. «The Importance of Classical Canon Law in Scandinavia in the 12th and 13th Centuries» in (ed.) ANDERSEN. P.,

Historians who study the 15th century always doubt the motives of the Church, question its general legitimacy, and interpret the motives of the laity with reference to 13th century politics. They see the cases, such as our incest case, as simply more evidence of the rivalry between those in power: Rather than any real legal substance, the bishop made up the charges against Bjarni for financial or other gain, and he was almost certainly cheating the lay church owners. Similarly, cases in which inheritance-seekers challenged the conclusion of clerical judges are simply expressions of a general will of the public to overthrow the corrupt Church. Such an understanding allows little space for examining the legal system as a medium for problem solving and the Church as an institution for upholding the peace. It is, on the other hand, quite as likely that the above cases arose *because* the legal system was a functional one; it went after criminals and was accessible at all levels of the hierarchy, to people and parties who saw need to rectify their cases or clarify their legal status.

Academic doubts about the nature and limits of Church power is rooted in studies of the law-making process of the late 13th century.¹² Habitually, historians examine the process through the eyes of the *Protestant Alarmist School*¹³ and doubt the validity of the *New Christian Law* citing the political upheaval at the time of its creation, which is traditionally seen as the understandable resistance on the part of locals to the Church's bid to expand power. The problem is that evidence for a general and continuing hostility between Church and the laity throughout the period of the Roman Church in Iceland does not hold. And, assumptions of the Church's uncertain status in the 15th century require overlooking the fact that the Church played an active role until the king formally disconnected his relationship with it by taking up Lutheranism in the 16th century. Only then was the system to which the *New Christian Law* belonged to abolished.

TAMM, D. & VOGT, H., *How Nordic are the Nordic Medieval Laws? Medieval Legal History I*. Copenhagen, 2005.

¹² Lára Magnúsardóttir has written extensively about this subject and shown that scholars have been influenced by Jens Aarup Seip's theory which accounts for massive anti-clericalism in during the period from the late 12th century and throughout the Middle Ages. MAGNÚSARDÓTTIR, L., *Bannfæring og kirkjuvald...* cit. pp. 297-399. See "Gjennem hele tidsrummet fra 1280 til henimot 1350 kan det således påvises en fast, sammenhengende antikirkelig tradisjon, som bæres av rikets stormannsklasse i opposisjon til et presteskap med store aspirasjoner. Denne tradisjon strekker sig over flere generasjoner, og den var sterk nok til å bestemme kongedømmets politikk overfor kirkens krav på politisk innflytelse og rettslig autonomi. Riksstyrets politikk var fast og sikker, og den søkte bevisst tilknytning til gammel antikirkelig politikk under Sverre." SEIP, J.A.: *Sættargjerden i Tunsberg og kirkens jurisdiksjon*, Oslo, 1942, p. 197.

¹³ Term borrowed from HELMHOLZ, R.H., *The Spirit of the Classical Canon Law*, London 1996, p.369.

A different and more fruitful way of looking at things is that the two 13th century law books, *Jónsbók* and *New Christian Law*, taken together combine the king's and Church's hierarchies to form one system of government with divided spheres of authority, temporal and spiritual.

3. CONCORDAT DEFINES LEGAL SYSTEM

The view taken here is that such coordination had been installed in a perfectly legitimate, orderly manner in the 1270s and was bound up in a Concordat between the king and the Church. A system that defined the spiritual sphere of Church authority had thus already been in existence for two hundred years by the time the Church and king divided Bjarni's property between them.

The history of the Concordat starts when an Archiepiscopal See was established in Nidaros in 1154, soon including the two Icelandic episcopal sees.¹⁴ The Church and king then made a concordat, probably in 1164, in which they agreed upon their relationship.¹⁵ That, and the subsequent developments in the relationship between Church and king can only be understood with direct references to the Lateran councils and changes that occurred on the highest levels of Church and empire in the following centuries. In 1247 the Church renewed aspects of its contract with the Norwegian king through Cardinal William of Sabena, with a focus on the Church's liberty and its judicial hierarchy, but they also agreed upon specific matters of law.¹⁶ During the legal reforms in Norway and Iceland in the 1260s and 1270s, the Church and king worked towards renewing the concordat entirely, of which the first version was published in Latin in Bergen in 1273.¹⁷ While the concordat was still being debated, the Church in Iceland promulgated the *New Christian Law* in 1275, and a law-book on temporal matters from the king had already been sent to them in 1271, *Járnsíða*. Both were built on the kind of power division

¹⁴ DI I 204-214.

¹⁵ This concordat was only ever in Latin: *Privilegium et iuramentum Regis Magni qui primus coronatus Nidrosiæ*: DI I 223-230. It is frequently dated to 1164 and is certainly from the time between the years 1163-1172. *Regesta Norvegica* I -145 pp. 69-70.

¹⁶ *Privilegium Wilhelmi Sabinensis* dated August 16th 1247 pp. 540-553. (Version A (pp. 546-548) is in Latin, version B (pp. 548-550) is a vernacular translation of the A text. Version C – 1, 2 and 3, deal with specific issues regarding the liberty of Church and excommunication, with references to Pope Innocence (p. 552), the crime of rising up against the king, monasteries and church property. Other statutes connected with the Cardinal dated August 17th are printed in Latin and translations DI pp. 554-568. They include exceptions from the law regarding work on holy days with reference to extreme weather conditions. There is also the king's approval of the statutes (DI I p. 557). They were attested in a letter from the Pope in 1249, which was also translated: DI I p. 569-574.

¹⁷ DI I pp. 100-106. The king wrote to the Pope for approval of the concordat DI II p. 107, which he did: DI II pp. 120-123.

that the Concordat represented. The *New Christian Law* was never revised, but the civil law book took its ultimate form as *Jónsbók* in 1281. As the legislative process went on, the Concordat was also revised and a final version of it had been issued in Tunsberg in 1277.

The Concordat of Tunsberg was published in Latin and a vernacular translation of it is likely to be from that time.¹⁸ The new Concordat agreed with the contracts from 1247, and corrected errors from the 1164 one. Basically it is a revision of the 1273 Concordat with a few additions and changes. It described in clear words the role and status of the Church within the Norwegian state, and thus set limits both on Church authority and that of the king.

The new law books in Iceland echoed that distinction, as did the new state law for Norway (*Landsloven*) from 1274. They all included this text;

"As God's mercy sees the need for the everyday needs of abundant commonalities and various multitudes, he has appointed two of his servants to be his officials in order to keep this sacred faith and his sacred law for the protection and rights of good people, but for punishing and cleansing of evil people. *These are two, one is king but the other is bishop; the king has temporal power for temporal things from God, but the bishop has spiritual power for spiritual things and each one of the two shall support the cases of the other* for right and legal matters and recognize that they have their power and authority from God but not from themselves."¹⁹

There can be no doubt that the law secured the authority of bishops on level with the king; they were partners within the state.

There was great political opposition to articles in the Concordat and the legislation that continued after 1277, that has received much scholarly attention. Still, evidence shows that the system of governance that the Concordat installed was in full force two centuries later.²⁰ But unlike the antagonism of the late 13th and early 14th centuries, the legal system of the period following the debate has not been examined in the same detail. Instead, observations on

¹⁸ Both versions are printed in DI II pp. 139–155.

¹⁹ Italics are mine. Járnsíða og Kristinréttur Árna Þorlákssonar; BERNHARDSSON H., LYNGDAL MAGNÚSSON M. & JÓNSSON M. Reykjavík, 2005. "Kristinréttur Árna", chapter 2, Kristindómsbálkur; Jónsbók, chapter 2; Norges gamle love II: KEYSER, R. and MUNCH, P.A. Oslo, 1848, p. 23. Translated with the help of Ryan Johnson.

²⁰ This is among the main conclusions of Magnúsdóttir's study of excommunication and the authority of Church in the period from 1275-1550: MAGNÚSDÓTTIR L., *Bannfæring og kirkjuvald...* cit.

political situations from the 1170s to 1350 have become the basis for interpretation for cases through the whole time the Roman Church held privileges in the country, placing them under the light of politics that were already obsolete.

If, on the other hand, the Concordat of Tunsberg from 1277 is regarded as the basis for the state's rule of law until the reformation, the old interpretation does not hold. The 15th century court cases do not show signs of a power struggle between Church and lay power. We see instead a dual judicial system that allowed authorities to pursue legal determinations while allowing laymen to seek their goals.

One of many things that supports the point of view that the system was functional, rather than comprised of two conflicting parties, is that the two law books perfectly respect the limits of the other's jurisdiction and the respective authority of each. The officials of the two hierarchies referred themselves directly to their superiors abroad – the ones who set the law, the king and the Pope. The subjection to the Roman Church is clearly visible in the case already mentioned, when the bishop asked the archbishop for advice. The pope had already felt he was a party of the 13th century conflict, as can be seen by his letter to the Norwegian king when it was attempted to overthrow the Concordat in 1285 – and he was listened to as an immediate translation of that letter shows.²¹ He also responded to the pleas of dispensation for the marriage of relatives in the 15th century, sent to him by lay Icelanders. The relationship between the Roman Church and Icelanders obviously went both ways.

These are some documents indicating that Iceland's liaison with the Norwegian king eventually included Roman Church authorities. The point that in the 15th century cases were still raised and judged according to the laws in these two 13th century books. The system of dual authority was quite stable. In fact, the cases mentioned here are known only because the law required documents. The existence of these documents is proof of the presence of the institution.

The 15th century documents provide clues to the establishment and intergration of that system. The number of copied law books rose considerably and the *New Christian Law* was just as popular as *Jónsbók*, which might be connected to those who made a career out of their specialized knowledge of the law by running cases for others; they managed estates for individuals, took property and inheritance cases to court, and challenged undesired outcomes by

²¹ DI II pp. 251-256.

referring to procedural rules. In short, they were lawyers who worked for a fee and went to whichever court that suited their case, be it secular or ecclesiastical.²² In that light, the documents that show laymen accusing a bishop of having gone the wrong way about drawing a confession from a suspected criminal do more for verifying the existence of a legal system with strict procedures than it does for showing that there was a general opinion that as a rule bishops bullied suspects.

4. CHRISTIAN LAW IN ICELAND WAS LIBER EXTRA

One goal of the discussion up to now has been to answer an old question on the nature of the *New Christian Law*. It was not just a set of laws on religion and Church administration, but a real law book that was applied to a defined sphere spiritual matters within the authority of the state. But among the reasons why the limits of Church authority in late medieval Iceland have seemed unclear is the mere existence of the *New Christian Law* itself because it was not written in Latin but in the language then spoken in the Nordic countries, one that now goes by the modern designations Old Norse and Old Icelandic – but was called *Norræna* at the time. This seems to remove the *New Christian Law* from the law of the Roman Church and indicate it was differentiated, and special – perhaps even “national,, in the future spirit of Luther. Norwegian historian, Sverre Bagge focused on this when he asked why the Church (in Norway and Iceland) insisted on having its own national vernacular Church law, rather than be content with international Canon law like most other countries.²³

Although Norway had been a kingdom for a long time when the Concordat was presented, it was moving from a system in which the king was dependent upon his barons into one where they were simply his officials. In Iceland the change was from a system of assemblies to that of institutional government. In both cases, the transformation could not take place without the consent of the players in the old system. It means that in order to implement the new system the parliamentarians representing the old system first needed to understand their choices. Therefore the importance of translating Latin documents such as the ones mentioned above: The statutes and contracts from 1247, the final version of the Concordat and the letter from the pope in

²² MAGNÚSARDÓTTIR, L., «Case(s) of Excommunication», in (ed.) PER ANDERSEN, P., LETTO-VANAMO, P., MODÉER K.Å., VOGT, H., *Liber Amicorum Ditlev Tamm - Law, History and Culture*,. Copenhagen 2011, pp. 185-197.

²³ BAGGE, S., «Kirkens jurisdiksjon i kristenrettssaker før 1277», in *Historisk tidsskrift* 60 (1981), pp. 133-159. See p.155: “hvorfir kirken hele middelalderen igjennom holdt fast ved den praksis å ha sin egen, nasjonale kristenrett, og ikke, som i de fleste andre land, nøyde seg med internasjonal, kanonisk rett”.

1285. These are all documents that touch upon the core of a *system* rather than being details of legal interpretation. Similarly, the vernacular text of the *New Christian Law* can easily be seen as a general description of the main issues and processes of the law of the international Church, necessary for the general assembly in order to formally accept the Church law in its entity.

Before Iceland made its deal with the king, Christian laws, which largely dated from the 12th century, had mostly been presented in a special chapter of the one valid law book that has gone by the name *Grágás*. Laws on Christianity had therefore been a part of the general law and not detached from it. And, although bishops had played an important role in government, the old law made no claim of freedom for the Church as an institution. That changed with the separate *New Christian Law* in 1275, mostly because it labelled the Church in Iceland as one branch of the free Roman Church under the authority of the Pope. It consists of some 37-46 chapters and differs from the old law not just in being a separate collection, but also in that it is a set of laws that encompasses a system of ecclesiastical law

The chapter on Christianity in the old *Grágás* law had set out some basics of Christianity, such as feast days, rules for baptism, fasting, burials as well as administering mulcts and penance for breach. *The new Christian Law* did all that as it outlined Christian life from birth, even conception, to eternity. It also set standards for clerical life and liturgy and accounted for censures and punishments. But unlike the old law it pronounced an independent institution in a relationship with the king while it referred directly to “God’s law” and “the law” for interpretation and further information and interpretation.²⁴ That cannot be understood as other than a reference to the *Liber Extra*, the then still relatively new law book of the Western Roman Church.²⁵

In general, the context of the *New Christian Law* indicates strongly that it was a confirmation of the *Liber Extra* in Iceland. A full comparison is yet to be made, but existing studies indicate that the law in Iceland was in harmony with the law of the Roman Church. No inconsistencies have been found except the method by which tithe was collected, as recorded in the Hagiography of bishop Árni.²⁶ Changes and additions to the laws of the Roman Church were thereafter

²⁴ For an example, see chapters 14, 16, 41 and 42.

²⁵ Additions to ecclesiastical law were later introduced by statutes that have direct references to Canon Law or are simply translations thereof, such as DI II 626; DI II 498; DI II 511–574; DI II 712; See MAGNÚSARDÓTTIR L., *Bannfæring og kirkjuvald...* cit. pp. 386-399.

²⁶ MAGNÚSARDÓTTIR, L., *Bannfæring og kirkjuvald...* cit. p. 407.

introduced in Iceland through the archbishop in Nidaros; never again did they pass through hands of laymen in the assembly.

5. WHAT CHANGED?

Comparisons of older Norwegian and Icelandic law articles to the newer ones in the *New Christian Law* have been made; they show that many provisions were merely transferred from the old law into the new law book. This has been taken as an indication of minimal changes from earlier local Church law. While this might be true it does not take into account that these earlier articles of law in all likelihood represented later versions of Canon Law anyway, since most of them are from the late 12th century and younger.

But there certainly were differences between the older law on Christianity and the *New Christian Law*. The essential one lies in the manner by which the *New Christian Law* describes an autonomous institution of power rather than focusing solely on regulating the Christian lives of people or running local Churches. This change was necessary because in the period leading up to the Fourth Lateran Council in 1215, the mother Church had undergone a structural, rather than religious, transformation that, among other things, required redefining its role within state governance systems. The *New Christian Law* marks a very important change that has to do with governance rather than religion.

The *New Christian Law* institutionalized the Church in Iceland and transformed the mode of which it was able to execute its authority on an administrative level, as well as the judicial one. The process of the courts became tied up with the public service that the Church was not only obliged to offer, but each and every one was now legally required to accept under the threat of excommunication. One of the novelties added by the *New Christian Law* was the duty to take the Eucharist regularly, which contributed to establishing excommunication *ipso facto* as an institutionalized censure that was now supported by the king, who would outlaw anyone who would not take absolution within set time limits. Instead of being a censure that anyone could doubt because it lacked ground in the law and the legal system – as is apparent in older sources – *excommunication ipso facto* became the pillar that Church authority stood on, elaborately tied with the royal establishment. The censure had been a crucial factor in the 12th century institutionalization of the Roman Church and consequently it became a major factor of court

procedures in the following ages.²⁷ The *New Christian Law* additionally secured the duty to do penance, another key to locking in the institution's authority. Thus, it completed the establishment of the new and free Church as it *had become* after the developments of the Lateran Councils.

After 1275, the bishops of Iceland therefore served in their offices according to a law book that highlighted the main points of ecclesiastical law; they communicated the Roman Church's system of operation and confirmed its authority. Iceland's bishops were not only directly a part of the Roman Church's hierarchy, but their law book was also ecclesiastical law. It was not a variant; the intent was to implement the laws of God and the Church, not to differ from them. *The New Christian Law* was more than merely a short version of Canon Law because if in doubt the law and offices of the Roman Church would be consulted. The main point here is that the *New Christian Law* in Iceland was *not* Icelandic law for an Icelandic Church but Roman Church Law for the Roman Church and spiritual matters for Christians *in* Iceland. It might be possible to see it as a delegated legislation or regulation that directed how ecclesiastical law functioned in Iceland, but locally it was the law by which the Church was run, its officials worked, the people lived and by which they were judged.

6. VERNACULAR IS NOT NECESSARILY VULGAR

The sources connected with the *New Christian Law* are manifold. In addition to law texts, the institution produced various sources for the subsequent 275 years, much of them from the late 15th century, concerning cases similar to those mentioned at the beginning of this article. There are, in addition, numerous sources from the lay branch that illustrate the interactions between the legal institutions and the people it ruled over. As a rule, these sources are in *Norræna*.

As the *New Christian Law* was written in the local language, it set standards for thought and language on Church law in Iceland to the same extent as it ruled the institution's administration and procedures. Although the *New Christian Law* was written in the language locally spoken, it was not the „vernacular“ in the sense of being informal or vulgar. The words in Iceland's law are translations from the Church's, which makes them real legal terms with the same underlying definitions as the Latin ones. *Óhlýðni* matches the legal term *Contumacia* as perfectly as *synd* does *peccatum*. Likewise, *bann af sjálfu verkinu* has the exact meaning of *excommunicatio ipso*

²⁷ VODOLA, E., *Excommunication in the Middle Ages*. Berkeley 1986, pp. 34–35.

facto much in the same way as the Icelandic version of Jesus' name has the same reference as it does in Latin. The vocabulary of the *New Christian Law* was not common or unspecific; its accurate definitions could, on the contrary, have dire consequences for politics and persons. The philosophy and theology contained in legal terms referred directly to ideas that were equally complex and important whether they were uttered in Latin or Icelandic. The law was, moreover, inseparable from the religion. Sources deriving from the medieval Church in Iceland are valuable for understanding how the Church worked and influenced life, language, and politics on the outskirts, but still inside, of the medieval Western Roman Christian world. In that sense Old Icelandic is a language of medieval ecclesiastical law in its own right.

Primary sources do not support a theory of conflict between the lay and learned as a main characteristic of Icelandic politics and government in the late Middle Ages, but the country rather secured a place for itself within the Western religious and political system in the 13th century. That requires that its history be read and interpreted in direct relation to general Western developments. This not only means that Western European sources are a necessary part of Icelandic history but also vice versa: Icelandic sources must also be approached as a part of European history. *Norrœna* as a modern academic discipline does not routinely include Latin scholarship and is only marginally connected with Christian and legal studies. Canon Law studies, it might also be pointed out, do not require knowledge of *Norrœna* either. But, had the Icelandic *New Christian Law* been written in Latin would it not then be normally known by Canon Law scholars and studied as a part of Canon Law history?

The Icelandic *New Christian Law* came into existence in a Norwegian context that is not accounted for in this article due to its necessary brevity. But, at the same time the *New Christian Law* was written, a Norwegian version was also made. Given their interrelationship, the two cannot feasibly be studied separate from one another. To make a closing recommendation, both sets of laws are in need of new editions published for a new generation of scholars. And, it is essential that they be translated into the language of the time: English.