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One of Us?: Negotiating Multiple Legal Identities across the Viking Diaspora

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Abstract:

Migrations from mainland Scandinavia during the Viking age resulted in the establishment of colonies across the North Atlantic. Evidence of sustained socio-cultural contact between these colonies has encouraged scholars to recognise the Viking world as a diaspora. Medieval Iceland, by way of its poets, writers and learned men, was the locus of the memorialisation of this diaspora. Laws provide historians with a way in which to understand the creation of identity in a past society and the criteria that formed the basis of these identities. In the Viking world, where separate identities were emerging while still being connected through the diaspora, the manner in which identity was constructed and negotiated is of special interest. This paper uses Grágás, the medieval Icelandic law code, along with laws from other parts of the diaspora and Icelandic sagas to unpick how Viking diasporans negotiated identity, where they ‘belonged’, and where they were excluded.

Keywords: Viking age; diaspora; identity; medieval law; sagas; Scandinavia
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Introduction

_Ert þú islenskr maðr?_ (Are you an Icelander?) — _Njáls saga_, §3

When Hrútr Herjólfsson approached King Haraldr gráfleðr (Greycloak) requesting help, the Norwegian monarch attempted to establish his identity by asking him: ‘Are you an Icelander?’ From the _Íslendingasögur_ (Sagas of Icelanders), primarily _Laxdæla saga_ and _Njáls saga_, it emerges that Hrútr was born in Norway, to a Norwegian father, Herjólfr, and an Icelandic mother, Þórirr Þorsteinsdóttir. His mother returned to Iceland after the death of his father but Hrútr remained in Norway. After Þórirr’s death, Hrútr decided to head to Iceland to collect his share in his mother’s inheritance, which took him three years to secure. He then returned briefly to Norway after the death of his brother Eyvindr, to collect the inheritance left to him at the Gulaþing (_Njáls saga_ §2). It was during this trip that Hrútr was asked to identify himself by the king. So was Hrútr Norwegian or Icelandic? Was his identity determined by his place of birth, the nationalities of his parents, or his domicile?

A variation on the king’s question is _Hvers son ertú?_ (Whose son are you?), which appears frequently in saga encounters between strangers, and is a common enquiry in a society that used (and continues to use) patronymics to denote family membership. What distinguishes the two questions presented here is the identifying parameter: the first alludes to nationality and geographical location, the second to kinship relations. Among the migrant societies of the Viking world, it was not unusual for these parameters to be in conflict, as is evident in the case of Hrútr Herjólfsson.

Most of us have a multiplicity of identities that affects our self-perception and how others view us in the world. People may selectively bring these aspects of identity to various social institutions or relationships in which they participate. (Josselson and Harway 2012, 3)

Sociological and social psychological research and theory have long recognised the concept of multiple identities, which form across lines of division in the lived experience of people. And there is no reason to believe that this multiplicity of identity is an exclusively modern phenomenon and could not equally apply to past peoples (Gregg 2012, 20). Similar multiple identities based on

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membership of a kinship group, nationality (a term fraught with difficulties when discussing the early medieval world), and geography are reflected in the worldview of the Viking diaspora as represented in various extant sources. Unless explicitly stated in their own words, it is difficult to accurately determine the self-identification of individuals in past societies; nevertheless, it is possible — and useful — to consider the manner in which sources represent memories of self-identification, as well as the identification of persons with the social group, community, or category (Tajfel 1982), and the functioning of these groups in historical societies. This paper is an exploration of the manner in which identities — with all the attendant problems, conflicts, and confusions — are reflected in the law codes of the memorialised Viking diaspora.

**Contextualising the Viking Diaspora**

Various sources attest to the migration of peoples out of Scandinavia between around the eighth century CE until the twelfth century, a period generally known as the Viking Age. These migrations across the North Atlantic led to the establishment of settlements in Continental France, to the islands of Britain and Ireland, Scotland, Orkney, Shetland and the Faroes, and further to Iceland, Greenland, and North America. This scattering of people of Scandinavian origins has, over the last decade, led scholars to refer to these settlements as part of a wide Viking diaspora. While there are differences in certain cultural characteristics between the settlements, they nevertheless share other cultural traits. This has led to a debate on how the separation between these colonies and the resultant differences between them may be understood, and particularly how banal correlations between modern nationalisms and Viking Age settlements may be avoided (see Downham 2012). The concept of diaspora is nevertheless useful to study ‘the interplay of cultural forces’ (Abrams 2012, 1) between the Scandinavian homelands and the settlements across the North Atlantic.

The Viking world shows sociologically recognised characteristics (Vohra, forthcoming) similar to modern diasporas (see Cohen 1997, Sheffer 2003) which are reflected in the worldview of extant textual sources. Viking movements across the North Atlantic show elements of both voluntary and forced migrations, characteristic of diaspora formation (Sheffer 2003, 83). Settlement in the older colonies can be seen largely as voluntary migrations resulting from Viking Age raiding and trading. The case of the Icelandic landnám (Settlement) is mixed. Although Icelandic sources favour the ‘victim tradition’ of forced migration — particularly in aetiological accounts of settlers escaping from King Haraldr hárfagri’s (Fairhair) tyranny and his unification of Norway in around 874 — there is sufficient evidence from other Scandinavian — especially Norwegian — sources that there was a significant amount of voluntary migration as well. Similar processes are evidenced in the migrations to Greenland and Vinland in North America.
Migration is, in and of itself, not sufficient to create a diaspora. There need to be significant economic, cultural and political exchanges between migrant groups, and either actual return migration or the desire for it, for a diaspora to be created (Shefer 2003, 83). Social and kinship ties therefore form the basis of diasporic links. Despite emergent independent identities for the members of the diaspora, the sources reflect links being maintained through sustained contact after the initial outward migration, with implications for the establishment and enactment of identities. Although mainland Scandinavia — principally Norway — functions as the ‘original homeland’ in the collective memory that underpins the diaspora, the locus of the memorialisation of diaspora history was Iceland. Literature, poetry and historical texts – and the people capable of creating these works – are generally accepted to have been one of Iceland’s primary exports in the medieval period. Medieval Icelanders were writing not only about their own historical past, but also the histories of the diasporic Viking settlements. Primarily written down from the twelfth century onwards but reflecting older oral traditions (Gisli Sigurðsson 2004), the bulk of the textual sources available to historians of the Viking diaspora are Icelandic.

It is in this context that the identification of peoples or individuals with one or another diasporic identity must be set. For the purposes of this paper, the framework within which identity and social ties are to be studied is provided by medieval Icelandic and related Scandinavian law codes, while historical-literary sources illustrate (or not) the patterns within this framework.

**Legal ‘markers of belonging’**

Laws, especially customary laws, provide historians with a way in which to understand the criteria on which identities in past societies were based — who belonged in the group and who lay outside. Studying a recent historical society, that of nineteenth-century United States, Welke finds that the law ‘lends consequence to elements of individual identity… and has been fundamental in the construction of personhood, citizenship, and hence borders of belonging’ (2010, 4). It is not surprising then to find that historians of the Viking world have looked to the law codes to help understand the structures and norms of the society that created them.

The Old Norse word *þýgg* — from which derives the English word ‘law’ — is the plural of *lag* meaning ‘layer’ or ‘what is laid down’. Law codes are thus structures that are built on over time through precedent. Rules were ‘laid down’ through collective action at the *þing* (assembly), and ‘when they fulfilled their function and met social needs, then by custom became binding laws’ (Sandvik and Jón Viðar Sigurðsson 2007, 242). In the Viking world, the word *þýgg* had an additional territorial dimension, with the law being synonymous with the territorial unit to which it was applied. *Gulapingsþýgg* covered the west coast and interior of Norway; *Frostupingsþýgg* covered Trondheimsfjord (modern day Trøndelag) and the Danelaw covered the north-eastern and east
midland parts of England. In Iceland, vár lög (our law) encompassed all of Iceland. The ‘law’ in Old Norse sources therefore refers not just to the collection of statutes by which society regulated its people but was also synonymous with the legal community and the land it inhabited (see Hastrup 1990, 34), the jurisdiction of the laws in question. It thus demarcates, not just the conceptual margins of society — the borders of belonging — but also the physical, geographical margins.

This conception of the law is further manifested in the punishment of outlawry, whereby the punished is literally outside the law, excluded from both society and territory. In Grágás, the outlaw is called skógarmaðr (man of the woods) while the Norwegian codes use útlagi (outlaw). Both terms evidently see the punished as ‘beyond the pale, outside the law, one doing it literally, the other metaphorically’ (Miller 1991, 2082). The use of the word vargr (wolf) and its compounds such as vargdropi (wolf-born) in Grágás serve to further highlight the alienation of the outlaw from land and society. Outlawry involved the confiscation of all property, making it virtually impossible for the punished to live in the land. The first type of outlawry in Grágás is fjørbaugsgarðr (lesser outlawry) in which the term of punishment is three years, during which time the outlaw was limited to three dwellings in which he was safe from being killed with impunity, and had to find a way out of Iceland (K§52-53). After three years, the outlaw was allowed back into society and the land. This punishment appears to represent a temporary loss of legal personhood, but not a loss of identity. The more permanent, more serious, loss of legal personhood is skóggangr (full outlawry). The punishment entailed a total removal from society, complete with loss of property, and the possibility of being killed with impunity (K§54,55,60). Crucially, the full outlaw could be killed with impunity even while outside the land, suggesting that the loss of identity was universal and not geographically contained.

Legal belonging then was built into the functioning of the social group. The interplay between the apparently demarcated boundaries and elements of identity dictated the manner in which laws shaped the operation of society. Across the Viking diaspora, laws also affected how the different components of the diaspora interacted with one another, dictating how people were categorised and identified by law and on what parameters this identification was based.

Source Analysis

The earliest laws of the Icelandic Commonwealth are collectively known as Grágás (the Grey Goose). They are preserved in two main codices, Konungsbók (GKS 1157 fol), dated to around 1250, and Staðarhólsbók, (AM 334 fol) from around 1260-1270, now preserved in the Árni Magnússon Institute. Several differences between the two surviving manuscript versions have led to much debate about their recorded versions of Icelandic law. The scholarly consensus is that although the two manuscripts are not related, they derived from a single source, and the
differences between them are an artefact of the process of creation of what are effectively private law books (Sandvik and Jón Viðar Sigurðsson 2007, 225). Only two manuscript leaves of legal records survive from the twelfth century (Ólafur Lárusson 1958) and some major early laws are recorded in Ári Þorgilsson’s Íslandingabók (Book of the Icelanders) written in around 1125.

The origins of the Icelandic laws, and the manner in which they were decided and compiled, are described by Ári Þorgilsson:

… þá háði maðr austrænn fyrrst lög út hingat ýr Norvegi, sá es Úlfjótr hét … ok váru þá Úlfótslög kplið… en bau váru flest sett at þvi sem þá váru Gulaþingslög eða ránd Porleifs ens spaka Hróða-Káranar váru til, hvar við skylði auka eða af nema eða annan veg setja.

… an Easterner called Úlfjótr first brought the law out here from Norway … and it was subsequently called the law of Úlfjótr… It was modelled on how the law of Gulaþing was at the time, except that the advice of Þorleifr the Wise, son of Hróða-Kári, was obtained as to what should be added, or removed, or changed. (Íslandingabók §2)

The legal statutes found in Grágás do indeed show similarities to those in the Norwegian law codes, Gulaþingslög and Frostupingslög. The origins of these law codes, however, are rather more uncertain. Snorri Sturluson in his Heimskringla credits the establishment of the assemblies at Gulen and Frosta to King Hákon Aðalsteinsfóstri c. 930 (Hákonar saga góða §11). However, the earliest extant manuscripts of Gulaþingslög and Frostupingslög date from the early thirteenth century and include later additions and expansions. Similarly, major Danish law codes from Skåne, Sjælland and Jutland also survive only in thirteenth-century manuscripts.

All the Scandinavian law codes from across the North Atlantic have older origins in oral tradition. As a consequence, they all show evidence of the ‘layers’ inherent in their creation.

There are many layers in the versions we have: some old customary law, some probably newly composed law… Some law rules have their roots in Roman legal tradition and some in canon law… (Brink 2013, 442)

The elusive nature of the dating of the law codes raises difficulties for the historian. On the one hand, the codes clearly represent traditions that predate their surviving manuscript contexts, but on the other hand, establishing dates for individual clauses and sections is fraught with peril, leading to much debate on the value of using law codes as sources of early history (Norseng 1991, Brink 2013). However, given the limited range of sources available, the medieval historian would be foolhardy to ignore legal texts. While they cannot be definitively established as recording historical actuality, they can be treated as representations of the Viking past, as it was memorialised through the vehicle of law. Norseng recommends that those ‘who attempt to use the law material as a
source should adopt the broadest possible comparative perspective’ (1991, 166) and this is the approach in the analysis of legal identities that follows.

In addition to comparisons between the law codes themselves, sources for the Viking diaspora present another opportunity for comparison: the rich literary tradition of the sagas. The Íslendingasögur in particular are set in the earliest part of Icelandic history, and show both knowledge of, and a deep interest in, the workings of society and the law. Although surviving in later manuscripts, the sagas, like the laws, have demonstrable roots in oral traditions (Gísli Sigurðsson 2004) and may thus be considered as vessels of the social memory of the earliest period of the existence of the Viking diaspora. It is, thus, useful to compare the theoretical constructions of society and identity contained within the laws, to the representations of the practice of the law as presented in the Íslendingasögur.

Identity in Law Codes

Grágás comprises several sections dealing with different aspects of the law. The most illuminating for purposes of understanding the construction of legal identity are the sections on inheritance (Erlöpaþttur), homicide (Vígslóð), and the wergild ring list (Baugatal).³ Kinship lies at the heart of the social structure of the Viking diaspora and the legal provisions for inheritance and wergild payments to kin, as well as those governing degrees of kin separation for marriage are very similar in Frostuþingslög, Gulaplungsþ, and Grágás. Although this is to be expected if in fact the Icelandic law was drawn from the Norwegian template, not all scholars are happy with this correspondence. Philpotts saw no correlation between social action in the sagas and the Baugatal section in Grágás, which she called ‘really an old North Norwegian wergild law’ (1913, 52) and thus dismissed the notion that the kinship structure may have survived emigration and settlement. On the contrary, Boulhosa (2005, 79) suggests that ‘many Norwegian families in Iceland might have found themselves only geographically separated from Norway’, implying continuity of the social order. According to diaspora theory, members of a diaspora maintain their identities as important bases for promoting solidarity within the diaspora (Sheffer 2003, 83). From the perspective of diaspora creation then, the similarity in the laws demonstrates a preservation of the migrants’ social and cultural identity, at least in the initial stages, before the addition of new ‘layers’ which shaped a separate Icelandic identity.

The Icelandic and Norwegian law codes do not merely show similarities; they also contain provisions that reflect the special relationship between the migrants and their ‘original homeland’. For instance, in Grágás, there are two consecutive sections relating to Norway:
Frá rétt noregs konungs á Íslandi: Sa er rétt konungs or noregi a islande at sialf stefnt scal socom hans vera. oc at logom þar landz manna sákia. Lóg oc rett scolo hans menn þar hafa. slican sem landz menn. Arf scal taca a islande frænde eða felagi. En ef þeir ero eigi til. þa scal biða þaðan erfinja.

About the legal rights in Iceland of the king of Norway: The legal rights in Iceland of the king of Norway are that his suits shall summon themselves and they shall be prosecuted in accordance with the laws of the inhabitants there. His men shall enjoy the same laws and right to personal compensation as the inhabitants. A kinsman or partner shall take an inheritance in Iceland, but if they are not available, it shall wait on an heir from Norway. (K§247)

The second section – Um rétt Íslandinga í Nôregi (On the legal rights of Icelanders in Norway) (K§248) – is long and very detailed but its main points are:

1. Icelanders have the legal rights of a hauldr (landowner) in Norway.
2. Second cousins or closer kin from Iceland, women as well as men, have the right to inheritance in Norway.
3. Inheritance can be kept in Norway for three winters by the householder with whom the dead man was lodging.
4. Icelanders have the right to water and wood in Norway.
5. Icelanders are required to go on military service for the king of Norway, but only to defend Norway, not for distant campaigns.
6. An Icelander’s property has immunity in Norway.
7. Icelanders are given full freedom to travel in the realms of the king of Norway.

Likewise, the section Um rettarfar manna (On the right to compensation) in Gulapingslög states:

Islendingar eigu haulldzrett meðan þeir ero í kaupfórum. til þeir hava her verit vetr .iij. oc hava buit her. þa scal hann hava slican rett sem menn bera hanom vitni til.

Icelanders shall have the same rights as the hauldr while they are (in Norway) on their trading journeys till they have lived here three winters and have established homes here; after that they shall have such (personal) rights as men testify to be theirs. (§200, NGL I: 71)

In a similar spirit, Frostupingslög states that ef maðr ðeýr fyrir vestan mitthaf eða Íslande út. þá scal sá taca arfinn at þogum þeirra er þar er á landi (if a man dies west of the middle (of the North) Sea or in Iceland, his heir shall assume the inheritance according to the laws of those who live in that land) (IX.6 NGL I:210). In both Icelandic and Norwegian law codes, mutual agreements and recognition of mutual rights in both countries points to the close relationship between Iceland and Norway, further strengthened by the Ólafsþeg introduced in 1030. Nevertheless, there is a clear
sense of belonging based on an individual’s land of origin, but also a recognition of their rights in a
different part of the diaspora.

Just as the laws recognise the distinct identities of Icelanders and Norwegians, they
similarly recognise the existence of other foreign peoples. These clauses are broadly divided into
two categories: laws regarding foreigners in Iceland, and laws regarding Icelanders abroad. In both
categories, the laws appear to suggest an internal hierarchy in the Viking diaspora, with Iceland at
the centre, and the realms of mainland Scandinavia appearing to take precedence over other
Norse settlements, on mainly linguistic grounds. Several clauses make a distinction between those
foreigners who share or tunga (our language) — that is dansk tunga, ‘a term that was commonly
used for ‘Norse language’ or ‘norraena’ (Hermann Pálsson 1999, 122) — and those who don’t.
These language-sharing foreigners are evidently being identified as having more shared markers
of identity, while still being separate, than those who did not speak the shared tongue. Kinship is
the organising principle on which legal action may be taken, but diasporic kinship ties evidently
crossed the boundaries of belonging recognised in the laws. Language is, therefore, used here as
the separating principle.4

In the laws dealing with foreigners in Iceland, it is clear that speakers of the shared
language are permitted to prosecute the killing of their kinsmen in Iceland (K§97), claim inheritance
and compensation (K§249) and even be nominated to a court in Iceland (K§20).

*El utlendir menn verða vegnir her a lande danscir, eða sanscir eða noronir. Pa eigo frændr
hans sðc ef þeir ero her alande um þau iii konunga vellde er or tunga er. En vigscarar um víg
utlendra manna af plume londom þörom en af þeim tungom, er ec talða nu þa á her engi mær at
spcia þa sðc as frændsemis sþcom nema fáðir eða sønr eða broþir oc þo þviat eins þeir ef þeir
hafa her vð kanatz aðr.*

If foreigners are killed here in the country, Danish or Swedish or Norwegian, then in the case of
these three kingdoms that share our language, the suit lies with the kinsmen of the dead man if
they are here in the country. But cases for killing of foreigners from all lands other than those
with the languages I just told may be prosecuted here on grounds of kinship by nobody except
father or son or brother, and only these if they themselves had previously acknowledged the
kinship here in the country. (K§97)

It appears that in the case of foreigners who ‘share our language’ the kinsmen of the dead man are
able to prosecute according to the rules that would apply to the killing of an Icelander. For non-
speakers of the shared tongue, the field of prosecutors is limited to only the father, brother or son —
immediate male relations — of the dead man, and then too only if they were present in Iceland
(presumably at the time of the killing) and had previously publicly acknowledged their relationship
to the dead man. Given the nature of medieval travel, it is unlikely that these very strict conditions could always have been met. Grágás does, however, go on to establish the succession of prosecution rights, which include Icelanders connected to the dead foreigner – his Icelandic partners, his host, his shipmates, or even the goði of the district in which he resided while in Iceland.

This set of clauses also recognises the possibility of cross-diaspora marital and kinship relations. Vígslóði (K§94) states that if a killing involved utlendr maðr norôn eða or noregs konungs veldi her quangaðr alandi verðr vegin, ða eigo þeir menn vig söc eiptir hann er ætti eipt kona (a foreigner from Norway or the realms of the king of Norway [Hebrides and Man, Orkney, Shetland, Faroes] who is married in Iceland, the case rests with those who would prosecute if his wife had been killed). According to the wergild laws, these men would be his wife’s sons, father, and brothers in that order: his mágar (affines), a close relationship of great importance. Both sets of clauses (K§94 and K§97) entertain the possibility that a dead foreigner might actually have Icelandic kin in Iceland despite the prosecution suit being limited to only the closest three male kinsmen. However, the identification of the dead man remains that of a foreigner. Kinship identification may thus cross diasporic boundaries but legal boundaries remained fixed.

The final clause in this section rounds off the salient points and ends with the stipulation that if the prosecution for the killing of a foreigner was not immediately carried out, in the case of speakers of the shared tongue, ef þeir comu síðan út oc eigo þo allar botr vigsar vaxta lavsar ut at ganga (If they come to the country later, all compensation from a killing case is still to be paid out but not with interest) (K§97). This last clause seems to be an afterthought, considering the possibility that the conditions laid out at the beginning of the section may not be fulfilled. However, there is no mention of a similar option for the kin of foreigners not speaking dýnsk tunga. The laws once again indicate the preferred status of the close diasporans, speakers of dýnsk tunga, who were granted the courtesy of deferred prosecution.

The perceived partiality towards dýnsk tunga speakers could probably be related to an earlier stipulation in Grágás: [p]an man scal eigi i dom nefna er eigi hefir mal numiti i barn æsku a danska tungu apr hann hefir verit iii vetr a islandi eða lengr (a man who had not learnt to speak the Norse language in his childhood is not to be nominated to join a court until he has been in Iceland three winters or more) (K§20). So people from within the Viking diaspora could potentially conduct their own affairs in Iceland, simply by virtue of the fact that they spoke dýnsk tunga. Anyone from the other lands mentioned, by not speaking the language would presumably have required help with translation or at least three years to learn both the language and the nuances particular to the
legal arena. Legal formulae were highly complex and needed to be memorised and spoken correctly. The penalty for speaking them incorrectly could be severe, even a case being voided entirely – as famously happened to Gunnarr in Njáls saga (§22-23). Language presented additional hurdles for non-native speakers; thus, the caveat that only speakers of dansk tunga be allowed to prosecute for kinsmen in Iceland makes good practical sense. Non-speakers of the shared language were also allowed a fair chance, except potential prosecutors were limited to very close kin, who according to further provisions would have required local support.

In the clauses relating to Icelanders abroad, Grágás gives due consideration to the different mishaps that might befall them; they cover Icelanders being plotted against and receiving blows (St§372; II 388-89), being robbed (St§329; II 357-8), slandered (St§329; II 358) and even killed. The killing clauses display remarkable astuteness in their wording in separating the different Viking territories an Islander could possibly be killed in. For killings in mainland Scandinavia:

\[El\ vigit\ hefir\ verit\ inoregs\ konungs\ velldi\ eða\ dana\ konungs\ eða\ suia\ konungs.\ þa\ scal\ sökiandi\ leiða\ fram\ v.\ menn\ vára\ landa.\ oc\ þa\ menn\ ii.\ af\ þeim\ v.\ er\ i\ þes\ konungs\ velldi\ være\ þa\ er\ vigit\ var\ vegit.\ eða\ sipan\ hefði\ þar\ verit.\ Hlyþir\ þoat\ þeir\ se\ iii\ er\ her\ a\ landi\ væri\ iafnan\ kyrir\ en\ allir\ scolo\ at\ tengðum\ réttir.\]

If the killing has taken place in the realm of the king of Norway or of the king of the Danes or of the king of the Swedes, the prosecutor is to bring forward five of our countrymen and two of the five must have been in the realm of that king when the killing was done or been there subsequently. It will serve if three of them have stayed permanently in the country here but all must be qualified in terms of connection (St§370; II 387).

Once again, the identities of those involved in the case are linked to their place of origin, but the clause also appears to recognise that the dead man may have kin in other parts of the diaspora by stating that only three of the five witnesses need be resident in Iceland. Here, however, these men are recognised as belonging to vára landa (our land), not foreigners. A similar clause covers the eventuality of an Islander being killed in a part of the diaspora beyond mainland Scandinavia.

\[El\ maðr\ verðr\ vegin\ a\ vestr\ lavndom.\ fyrir\ norðan\ val\ land.\ oc\ ero\ þa\ iafn\ réttir\ sanaðar\ menn\ allir\ þeir\ er\ verit\ hafa\ i\ nokor\ konungs\ velldi\ þeirra\ þa\ er\ vigit\ var\ eða\ sipan.\ i\ engla\ konungs\ velldi.\ eða\ breta\ konungs\ eða\ scota\ konungs.\ eða\ jra\ konungs.\ eða\ suðreyinga\ konungs\ velldi.\ Nu\ verðr\ maðr\ vegin\ fyrir\ sunan\ dana\ velldi.\ oc\ ero\ þa\ iafn\ réttir\ sanaðar\ menn\ þeir\ allir\ er\ þa\ voro\ inokors\ þeirra\ konungs\ velldi\ eða\ sipan\ er\ vigit\ var\ vegit.\]

If a man is killed in western Europe north of Valland, then every man is equally well qualified to vouch in the case who has been in the realm of any king among those countries at the time of the killing or subsequently, in the realm of the king of the English or the king of the Welsh or of
the king of the Scots or the king of the Irish or the king of the Hebrideans. If a man is killed south of the realm of the Danes, then every man is equally well qualified to vouch in the case who was in the realm of any king among those countries at the time of the killing or subsequently (St§372; II 388-89).

Although not stated explicitly, the territorial units specified here correspond to the linguistically determined divisions in the Viking diaspora seen in the killing clauses above. Greenland too features in these killing clauses (St§373; II 389), and seems to belong to the same division of the diaspora as the rest of the kingdoms mentioned above.

The linguistic separation of prosecutors seen in the first set of laws dealing with foreigners in Iceland is mirrored in the clauses dealing with the killings of Icelanders abroad. Language determines the degree to which people across the diaspora can be considered to share elements of identity. One set of rules applies to the killing of anlander in Iceland, another to those killed in Norway, Sweden, or Denmark (lands of the shared language), a third set of rules applies to the rest of the Viking world (Greenland, Britain, Ireland, Hebrides, Faroes, Orkneys, Shetlands, and northern France (Valland)). Although the legal system does pay token attention to the rest of the world, the rules applied are very lax and almost non-consequential. This pattern of division along the lines of shared language is also found in other legal clauses throughout Grágás (e.g. K§114 on truces and truce-breaking; K§238 on composing mocking poetry; K§143 on illegitimate children). Linguistic divisions thus determine the legal identities of diasporans in what appears to be a three-tiered view of the Viking diaspora – the first looking inwards at just Iceland, the second taking in the mainland Scandinavian kingdoms of Norway, Denmark and Sweden, and the third including the rest of the North Atlantic settlements. Given these prescriptive boundaries of belonging in the normative context of the law codes, it is useful to consider their representation in practice, in the sagas.

**Law and Legal Identities in Saga History**

… með ípgum skal land byggja en með óípgum eyða … (with law shall the land be built and with lawlessness desolated) — Njáls saga, §70

This proverb highlights the importance of the law in the medieval Icelandic worldview. The same sentiment is found across the Viking diaspora: in the Norwegian Frostupingslög (I.6 NGL I); in Jyske lov (Law of Jutland); in Jársiða (later Icelandic laws), and in Upplandslag (Swedish provincial law). Law as the underpinning of the functioning of society is further attested in the sagas, to such an extent that Miller calls it a ‘cultural obsession with law’ (1990, 227). Preparations for cases for either district assemblies or the Alþing are described in detail; the importance of legal processes and following them correctly appear repeatedly; and the all-pervasive nature of the law
is highlighted by the motif of poor children ‘playing at the law’ in *Njáls saga*. Despite this elevated position of the law, Heusler (1911) identified great divergences on many points between the stipulations in *Grágás* and the legal machinations in the sagas. Although both sets of sources were committed to writing at roughly the same time, the divergences may be explained by the ‘layering’ effect of the laws (Brink 2013, 442). At the same time, it is important to highlight that while the law codes represent the law in theory, the sagas contain representations or memories of the law in practice. Miller explains the interaction between the two spheres saying ‘[b]oth theory and practice affected each other in some ways. Practice was undoubtedly the starting point of much theory, but some theory was, in all probability, the consequence of formal exercises of legal experts interested in categorising and system building’ (1990, 142). It is therefore useful to put the laws alongside the sagas to uncover the manner in which theoretical legal constructs and identities manifested themselves in the memorialised traditions of their practice.

For instance, *Grágás* (K§248) allowed Icelanders the rights of a *hauldr* (landholder) in Norway. Icelandic kin, men and women, up to second cousins, were allowed to inherit in Norway. It is this provision that Egill Skalla-Grimsson tries to exploit when he journeyed to Norway to claim his wife Ásgerðr’s share her father’s property (*Egils saga* §56). Although the inheritance is rightfully hers, only men could bring suits and, therefore, it falls to Egill to represent his wife. When Berg-Ǫnundr, Ásgerðr’s brother-in-law, refuses to give out her share, Egill puts the case before the Gulaþing and King Ólafur blóðox. Owing to existing hostilities between the king and Egill, the suit fails and Egill is forced to wait until after the king’s death to claim this inheritance. However, the saga makes it clear that Egill has support from various Norwegian kinsmen, suggesting that the law would have been upheld had King Ólafur blóðox not been antagonised and if Berg-Ǫnundr had not been *harðr ok ódaell, ranglátr ok fégjarn* (hard and quarrelsome, wicked and covetous) (*Egils saga* §56). This episode is a good example of the dissonance between the spirit of the law and its practical application. Interpersonal discord is the primary shaper of events, not legal identity.

The same law also states that Icelanders are allowed to claim resources from Norway. The *Íslendingasögur* mention several instances of Icelanders travelling to Norway for building wood, which was almost non-existent in Iceland. Óláf r pái in *Laxdæla saga* travels to Norway to get *viðaval* (a prime selection of timber) (*Laxdæla saga* §29). Similarly, Icelanders travelled to Norway to become *konungsmenn* (king’s retainers) and gained fame, wealth and glory as a kind of coming-of-age rite of passage for young Icelandic men. In *Laxdæla saga*, Porleikr Bollason becomes a follower of King Óláf hinn helgi (§70) and his brother, Bolli Bollason subsequently does the same because *pykkir maðr við þat fáviss verða, ef hann kannar ekki viðara en hér Ísland* (a man is considered to grow ignorant if he has explored no more than the shores of Iceland) (*Laxdæla saga*).
§72). Bolli proceeds to travel through Norway and Denmark and eventually ends up with the Varangian guard in Constantinople. In this case, then, the law codes and the sagas appear to be in agreement.

The reciprocal clauses in the law stipulate that Norwegians could take an inheritance in Iceland (K§247). This is seen clearly in Laxdaela saga, when on Þorgerðr’s death, her son Hrútr Herjólfsson comes to Iceland for his inheritance. The special dispensation of a three-year time period allowed to the speakers of dansk tunga when claiming inheritance or initiating a killing suit is also represented. In Flóamanna saga (§34), the Norwegians Einarr and Sigurðr come to Iceland two years after their brother Helgi was killed, and the matter is resolved, not through prosecution, but through arbitration. The possibility that individuals from different parts of the diaspora could claim inheritance or compensation in one another’s lands is further extended by the central theme of Gørnlinginga þátr, in which the Norwegian merchant Ózurr travels to Greenland to reclaim the property (especially the painted ship) of his uncle, Arnbjörn. The þátr suggests that this was not unusual, stating that leiðir menn váru þeir, er sina þrændr höfdu misst á þvi skipi ok væntu til greizlu um féit (there were other people who had lost kinsmen on the ship, and went to Greenland for the money) (§2). Therefore, while separate identities based on geographical origin might determine the privileges available to a litigant, a shared diasporic identity was nevertheless recognised in the first place in order for individuals either to claim compensation or to reclaim inheritance.

Although people from across the diaspora were permitted legal recourse, the laws present a three-tiered division based on linguistic separation. The special status of the speakers of the shared language is an interesting one, suggesting a closeness not afforded to other parts of the diaspora. Grágás states that enscir menn her eða þeir er en ero o kunare hingat (Englishmen or men still less well known) (K§120) lay outside the sphere of dansk tunga. The underlying suggestion is that the parts of the Viking diaspora beyond mainland Scandinavia were somehow outside the Norse linguistic sphere. This is a major and interesting contradiction with saga and other historical evidence. Place-name and linguistic evidence from the British Isles shows distinct Norse influences, and it is accepted that the Norse language, possibly with variations and dialectical differences, was used in these settlements. In the Íslendingasögur, among all the episodes of travel across the diaspora, only in Norse contact with the skraelingjar (natives of Vinland) presented in Gørnlinginga saga and Eiriks saga rauða is there any suggestion of a failure to communicate with local people. Several skálds, notably Egill Skalla-Grimsson, Hallfreðr vandræðaskáld, Halli, and Gunnlaugr, present themselves at courts in England with offerings of verse gifts. Skaldic verse is famed for its convoluted phrasing, alliterative phrases and dense use of metaphor. It would therefore be unlikely to be accessible to an audience lacking the requisite linguistic skills, even if poetic forms were simplified for a non-native audience. Gunnlaugs saga
ormstungu explains the rationale behind Gunnlaugr’s offer of a poem to Æthelred, the king of England, saying: *Ein var þá tunga á Englandi sem í Nóregi ok í Danmørku* (In those days, language in England was the same as that spoken in Norway and Denmark) (§7).

While Old English and Old Norse are certainly not the same language, recent research on multilingualism in the courts of medieval Europe suggests that the speakers of these languages were probably at least mutually intelligible (Tyler, 2011). McDougall proposes that in linguistic terms ‘of those races whose languages made them “strange” to Icelanders, the English were, at least, the least foreign’ (1994, 190). Was this level of linguistic knowledge, however, sufficient to meet the stringent requirements of legal formulae? It is plausible that the linguistic separation in the law codes is rather conservative with the objective being the optimal execution of the legal process.

Beyond the Viking diaspora, the laws lose their sharpness. Interestingly, so do markers of identity. In Gunnlaugs saga ormsstungu (§7), Gunnlaugr is referred to as Norðmaðr (Northman) while abroad, as is Bolli in Laxdæla saga (§73) during his sojourn in Byzantium. In both cases, it would appear that circumstances do not require the assertion of a unique identity; therefore, simply a Northern one will do. Despite an impetus towards the crystallisation of separate identities across the diaspora, individuals travelling across both legal and geographical boundaries appear to have possessed multiple identities. Their identities could be, by turns regional, national or diasporic, depending on context, especially when determined by the opposing ‘other’: an Icelander on the Continent may simply have been a Norseman; in England, he was a speaker of dønsk tunga, but in Norway he was decidedly Icelandic. While this three-tiered view of the world illustrates multiple identities in the diaspora, it also serves to demonstrate that the Viking world did indeed continue to use shared markers of identity, as expected in a functioning diaspora.

**Conclusions**

Let us return now to Hrútr Herjólfsson and the question asked of him: *Ert þú íslenskr maðr?* (Are you an Icelander?) (Njáls saga §3). Based on his place of origin, the answer would be ‘no’; he was Norwegian, having been born and raised there. Based on his parentage, the answer would be ‘perhaps’; he was the son of a Norwegian father and an Icelandic mother. Although with slightly greater emphasis on the patrilineal line in practice, the Norse kinship group was reckoned along bilateral lines, making the origins of both parents pertinent. Based on his residence, however, the answer would be ‘yes’; and it is this answer that Hrútr gives to the king.

To understand Hrútr’s self-identification, we must look once again to the law codes. When he first comes to Iceland, it is because his half-brother Hóskuldr is unwilling to share his mother’s inheritance. Laxdæla saga goes on to tell us that Hrútr lived at Kambsnes for three years and
persisted in his efforts to get his inheritance. Three years’ residency qualified a foreigner to be brought under the umbrella of Icelandic law and to be accepted as a judge (*Grágás* K§20). Although Hrútr did not need to fulfil this requirement, being originally Norwegian and therefore a speaker of the shared tongue, becoming an Icelandic legally, would have added weight to his claim to both the inheritance itself as well as support from the kin group in his quest for that inheritance. Hrútr was well and truly brought ‘into Icelandic law’, both territorially and socially, by his being permanently settled in Iceland. The saga authors, especially of *Njáls saga* — a saga perhaps more ‘culturally obsessed’ with the law than most — would have been well-versed enough with the law to know that Hrútr could legally have claimed to be an Icelandic.

In asking and attempting to answer questions of identity in the Viking world, one of the main concepts to deal with is that of the self-perception of the memorialisers of the diaspora, of Icelandic self-identification, be it in the ninth or the thirteenth century. The moment of creation for the Viking diaspora, as memorialised in the sources, was the Icelandic *landnám* (Settlement). The migration out of Scandinavia was focussed primarily on Norway, the ‘original homeland’ and the *landnám* was presented as a forced migration, a bid to preserve freedom and an old socio-political structure in the face of the changes wrought in Norway by King Haraldr hárfagr (Fairhair). Most forced migrations result in nostalgia for the homeland, which stems from the knowledge that there is no possibility of return. However, there is no nostalgia here, not because there was no memory of the ‘original homeland’ but because it had become ideologically altered and thus separated from the people emigrating from it. The sources nevertheless show sustained contact across the Viking diaspora, a recognition of shared cultural attributes; further, kinship relations appear to transcend boundaries rather easily.

However, in Iceland in particular there appears to have been a deliberate effort to forge a new identity through the creation of an ‘origin myth’ connected with the ‘original homeland’ in the indigenous vernacular literature, historical and legal writings and grammatical treatises. Ari’s *Íslingingabók* (1125) provides the earliest sense of a separate Icelandic identity. The author of the mid-twelfth century *First Grammatical Treatise* highlights an Icelandic identity by stating that *hefi ek ok ritit oss íslandingum stafróf* (sic) (I have written an alphabet for us Icelanders too) to stand alongside the grammars of other countries (Haugen 1972, 12-13). Hastrup argues for the conscious separation of the Icelandic identity from the rest of the Viking world through the retrospective application of the word ‘Íslingr’ (Icelander) (1990, 123-26). Mundal reckons that this would have been a lengthy process with Icelandic identity developing ‘partly in opposition to a Norwegian identity, while at the same time a consciousness of roots in Norway became part of the new Icelandic identity’ (1997, 28) and Callow (2004, 323-32) highlights the conscious ‘othering’ of Norwegians in the sources. Leonard sees identity, especially Icelandic identity, as being defined by
legal texts and argues that Icelanders were more conscious of ‘otherness’ owing to their islandhood (2009, 127). However, Sverrir Jakobsson (1999, 91-101) argues that issues of identity come into play only when there is need or a deliberate effort to separate a person or group in the face of the ‘other’; where this separation is not necessary, the lines of distinction are blurred. The pattern of sharp and blurred boundaries of belonging is clear from the law codes discussed above. Iceland became increasingly dependent on Norway towards the end of the Icelandic Commonwealth, culminating in its dissolution in 1262-64. It is possible therefore that the very same shared origins and social links, which initially inhibited the crystallisation of a separate Icelandic identity, appearing only in a handful of early sources, eventually emerged more clearly when faced with the new reality of Norwegian political control in the thirteenth century. Icelandic identity thus became most firmly established and most important when the Icelanders lost their autonomy to the Norwegian crown as their ancestors had done.

The motif of an Icelandic-born man and his Norwegian-born half-brother, known from several Íslendingasögur, represented the closest possible diasporic link in both the ninth and thirteenth centuries. It may thus have been important to the memorialisers of the Viking diaspora that when faced with a question of identity, set to him by a Norwegian king, Hrútr negotiated his multiple identities correctly and chose to be Icelandic.

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1 Unless otherwise specified, translations from Old Norse are my own. Clauses in Grágás are denoted by manuscript and translations are from Dennis, Foote and Perkins.

2 Owing to the nature of the sources and space restrictions, this paper focuses on the North Atlantic and will not cover the eastward Viking migrations into Russia, Constantinople, and beyond.

3 ‘Wergild’ is the payment set by law as compensation for homicide. In Baugatal, it is expressed in terms of silver rings (baugar) of different weights paid or received by different groups of kinsmen (Dennis, Foote and Perkins 1980, pp. 175-83).

4 The later Icelandic law code, Jónsbók (1281) maintained the special rights of speakers of dǫnsk tunga.