

## **Viking Age Iceland**

**by Jesse Byock. Vol.16 No.6 Aug. 2003**

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*Viking Age Iceland* supplies a lesson in Icelandic history and anthropology commencing with the arrival of some 10,000 immigrants between 870 and 930. Of particular interest to libertarians is the example it provides of a

society in which a legal system (a "public good") can be developed and operate independently of the State.

Reviewed by Brian Bedkober.

Byock quotes the legal historian James Bryce who observed that the immigrants to Iceland "produced a Constitution and laws unlike any other whereof records remain, and a body of law so elaborate and complex that it is hard to believe that it existed among men whose chief occupation was to kill one another." Early immigrants did bring with them, however, the cultural and legal traditions of Norway, including "complicated constitutional concepts as well as sophisticated laws of contract, property and tort" - all of which they adapted to their own circumstances. Nevertheless, Icelandic law was based, says Byock, on custom; it "set the parameters of successful arbitration, and served as an element of continuity throughout Iceland's medieval history."

Icelandic society was not tribal, there were no towns or communities, only family units, and so there was no need for any hierarchical structure. For centuries there was no need for any foreign policy or national defense and, therefore, no need for any command structure or system of taxes to support it. Icelanders were opposed to a centralized state.

The privately developed legal system was built around several local assemblies (called "things"), a single central assembly (the "Althing") and a process of arbitrated settlement, advocacy in court and private enforcement of penalties. The chiefs responsible for the particular assembly named the people who were to act as jurors and judges, but were then free to act as advocates and to negotiate out of court settlements. Penalties were usually either fines or degrees of outlawry.

The central assembling was only created after 930, when all the land had been taken, and it was felt that some common law was necessary. The Althing was held annually and was attended by the chiefs (and later, two bishops) and some of their supporters (who could not vote). The meeting of the Althing was also the occasion for the meeting of the legislative council that reviewed old laws and made new ones and (after 960) for the meeting of courts (one for each quarter of the country) established to hear appeals and to try serious cases that could not be dealt with locally. The Chairman (elected every three years) was required to recite aloud one

third of the laws each year and acted, in consultation with others if necessary, as an authority on the law (with a written record available from the early 12th century).

The two principal components of the system were the legally defined relationship between a chief and his supporters (“thingmen”) and the private contractual relationship whereby one individual would agree to act as another’s advocate and become a third party to a dispute. The chief-thingman relationship was a public one, witnessed at an assembly, that required acceptance by both parties, whereas advocate-client relationships were often covert. This decentralized system of justice enabled Icelanders to limit coercive power and meant that they did not need to pay taxes for the upkeep of state institutions of enforcement (although chiefs leveled a thing tax to pay for attendance at assemblies).

The roles of chiefs and advocates were, in fact, entrepreneurial ones in which those skilled in settling disputes and conducting feuds could gain respect, authority and personal wealth. A successful chief had to have considerable personal charisma and “skill in managing relationships with thingmen, as well as supervising disputes and feuds, especially in the final court and arbitration stages, and in winning legal cases.” Farmers chose the chief they wished to link with from (with a few exceptions) those within their own quarter of the island (although chieftaincies had no territorial descriptors) and they were able to exercise considerable influence over the way in which the chief settled disputes (since they were the ones most likely to suffer from unsuccessful resolution). The local chieftains were, therefore, seriously limited in the authority they could wield, since their thingmen were entitled to change their allegiances, and there was always the risk of “arousing the vengefulness of the local farmers.”

The role of advocate enabled some respected individuals (not all of whom were chiefs) to become power brokers. Although a farmer could bring a case to the courts he would not stand much of a chance if he was up against somebody represented by a chief, particularly a powerful one since cases were often determined on the basis of power rather than on the justice of the circumstances. It was usual, therefore, for advocates to be chiefs. The advocate’s services were sometimes offered free but could also attract considerable fees including the transfer of property and inheritance rights. “Advocacy,” says Byock, “became the keystone of a system of reciprocal arrangements in which people carefully kept track of assistance rendered, and balanced the books of obligations.” Advocates would decide whether to settle a dispute by arbitration (at an assembly or other gathering) or in court. When arbitration looked promising the supporters of both parties (and men of “good will”) often assisted the arbitrator to reach a settlement. Settlements were privately enforced; to break an agreed settlement was dishonorable and was likely to result in banishment from the island. Outlawry involved both property confiscation – with the spoils going first to those with a legitimate claim and then, after the chief took his fee, to the people of the district – and, in the case of full outlaws, liability to be killed with impunity. Parties were encouraged to be moderate in their claims since failure to reach a peaceful settlement between individuals or groups could result in duels (outlawed in the 11th century), open conflict and continuing feuds. Violence, however, was only one of many options – and one not commonly pursued.

Settlement of disputes through arbitration, nevertheless, often left a residue of smoldering discontent reflected in longstanding (usually low-grade) feuds. Feuds, however, were conducted according to rules and had a recognized role in the settlement of disputes so that, says Byock, “for approximately three centuries, or until the last decades of the Free State, there were in Iceland, no pitched battles with casualties comparable to those that routinely took place elsewhere in medieval Europe.”

The relationship of kin was also very important, as it was from kin that individuals could most expect support (as an advocate, for example) and it was these relationships that determined the responsibility for exacting revenge and provided the means to do so. However, the dense and complicated kin relationships and the general reluctance to physically harm one’s kin, combined with considerations of political and friendship obligations made it generally more acceptable to pay compensation than engage in bloody reprisals.

This, therefore, is an outline of the legal system that enabled Iceland to function effectively without a centrally controlled and administered legal system. The close connection between the political and legal success of Iceland,” say Byock, “was owing in part to the institutionalized concept that government bore no responsibility for punishing an individual for breaking the law. Criminal acts were regarded as private concerns to be settled between the injured and the offending parties or their advocates.” A further advantage of this system was that compensation was paid as restitution to the victim rather than as a fine payable to the State (or a jail sentence for which everybody pays).

Notwithstanding its relevance to the cause of anarchists, this is a very interesting book in that it provides some fascinating information about survival techniques in harsh circumstances and about the cultural habits of the early Icelandic people (including the role of the church after 1000). The workings of the law and the nature of social and economic forces are explicated in vivid, even exciting, descriptions of particular sagas (social dramas) involving chieftains and farmers. An interesting read.

1 Hamilton, Charles p. xxxii in the 1975 introduction to Oppenheimer, Franz. *The State*. Fox & Wilkes. San Francisco. 1997.

2 Hayek, Friedrich A. *Law Legislation and Liberty*. Vol.1 *Rules and Order*. Pp 72-85.

3 Benson, Bruce L. *The Spontaneous Evolution of Commercial Law in Reputation: Studies in the Voluntary Elicitation of Good Conduct*. University of Michigan Press. 1997. Pp 165-189.

4 Rothbard Murray, N. *The Ethics of Liberty* p 128.