

Deviant Burials: Societal Exclusion of Dead Outlaws in Medieval Norway

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In Norway, an outlaw was “placed outside the law” and, after the introduction of Christianity in the eleventh century, the worst kinds of outlaws, perpetrators described in terms revolving around the vargr and the niðingr, were denied burial in the churchyard. Such people had committed their crimes in an unmanly and stealthy way. Additionally, they may have avoided taking responsibility for their actions. Such behaviour made an otherwise redeemable act irredeemable.

This norm for proper conduct is firmly rooted in pre-Christian notions, and the Church used it as a platform to make it easier for the populace to understand that whereas most people belonged within the churchyard, others clearly did not. With some modifications during the high Middle Ages, typically when additional categories of criminals were excluded from Christian burial, this principle carried through well into the early modern period. Documents which can tell us how these rules worked out in practice are few and far between, but are enough to show that the Church tried to ensure that the worst outlaws remained out of the churchyard. The outlaws’ bodies may have been buried at the place of execution, typically close to the gallows, or at the shore or under heaps of stones far away from settlements.

Introduction

In Viking Age and medieval Norway, an outlaw was “placed outside the law”, a loss of legal protection which had several consequences.¹ An outlaw might be expelled from a legal province or from the country, forfeit property and risk being killed by anyone with impunity. The concept and applicability of outlawry changed over time.²

1 Ebbe Hertzberg, who wrote the glossary of *Norges gamle Love indtil 1387* [hereafter *NgL*], ed. by Keyser *et al.*, *NgL* V, 676, interpreted *útlagr*, *útlægr*, *útslægr* as “*fredløs, stillet udenfor loven*”, i.e., “outlaw, placed outside the law”.

2 Riisøy 2014.

The introduction of Christianity brought about alterations; for example, outlaws were denied burial in the churchyard, which will be the topic of this article. The defined and enclosed churchyard implies that someone controlled that particular space and access to it, and I will ask why exactly outlaws were denied Christian burials, who controlled this process and where deceased outlaws were buried.

This article will cover a long chronological span, and hence touch upon various “cultures” of death, which were influenced by both heathen and Christian ways of thinking. The focus will primarily be on the Middle Ages, which in Norway lasted from approximately the early eleventh century to the coming of the Reformation in 1537. To a certain extent, this study will delve into the Viking Age because the rules on exclusion of outlaws evidenced in the earliest Norwegian Christian laws have found inspiration in pre-Christian provisions on outlawry. Hence rules which placed some categories of people outside the sphere of the good Christian dead were based not only on Christian notions of life after death, but were also very much rooted in a heathen secular way of thinking about the punishment of criminals in this world. This combination of various legal and religious notions was probably facilitated by the fact that before, during, and after the Middle Ages, the populace at large saw no clear demarcation lines between the living and the dead, between flesh and soul.

The Christian culture was not a given once and for all, and the Middle Ages saw changes which also had a bearing on rules of exclusion of various categories of criminals from the churchyard, and although traditionally considered a watershed in regard to introducing new religious and legal ideas, the introduction of the Reformation did not initially touch upon the question of how to treat dead criminals. Hence, some discussion of the treatment of dead outlaws after the Reformation is also in order.

Rules on Burial: Inclusion and Exclusion

The archaeological evidence for the tenth century is fragmentary, but enough to show that the oldest Christian cemeteries and churches in Norway go back to this time. At Veøy on the coast of western Norway, the remains of a church and a cemetery dating to the mid-tenth century were found, and further south along the coast, at the royal manor at Fitjar, Christian burials may have taken place at the same time.³ At Kvinesdal in southern Norway, stratigraphic analysis and radiocarbon dating evidence a church built ca. AD 1000, while a Christian cemetery at the same site may be 100 years older.⁴ Comparable early dates exist for Faret in Skien in south-eastern Norway, where a Christian grave area, limited by a ditch, was established inside a pre-Christian cemetery in the mid-tenth century, and in

3 Veøy see Solli 1996, 89–114; Fitjar see Iversen 2008; Dunlop 1998.

4 Brendalsmo & Stylegar 2001, 5–47.

the early eleventh century a church was built.⁵ This pattern, where a Christian cemetery was a direct continuation of a pre-Christian burial ground, and where the building of a church came last, is evidenced in several places in Norway.⁶ Christianization was a protracted process, and heathen burials of the eleventh century are still documented along the coast of Agder in southern Norway.⁷

Because churches and churchyards are very visible manifestations of the new religion, I will rule out the idea that rules on Christian burial were enacted in law before Christianity finally gained universal political acceptance, which happened during the first half of the eleventh century in most of Norway. At this time, there were four large legal provinces: Gulathing (west coast), Frostathing (the area north of the Gulathing), Eidsivathing (east) and Borgarthing (south-east), each of which had its own representative assembly. The dating of the oldest Christian laws will always be open to some debate because the oldest manuscripts and fragments in which they are preserved date from around 1200.⁸ Although these laws were undoubtedly written down before then, there is contention over how much earlier. Whether the laws contain even older, orally transmitted material is also debatable. However oral traditions were much stronger in the Middle Ages than today and, because a law may consist of several chronological strata, it is possible to see that some laws, or sections of laws, are indeed older than others; this can be seen both in choice of terminology and concepts, and in the existence of obsolete regulations alongside new rules.

In the area of the Gulathing, some Christian law legislation may already have been enacted during the reign of King Haakon the Good (r. ca. 933–959), who was sent to Wessex to be fostered at the court of King Æthelstan (r. over Mercia and Wessex 924–939, r. over England 927–939).⁹ Wessex probably exercised considerable influence on the Christianization of Norway, particularly the western parts of the country.¹⁰ When Haakon came back to Norway, it is quite likely that

5 Reitan 2006.

6 Vibe Müller 1991.

7 Rolfsen 1981, 128. For a study including various parts of Norway, see Walaker Nordeide 2011.

8 See, for example, Helle 2001, 17–23, Rindal 1996, Røssstad 1997. A short description of each law manuscript is found in *NgL* IV, xiv–xv.

9 According to *Bergsöglisvisur*, a poem composed by Sigvat in the 1030s, King Haakon was King Æthelstan's fosterson (Hollander 1964, 553), and a total of five different sagas, written in Old Norse or in Latin also mention this; see Williams 2001, 113–114.

10 This influence may have been less in Eastern Norway, and Landro 2010 has shown that the Old Christian Borgarthing Law also had Continental influence.

missionaries were among his entourage.¹¹ Haakon probably transferred his experiences in regard to Christian beliefs and rituals from Wessex by initiating the building of some churches and by introducing a Christian law which included a few basic rules.¹²

Christian missionaries were present in Wessex from the early seventh century. The transition from field cemeteries to churchyard burial was slow, but the majority of burials are adjacent to ecclesiastical buildings by the mid-eighth century.¹³ In England, it was no longer the norm to inhumate criminals in community cemeteries from the eighth century onwards. Some of these ended up at so-called execution cemeteries; burial grounds used to inter those denied churchyard burial, including criminals, the unbaptised and suicides. The deceased often lay on their sides or in a prone position with their limbs akimbo, decapitated or interred with bound hands; the so-called “deviant burials”.¹⁴ Early tenth century legislation, which starts to refer to the exclusion of criminals, may thus have reinforced existing practices.¹⁵ Hence Anglo-Saxon missionaries who came to Norway in the tenth and eleventh centuries were long used to legislation and legal practice that excluded certain categories of criminals from churchyard burial.

In a comprehensive study on the legislation on burials in *Corpus Iuris Canonici* and in the medieval Nordic laws, Bertil Nilsson has found that canon law had no uniform rule regarding exclusion from Christian burial. The canonists showed frustratingly little interest in this issue and canon law is less specific than the Nordic laws in this respect.¹⁶ Canon law had two main reasons for exclusion; first, people who had never been part of the Christian community, baptism being the ultimate criterion, and secondly, people who had been separated from the Church. This latter group is of interest here. The most numerous group were excommunicates,

11 See Jørgensen 1995; Birkeli 1995; Williams 2001. William of Malmesbury (ca. 1095/1096–ca. 1143), the distinguished twelfth-century English historian, probably had information about an Anglo-Saxon bishop who served during Haakon the Good’s rule. *De Antiquitate Glastoniensis Ecclesiæ* contains a list of death dates for ten Glastonbury monks who became bishops, and who lived during the reign of King Edgar (r. 958–975). Fridtjov Birkeli suggested that the first five names constitute the original list, and hence number four on the list, *Sigefridus norwegensis episcopus*, may have been a bishop in Norway during Haakon’s reign. Sigefridus may have been forced back to England during the heathen reaction which followed in the wake of King Haakon’s death. According to Gareth Williams, this information is quite consistent with the *Saga of Hákon the Good*, chapter 13, that “he sent to England for a bishop and other priests”, Hollander 1964, 106.

12 Williams 2001, 116–117. For example, he may have transferred the celebration of Yule from the midwinter nights to “the same time as is the custom with the Christians”, and the king himself kept Sundays and fasted on Fridays, Hollander 1964, 106, chapter 13.

13 Cherryson 2008, 115–130, Buckberry 2008, 148–168.

14 In a study of Anglo-Saxon burial practices from 1992, Helen Geake was the first to use the expression “deviant burials”, Buckberry 2008, 148.

15 Reynolds 1997, 38. Athelstan II 26, decrees that anyone who swears a false oath shall not be buried in consecrated burial ground unless the bishop permits it, Attenborough 1922, 140–143. According to King Edmund (r. 939–946), a man “who has intercourse with a nun, unless he make amends, shall not be allowed burial in consecrated ground any more than a homicide. We have decreed the same with regard to adultery”, Robertson 1925, 7.

16 Nilsson 1989, 242, 255.

who died before they had been reconciled and hence been reintegrated into the Christian community.¹⁷ Among the excommunicates may also have been various categories of criminals. Otherwise canon law excludes from Christian burial people who had broken the Ten Commandments, including crimes against the religion, and thieves and robbers. Nilsson points out that canon law does not specifically mention outlaws.¹⁸

As a general rule, all Christian people who died should be brought to the churchyard for burial,¹⁹ but there already were explicit exceptions to this rule in the oldest Christian laws: “evildoers, traitors, murderers, truce breakers, thieves, and men who take their own lives” are listed in the Old Christian Gulathing Law, while in the Old Christian Eidsivating Law people who broke temporally or locally imposed peace or protection (*gríðniðingar*), arsonists (*brænnui vargar*) and violent housebreakers (*hæimsoknar vargar*) are listed as well.²⁰ Suicide is condemned according to ecclesiastical law; otherwise all these specified crimes are punished with outlawry according to the oldest secular sections of the laws which have survived, those from the Gulathing and the Frostathing.²¹

Other crimes than those enumerated above also entailed outlawry according to the secular sections in the medieval Norwegian law codes, and it therefore seems that not all outlaws were equal, some not being excluded from the churchyard, so the question then is, what characterizes those who were denied Christian burial?

Outlaws Excluded from Proper Burial

First in the enumeration of these outlaws, the Old Christian Gulathing Law lists traitors (*drottens svica*). A *dróttin* was a title for a lord in a broader sense, whether he was a king, leader of a war band, or an owner of slaves and, after the introduction of Christianity, even Christ.²² To betray one’s lord was the worst crime imaginable; and the traitor was branded as a *níðingr*, implying lack of masculinity – a coward. Thomas L. Markey found that *níð* was part of an ancient pre-Christian tradition among the North Germanic peoples, best maintained in the West Norse Area.²³ Here it was clearly also associated with the most cowardly crimes, and a

17 Nilsson 1989, 255.

18 Nilsson 1989, 271–272.

19 G 23 and F II 15, *NgL* I, 13–14, 135–136; Larson 1935, 51, 232.

20 E II 40, *NgL* I, 405. The paragraphs on burial in the *Old Christian Borgarthing Law* do not mention anything about whether outlaws should be allowed Christian burial or not. The primary concern in early medieval Borgarthing seems to have been whether people were buried according to their social standing: B I 9, B II 18, B III 13, *NgL* I, 345, 359–360, 368.

21 Only a few paragraphs and a fragment are preserved from the secular sections in the Borgarthing and the Eidsivating, so only the Christian law sections have survived from these two laws, Riisøy 2003, 155–156.

22 *NgL* V, 139–140. For an in-depth study of the *dróttin*, see Green 1965.

23 Markey 1972.

níðing-crime was committed under such circumstances and by such methods as to give the criminal the reputation of a wicked and deceitful person with an unmanly and weak personality. Primarily on the basis of runic inscriptions, Judith Jesch discusses how betrayal was considered the “deed of a *níðingr*” in the Viking Age when ideally a man showed complete loyalty within his group, a group who formed a partnership in war or in trade.²⁴ During the eleventh century when Scandinavian kingship grew more powerful, concepts of loyalty and treachery moved away from relationships within a more equal group towards a more clearly defined “above and below” perspective, the king and his subjects. This point of view is also reflected in Norwegian law; for example, according to the Old Frostathing Law, F IV 4, plotting to deprive the king of land and subjects was the worst form of a nothing crime (*níðingsverc hit mesta*).²⁵

There were also other acts committed by a *níðingr*, including several categories of murder, which ultimately led to exclusion from the churchyard. The distinction between manslaughter – which it was possible to atone for – and murder – which led to irredeemable outlawry – was an old and very important one in Norwegian law. *Morð* was a homicide committed in some underhand way and the killer concealed the deed and avoided assuming responsibility for it by declaring what he had done. The punishment for murder was more severe than for ordinary slaying, and the murderer could be killed in his turn, without legal consequences.²⁶ According to paragraph 178 in the Old Gulathing Law a so-called *níðingsvíg*, which includes violent housebreaking (*heimsokn*), burning another to death (*brenner mann inni*) and murdering a person (*myrðir mann*), entailed irredeemable outlawry, loss of personal rights and all property.²⁷ Comparable rules are laid down in the Old Frostathing Law.²⁸

24 Jesch 2001, 258–265.

25 NgL I, 158; Larson 1935, 257. In the Swedish provincial laws, *nipingsværk* only appears in the oldest version of the *Västgötalagen*, written around 1220. This law was used in West Gothia (*Västergötland*), the western province bordering on Norway. When a new king rode the so-called *eriksgata*, he had the power to grant peace and protection (*frip*) to three criminals, but not men who had committed *nipingsværk*, SSGL I, 36–38, Holmbäck & Wessén 1946, 70–74. The *eriksgata* was a ritual-judicial royal progress performed at the royal election; see Sundqvist 2002, 306–333. This concept clearly also existed in eastern Scandinavia. The now lost memorial stone from the Swedish province of Uppland U 954, in eastern Sweden, has the term *nipiksuerk* “the deed of a *níðingr*”; see discussion in Jesch 2001, 255. The so-called Pagan Law from Uppland, which is preserved in a fragment from the thirteenth century, contains a section where a man who uses an unspeakable word (*oquæpins orð*) to another: “You are not a man’s equal and not a man at heart.” [He answers:] “I am as much a man as you.” A duel should follow this verbal exchange, but if only the insulted man turned up was he allowed to shout three *niping*-shouts” and mark the other man in the ground”; see Foote & Wilson 1980, 379–380.

26 Regarding the proper report of a slaying, see F IV 7 and G 156, NgL I, 61–62, 159–160; Larson 1935, 130–131, 260. It was also murder if a man killed his slave without reporting it according to G 182, NgL I, 66–67; Larson 1935, 138.

27 NgL I 66; Larson 1935, 137.

28 Killing of a man after peace pledges have been given (*vegr á veittar tryggðir*) or killing a man to whom temporary protection (*gríðum*) was given and if a man murders a man (*ef maðr dreppir mann á morð*) were defined as foul killing (*scemdarvíg*) in F IV 2, F IV 3 and F IV 4. Setting fire to another man’s homestead and burning it down was also labelled foul killing as well as a nothing crime (*níðingsverc*) in F IV 4, and F IV 5 stress that all free men shall enjoy security in their homes. NgL I, 158–159; Larson 1935, 257–258.

Later legislation on homicide which applied to the rest of the Middle Ages also builds upon these principles. The relevant paragraphs in the Book of Personal Rights in the Law of King Magnus IV “the Law-Mender” (r. 1263–1280), codified in 1274 and which applied to the whole country, specify that if a man killed (*uegr*) another person, the killer forfeited all his property except his real estate, (*iordum sinum*). However, if a person committed a vile murder, (*niðings uigh*), he forfeited his real estate as well.²⁹



Picture 1. This decapitation scene is from a text written by Aeneas Sylvius Piccolomini (1405–1464), future Pope Pius II. The text is a long letter to a friend depicting court life in realistic terms, sometimes resulting in political violence. In the background, a man is being lead to gallows for hanging and on the left, another is facing drowning.

29 With King Magnus's Law of 1274, legal uniformity was achieved in Norway. Vile murders are further specified in L IV 1 (especially items 3.4 and 3.5); *NgL* II, 48; Amongst other things it is a *niðings uigh* if a man murders a person, (*ef maðr myrðir mann*); *NgL* II, 50–51.

Burning someone to death was one of these vile murders and considered a very cowardly deed. Not only was it an excruciatingly painful way to die, but it was also derogatory because often the victim had no way of escape and no opportunity to fight his way out. According to Finn Hødnebo, it is not made explicit in Norwegian law whether people who set fire to houses did so with murder in mind.³⁰ The Old Gulathing Law paragraphs 98 and 99 distinguish between fire set by a so-called “unfriendly hand” or not. However, while a person who caused fire without being “unfriendly” should restore what he had burned down “to full value”, the punishment was indeed severe if the fire was started with an “unfriendly hand”. If convicted, the perpetrator “shall be outlawed and shorn of all personal rights (*utlagr oc uheilagr*); and he shall be called a firewolf (*heitir brennuvargr*) and shall have forfeited all his property to the last penny, both land and movables.”³¹ This severe punishment and harsh terminology (especially *vargr*; see below) indicates that the perpetrator had done something more than burning down an empty dwelling or barn. Swedish legislation, particularly the provincial Law of East Gothia (*Østgøtalagen*), offers additional support for this interpretation. Someone who set fire to another’s house in order to let him burn shall be called a firewolf: (*heti kasnar warghær*; *kase* denotes a pile of logs), a compound term, which shows striking similarity to the Norwegian term quoted above.³² Ragnar Hemmer points out that what made this act heinous was not only the intention to kill people through burning, but an aggravating factor was the stealth with which it was done. The *Østgøtalagen* presumes that the arsonist (*warghær*) was “stealing” fire into another’s house.³³ However, this was not the only murderous *vargr* denied Christian burial.

The compound term *heimsoknar vargar* gives the impression of a *vargr* who was seeking out someone in order to attack him at home. In early Germanic society, since the house was enclosed by a safety zone, which accorded it higher legal protection, an attack on people at home was particularly reprehensible. Rebecca V. Colman discusses this crime in a wider Western European context, but without including Norwegian sources, argues that the original meaning of *heimsókn* was violent attack, which often resulted in someone being killed.³⁴ There is also every reason to believe that the *heimsoknar vargar* denied Christian burial in the Old Christian Law of the Eidsivating not only caused material damage to houses, but also caused personal injury. This interpretation is supported by paragraph 178

30 Hødnebo 1966, 694–695.

31 G 98, *NgL* I, 46–47; Larson 1935, 105.

32 Eb 31, ÖgL, Schlyter 1830 (ed.), 43: “Nu stial mapær eld i hus annars ok vill han inne brænna. Þæn sum sua gør han heti kasnar warghær.”

33 Hemmer 1966, 693–694. Hemmer notes that while the term *morðbrännari/mordbrander* (which also alludes to stealthy “murderous” acts) is used in the mid-fourteenth century town laws of *Björköarätten* and the Town Law of King Magnus Eriksson as well as in Law of King Christopher of Bavaria (1442), the older term *kasnavargher* appears in several Swedish provincial laws.

34 Colman 1981, 95–110. For more focus upon Scandinavia, see Carlsson 1935 and Brink 2014.

“Concerning Housebreaking” in the Old Gulathing Law which states that it was a nothing crime to break into another person’s house to attack him.³⁵

While killing someone had two main classifications, murder and manslaughter, the earliest laws also drew distinctions between various kinds of stealing, and primarily that between robbery (*rán*) and theft.³⁶ While a robber (*ránsmaðr*) commits his depredations by daylight and makes his intentions clear, although he often uses violent methods, he is regarded as less reprehensible than the thief who works in secret or under the cover of night. The opening line in the Book of Theft in the Old Gulathing Law stipulates that anyone who desires to remain in the king’s realm shall refrain from stealing. The value of the stolen goods determined the punishment; an *ertog* or more qualified as theft, and the thief should be outlawed or slain. The amount which qualified for theft was rather small; in the Gulathing province an *ertog* amounted to approximately the value of 1/7 of a cow.³⁷ Similar rules also applied in the Frostathing.

Since in a (pre-)state society solving conflicts and enforcing the law depended upon the parties involved keeping to their agreements, it was paramount that promises of peace and security, whether temporary or permanent, were kept. There is every reason to believe that in Scandinavia elaborate rules on truce and pledge already existed in the Viking Age.³⁸ Evidence to this effect has survived outside Scandinavia; Vikings abroad confirmed peace with the Anglo-Saxons on ceremonial oaths (evidence has survived from the late 800s), Constantinople (in the tenth century), and with the Franks in the late 800s.³⁹

Grið refers to a limited period of peace and security granted to a law-breaker to enable him to put his affairs in order, or to peace and security that was enforced at certain times and in certain places, such as the assembly or on the way to and from the assembly.⁴⁰ This principle also carried great weight in later centuries, as letters of *grið* from the late Middle Ages and Early Modern period witness. These letters show that before a case was closed, it was subject to a public investigation in which the royal representative (*sýslumaðr*) or his aides, in cooperation with the local community where the crime had been committed, were in charge of gathering the evidence. During this period, a *grið*-letter was issued, which offered the offender

35 G 178, *NgL* I, 66; Larson 1935, 137, cf. E II 40, *NgL* I, 405.

36 See discussion of *rán* in *NgL* V, 505.

37 G 253, F XIV 12, *NgL* I, 82–83, 252–253; Larson 1935, 164–165, 397–398. According to G 223; Larson 1935, 151 the value of a cow was 2 ½ *øres*.

38 Only a fragment of a *trygða mal* has been preserved from Norway, in the Old Gulathing Law; G 320, *NgL* I, 110. However, a similar provision found in the Icelandic lawbook *Grágás* is possibly a Norwegian import. See, for instance, Sunde 2007.

39 Stein-Wilckshuis 2002, 155–168; Lund 1987, 255–269; Reuter 1992, 71.

40 *NgL* V, 248–249. *Grið* could also refer to peace and security at home, and a *griðmaðr* or *griðkona*, for instance, although not of the family, shared in the rights of the family they had been admitted into.

temporary legal protection (*grið*) in the name of the king.⁴¹ Ideally, a limited period of peace and security was followed by permanent protection and peace. *Trygð* has the sense of protection, peace, and settlement confirmed by oath; it was used particularly in cases of manslaughter and revenge, and someone who broke a peace pledge (*trygðar*) was a pledge-breaker (*tryggrofi*).⁴² *Trygð* made under oath was of great importance in the Nordic countries from the Viking Age and at least until the late Middle Ages, where legal procedures were normally not put down on parchment, a contrast with procedure under canon law, which relied on written testimonials to a much greater extent.⁴³ A pledge-breaker may also be someone who withheld wergeld money, which several paragraphs in the Old Gulathing Law attest.⁴⁴ If someone accused of breaking a *grið* or a *trygð* was unable to be defended with a threefold oath, this person became an outlaw, and was therefore appropriately designated a *griðnidingr* or a *tryggrofi*.⁴⁵ It was probably fitting that because they had violated the legal process and placed the peaceful resolution of conflicts in jeopardy, they were denied Christian burial.

Principles of Exclusion

After this survey of various outlaws denied burial according to the early medieval Christian laws, it is necessary to discuss the ideologies which underlie the basis of exclusion in the first place. Central to this understanding are two terms which were frequently used to reinforce the description of this particular outlaw, *niðingr* and *vargr*, either one of these terms, or both combined.

As noted above, *nið* was part of an ancient tradition in North Germanic societies, and I endorse Preben Meulengracht Sørensen's view that old Norse society revolved around a militant concept of morality.⁴⁶ The concept of *nið* entailed that some misdeeds were unworthy of a warrior, and this concept of honour and loyalty within the group also applied to the armed merchants of late Viking Age Scandinavia and, in a wider context, it is probably correct to say this principle permeated society as a whole.⁴⁷

These ideas may help to explain why some outlaws were denied Christian burial in early medieval Norwegian law. Outlaw (*útlagr*) was a general term, and we often have to rely on the context or additional terms to decide whether the outlaw had

41 Imsen 1998, 489–490; Hamre 1977, 259–264; Agerholt 1965, 297–298.

42 F IX 19, *NgL* I, 213, Larson 1935, 337.

43 Nilsson 1989, 271.

44 G §§ 316–319, *NgL* I, 106–109; Larson 1935, 201–210.

45 F V 9, *NgL* I, 178; Larson 1935, 284–285.

46 Meulengracht Sørensen 1980, 24.

47 Jesch 2001, 258–261.

committed an irredeemable crime or not. We have seen above that *nið* is one such distinguishing term, and it is clearly evident that an outlaw was not necessarily a *niðingr*. For instance, paragraph 314 in the Old Gulathing Law stresses this distinction. G 314 concerns men in longships, Vikings, who could be outlaws but whether they were branded as nithings or not was dependent upon whether they renounced the peace before they started raiding.⁴⁸ This is in line with the principle of distinguishing between murder and manslaughter, theft and robbery. It was the lack of public declaration of intent, the clandestine and unmanly way in which the wrong was done which made an otherwise redeemable act irredeemable. Therefore it seems that the outlaws explicitly debarred from the churchyard according to the oldest Christian laws had committed nithing-crimes, which went against the Viking Age code of conduct.

Another interesting facet is the relationship between the *niðingr* and the *vargr*. While a murderer was branded a *niðingr*, he could very well also be a *vargr*. This is an ambiguous term; in Old Norse it could mean outlaw as well as a wolf, but it is probably significant that the word for the animal itself, wolf (*úlfr*) is never chosen in these legal compound terms, probably because it is not strong enough or precise enough. The concept of the outlaw or criminal encapsulated in the term *vargr* stretched back prior to the Viking Age, and it may even have been common Germanic.⁴⁹ It is difficult to assess the use of the various “wargish” compound terms in Old Norse chronologically, but it is probably significant that whereas such terms occur in the family sagas (*Íslendingasögur*) describing events that took place in the tenth and early eleventh centuries but which were written down in the twelfth and thirteenth centuries, none are found in the *Sturlunga Saga* (events that took place 1117–1264).⁵⁰ This way of designating outlaws in the Icelandic sources is probably an import from Norway, since the only indigenous Icelandic mammal is the arctic fox.

The image of the outlaw as the *vargr* has caught the attention of scholars since the early nineteenth century.⁵¹ While some consider the association between the criminal and the *vargr* as symbolic, others think this association was something more than the criminal being cast in the image of the wild wolf living in the wilderness, hunted by all. Building upon older research and comparing a wide range of sources, continental, English and Old Norse, Mary Gerstein presents some interesting ideas. She argues that the criminal by means of a magical-legal pronouncement was transformed into a *vargr*, a monstrous evildoer who was “not human”; something

48 G 314, *NgL* I, 103, where the following formulations occur: “outlaws but not nithings” / (*utlager oc eigi niðingar*) and “they are outlaws and nithings too” / (*þa ero þeir utlager. oc niðingar*); Larson 1935, 198–199.

49 Gerstein 1974.

50 Vatne Ersland 2001, 20.

51 See overview in Gerstein 1974.

far worse than the animal wolf. Thus, according to Gerstein, there was more than an allegorical association between the criminal and the *vargr*.⁵²

At this point, I think it is important to underline that whether a physical transformation from man to beast actually took place is not important. What matters is whether Viking Age and early medieval people actually believed a transformation like this possible.⁵³ Although the earliest written Old Norse evidence is sparse, it is consistent. Therefore, I endorse Gerstein's claim that *vargr* is an old term which survives as a *terminus technicus* for a particular subclass of outlaw who had committed odious crimes. More evidence has recently been published which supports the view that the association between *vargr* and outlaw or criminal is very old, and that at one time this notion was probably recognized among most, if not all, of the Germanic peoples. For instance, while no examples which attest that an odious criminal was designated as a *vargr* are found in Anglo-Saxon law, other sources attest to the earlier existence of this association. In a study of execution sites and cemeteries, Andrew Reynolds has found fifteen instances of place-names in Anglo-Saxon charter bounds where *warg* is used in combination with other terms to describe execution sites, the earliest dating to 891.⁵⁴

As we have seen above, some outlaws were clearly worse than others. *Vargr* was a technical term for outlaws guilty of especially heinous crimes which were committed in a underhand and unmanly way, characteristics which also fit the description of crimes committed by a *niðingr*.

Medieval literature from all over Europe, including old Norse society, provides evidence that the undead frequently had led an evil life, and continued his evil ways after death.⁵⁵ A good death was tame, according to Philippe Ariès.⁵⁶ As far as outlaws were concerned, however, death was often violent. In medieval Norway, it seem clear that the pre-Christian Viking-age ideology concerning crime and punishment, nothing-crimes which were frequently committed by a *vargr*, was adapted to ecclesiastical needs when the oldest paragraphs distinguishing between in-groups and out-groups in the churchyard were worked out. The notion of the irredeemable outlaw who had to be excluded from society, placed outside the law, was ingrained in popular custom. This made the next step much simpler: the deceased but still irredeemable outlaw also had to be excluded from the society of the Christian dead, the churchyard.

52 Gerstein 1974, 133–134.

53 Well into the early modern period it is evidenced that creatures which we today would regard as ridiculous and at best superstitious actually played a part in court cases in Norway, for instance trolls and changelings. At least by the late seventeenth century, a distinction between popular and elite beliefs is discernible; the elite no longer seem to take such creatures seriously, while they still existed for the populace at large. See Knutsen & Riisøy 2007, 42–48.

54 Reynolds 1997, 38. See also Reynolds 2009.

55 Caciola 1996, 3–45.

56 Ariès 1981.

New Times, New Principles

Norwegian law was transformed between the late twelfth and the late thirteenth centuries in many ways.⁵⁷ These alterations also affected rules on burial, and new categories were added to those variously denied Christian burial, including assassins, robbers, excommunicates, and usurers (and some manuscripts include adulterers as well). In addition, the Old Christian Frostathing Law and Archbishop Jon's Christian Law of 1273 contain some special rules.

Some of these additions can be linked to legislation to ensure the king's peace, a common European phenomenon, which was stepped up during the early years of Magnus Erlingsson's reign (1161–1184).⁵⁸ The Old Gulathing Law, particularly the Christian law section, was thoroughly revised, possibly at a meeting in Bergen in 1163 or 1164 in connection with the crowning of King Magnus.⁵⁹ In paragraph 32, "Magnus made this new ordinance", robbers, "whether they plunder men on shipboard or on land" and assassins (*flugu menn*) were declared irredeemable outlaws.⁶⁰ These rulings have also been included in the Old Frostathing Law, F V 45.⁶¹ As I have discussed above, in older legislation a robber was given a more "honourable" treatment because his intentions were fairly clear, whereas in the late twelfth century he was degraded to the legal status of the skulking thief. The *flugumenn*, literally "men of flies", were possibly given their name because they were the image of enticement, like the flies tempting the fish to bite.⁶² Frederic Amory has used primarily Icelandic sources to show that the "men of flies" were also easily fooled; in ninety percent of attempted assassinations, the outlaw-assassin is killed himself.⁶³ In order to further peace in the country, late twelfth century Norwegian law decreed that hired assassins could no longer hide behind their employers, but were made personally responsible and their deeds became a royal plea.

In the 1170s during Archbishop Eystein's episcopacy (1161–1188), the Christian law section in the Old Frostathing Law was thoroughly revised and the strong influence of canon law is palpable.⁶⁴ The Frostathing law applied to the province where the archbishop had his seat, and it is not therefore surprising that this law also has a strong focus on the peace of God; a person who threatens, wounds or slays someone with a weapon forbidden in the Church or the churchyard was

⁵⁷ Riisøy 2009.

⁵⁸ Helle 1974, 95, 100–101.

⁵⁹ Helle 2001, 17–23.

⁶⁰ G 32, *NgL* I; Larson 1935, 58–59.

⁶¹ F V 45, *NgL* I; Larson 1935, 290–291.

⁶² *NgL* V, 198.

⁶³ Amory 1992, 200.

⁶⁴ Archbishop Eystein's role in the revision of this law and the influence of canon law has been discussed by Erik Gunnes in particular; see Gunnes 1996, 149–171; Gunnes 1970, 127–149; Gunnes 1974, 109–121.

excluded from burial. Burial was however possible if the bishop consented, and the perpetrator had “formerly been a decidedly peace-loving man” and his kinsmen would honour the Church where the peace was broken with money or gifts.⁶⁵

The Old Christian Frostathing Law does not enumerate a long list of specific outlaws denied burial, but did exclude someone who “had been separated from his Christian faith while he was still living” (*eða hann hafe veret fra kristni skilder meðan hann uar lifs*).⁶⁶ According to Bertil Nilsson, it is not entirely clear whether “had been separated from one’s Christian faith” alludes to the unbaptized or excommunicates or both; but most likely it concerns excommunicates who had been separated from Christianity, that is the Church.⁶⁷

Nilsson has pointed out that the question of whether excommunicates were allowed Christian burial or not was debated in Norway at the latest about the year 1200, because in a letter now lost, the archbishop of Nidaros (present-day Trondheim) had asked Pope Innocent III (r. 1198–1216) for advice on this topic. We know of the existence of this letter because of the Pope’s reply, and here we learn that “we may not communicate with those persons dead with whom we have not communicated while they lived”.⁶⁸ In the letter, the Pope also stressed that if excommunicates were buried in the churchyard they were to be removed, but only if it was possible to identify them. In the mid-thirteenth century Christian laws, people who died while excommunicate were added to the list of people excluded from the churchyard.⁶⁹ Excommunicates could be regarded as a kind of spiritual outlaw, and the link between an incorrigible excommunicate and an *ipso facto* outlaw is attested in the Christian laws, possibly from the late twelfth century. The Old Christian Frostathing Law stipulates that an excommunicate who did not repent and concluded his affairs within a specific time, should be summoned by the bishop’s bailiff before an assembly and declared an outlaw.⁷⁰ The injunction to expel excommunicates from the churchyard if it was possible to identify their bones was analogously applied to the various categories of outlaws denied burial in the mid-thirteenth century Christian laws.

It is also possible that someone who “had been separated from his Christian faith while he was still living” had a broader application than simply the excommunicates,

65 F II 10, *NgL* I, 134; Larson 1935, 229–230.

66 F II 15, *NgL* I, 135; Larson 1935, 232.

67 Nilsson (1989, 242) points out that, the legal expression for excommunication was normally “*skildir fra heilagri kirkiu*”; *NgL* V, 567.

68 Nilsson 1989, 40 refers to DN XVII, no. 10 [1200]. LatDok no.39; Vandvik 1959, 125–127. The Pope answers a request from Archbishop Eirik of Nidaros (archep. 1189–1213), then living in exile in Denmark because of the quarrel with the King. As Vandvik points out, the contact with the Pope was most likely initiated because of the excommunication of King Sverre Sigurdsson (r. 1184–1202) and his followers. Cf. X 3.28.12: “*Si ossa excommunicatorum sunt sepulta in ecclesiastico coemeterio, et discerni possunt, debent exhumari et proiici; alias secus.*”

69 These were *excommunicati major* (*bandsættir menn*) and *excommunicatio minor* (*þæir er tælia oc fræmia rangan atrunað firir mannum*), see *NgL* V, 88, 200.

70 F III 21, *NgL* I, 154; Larson 1935, 254. This rule is also found in, J 60, *NgL* II, 382.

and also referred to un-Christian behaviour in general. Again the outlaws are brought into the picture.

The oldest Christian laws had already explicitly associated outlaws with un-Christian conduct. According to the Old Christian Borgarthing Law, an outlaw not only lost legal protection and absolutely all he owned, he was also often exiled to a heathen country. During the eleventh century a “heathen country” may, to some extent, have existed in remote parts of Norway and Sweden and around the Baltic. Some provisions add that the act of becoming an outlaw is a refusal to be a Christian. Thus the outlaw chooses to be a heathen, and therefore he shall never again be allowed in a country where Christians live.⁷¹ Presumably this expulsion also assumed an element of purification: not only getting rid of troublemakers, but also delivering the country from all non-Christian beings. According to Absalon Taranger, Anglo-Saxon Church law is a possible source of inspiration. In Anglo-Saxon England in the first decades of the eleventh century, persistent opposition to the Church commands normally led to expulsion from the country, which was thus delivered from un-Christian beings.⁷² In the Norwegian Christian laws, we also find this idea manifest in prohibitions on having heathens in the country. Even someone who gave the heathen food risked a heavy fine.⁷³ This line of thought is discernible in the rules on burials: not only was removal of the outlaws’ remains required, but the Church risked staying without a service until the bodies had been taken away.⁷⁴ Thus, the body of an outlaw continued to pose a threat, and his impurity did not cease with death.

So-called *okr karlar*, which literally means “usury men”,⁷⁵ were also denied burial; one exception is two manuscripts of the New Christian Gulathing Law, which exclude *horkallar* (literally “whoring men”) rather than the *okr karlar*.⁷⁶ Usury was a new crime in high medieval Norway. In pre-Christian and early Christian society, a man who had sexual relations with any other woman but his own wife risked being

71 For example, outlawry because of incest in the first degree, B I 15, *NgL* I, 350; murder of a newborn, B I 3, *NgL* I, 340; refusal to baptize a newborn within 12 months, B I 4, *NgL* I, 341; divorce without proper cause B II 6, *NgL* I, 355, cf. B III 6, and failure to pay tithes, B I 11, *NgL* I, 346. We also find traces of this in the *Old Christian Eidsivathing Law*, E I 52, *NgL* I, 392 on incest and E I 27, *NgL* I, 384, concerning meat-eating.

72 Taranger 1890, 299–300.

73 G 22, *NgL* I, 13; Larson 1935, 61.

74 F II 10, *NgL* I, 134; Larson 1935, 230.

75 This is a prohibition which found inspiration in canon law; Nilsson 1989, 264. Nilsson, however, is of the opinion that, compared with canon law, this indicates that the *Old Christian Eidsivathing Law* cannot be older than the late 1230s. However, as pointed out by Lars Hamre (1967, 491), “*okr karlar*” or “*manifesti usurariis*” may be a later interpolation since the oldest manuscripts of this law are all later than 1300.

76 *NgL* II, 292, 314, MSS. D as well as MSS. A from the beginning of the fourteenth century. The term *hór* was normally applied for adultery, which was possibly made a crime in Archbishop Eystein’s late twelfth-century revision of the Old Christian Frostathing Law according to Gunnes 1996, 160.

killed; for the offended party compensation clearly was a less honourable option.⁷⁷ Adultery was criminalised in the Frostathing law province in the 1170s, and in the 1260s outlawry was decreed for adulterers who were utterly obstinate and refused to cease their behaviour.⁷⁸ At the same time, the Old Christian Frostathing Law decreed that “wicked men” who run away “with the wives of other men” shall be regarded as forever outside the law and were denied “burial at Church.”⁷⁹ In this context, the expression “run away” probably refers to the abduction of women, while in the later Middle Ages it could also refer to a more gender-neutral extramarital affair, in which women also took a more active part.⁸⁰ Thus whether the woman consented or not, adultery was considered a reprehensible crime and the sentence might extend to the churchyard.

As we have seen in the oldest legislation, categories of irredeemable outlaws like murderers and thieves were denied Christian burial. According to Nilsson, the Norwegian principles of exclusion basically follow canon law, while some categories are peculiar to Norway, the *gríðniðinga* and the *tryggrova*.⁸¹ This perhaps mirrors the great importance these procedures played in Old Norse society, which hardly relied on written evidence, but on people keeping their oaths and promises.

The Christian laws of the mid-thirteenth century also introduce a few exceptions to the rules denying burial. If a person called on the priest before dying and confessed, then the priest had the power to grant permission for a Christian burial. In addition, the outlaw's heir was also obliged to compensate for the deceased outlaw's crimes. However, convicted thieves, murderers, robbers, and people who were not baptized were not allowed any reprieve.⁸² Ideally, a member of the Church who had repented, confessed, and thus become reintegrated into the community of all Christians was entitled to a Christian burial. Therefore denial of burial in consecrated ground was a second punishment in addition to the sentence proper. However, the threat of having one's remains interred in unconsecrated ground might

77 I have discussed this aspect of the legislation in Riisøy 2003, 163–167. The right to kill for revenge in the provincial Gulathing laws, § 160 and the Frostathing IV § 39, list seven women (*NgL* I, 62–63, 169–170; Larson 1935, 132, 273–274). According to the Old Christian Borgarthing Law, version II, § 15, (*NgL* I, 358) *lendmenn* (who had obtained land from the king) and *hauddar*, (who were important farmers and who may have ranked alongside earls during the Viking Age) had a right to kill for revenge against thirteen categories of female relatives. According to the Old Christian Borgarthing Law, the further a man descended the social ladder, the proportionally fewer female relatives he could protect from sexual advances from other men through the right to kill. In addition, female slaves and servants were under the authority of the *paterfamilias* with regard to their sexuality, but in their case family honour was not considered to have been insulted to such a degree that it justified killing. Rather, the head of the family could claim economic compensation in proportion to the woman's position within the household, G § 198, see also F XI 21, *NgL* I, 70–71, 234; Larson 1935, 143–144, 369.

78 *NgL* I, 459; *NgL* II, 454.

79 F Introduction § 10, *NgL* I, 123; Larson 1935, 216. This rule was probably added by Håkon Håkonsson in ca. 1260, Hagland & Sandnes 1994, XXXI.

80 Riisøy 2009, 25–28.

81 Nilsson 1989, 289.

82 NB I 8, *NgL* II, 296, NG I 16, *NgL* II, 314–315, NB II 10, *NgL* IV, 166, J 16, *NgL* II, 350.

have acted as a powerful deterrent to potential criminals. This view is also reflected in the New Christian Borgarthing Law II of 1267–1268 because henceforth the king's approval was also required to obtain a Christian burial for outlaws, as well as for "cases of irredeemable outlawry according to the Christian laws" (*wbota malom y christnom rette*).⁸³

The Protracted High Middle Ages and the Reformation

The Catholic faith was rejected with the Reformation,⁸⁴ and Christian III (r. 1534–1559) ratified a church decree in Latin on 2 September 1537, which with minor changes was translated into Danish two years later.⁸⁵ For Norway, this decree of 1539 was intended to be merely an interim regulation, but it was only in 1607 that a Norwegian church decree was issued.⁸⁶ In his forthcoming study on dishonourable death in early Reformation period Norway, Arne Bugge Amundsen points out that since the decree of 1539 does not contain any rules on exclusion from the churchyard, the medieval Christian laws were an obvious place to look for guidance.⁸⁷ The medieval Christian laws were often translated and diligently written into the law-books in the post-Reformation sixteenth and early seventeenth centuries, and we also know that they were applied in ecclesiastical lawsuits during this period.⁸⁸

Bugge Amundsen draws attention to a burial sermon preached by Superintendent⁸⁹ Jørgen Eriksen in 1578.⁹⁰ According to the superintendent, so-called "ungodly people" should not be buried together with "God's chosen children",

83 NB II 10, NgL IV, 160, see also 166–167: "*En om da men som før ere talde tiuffue, mordere, och ransmen maa ey y kirkegaard komme wdenne kongens samtyke see till med, och det samme huaruetna der som kongsomenom ber med halfft sekt, aa wbota malom y christnom rette*". This addition is not found NB I 8, NgL II, 296; NG I 16, NgL II, 314–315, J 16, NgL II, 350, NB II 12, NgL II, 330–331.

84 In Denmark and Norway, the Reformation was implemented by King Christian III after a protracted civil war. On 30 October 1536, Christian issued a royal charter which stated that Norway should no longer exist as an independent country but become a province of Denmark, and on the same day the Catholic Church in Denmark was abolished. In 1537, the last Catholic Archbishop left Norway, and Christian signed a new Lutheran Church Order or Ordinance, which was accepted in Norway in the same year. For an overview, see Montgomery 1996, 147–179.

85 Amongst other things, the church decree enjoined rules regarding faith, choice of ecclesiastical personnel, and moral conduct. The church decrees of 1539 and 1537 were published in *Kirkeordinansen 1537/39: Det danske Udkast til Kirkeordinansen (1537)*; *Ordinatio Ecclesiastica Regnorum Daniæ et Norwegiæ et Ducatum Sleswicensis Holtsatiæ etc. (1537)*; *Den danske Kirkeordinans (1539)* by Martin Schwarz Lausten.

86 Kolsrud 1917, 189–190, 193, 199–205.

87 I would like to express my thanks to Professor Bugge Amundsen (University of Oslo), who gave me access to his manuscript before it went to print.

88 Kolsrud 1917, 185–211; Bang 1895, 158–160; Riisøy 2009.

89 Superintendent was introduced as an alternative title for a bishop after the Reformation.

90 Bugge Amundsen 2015.

but in places where they would be eaten by birds and animals. According to the superintendent, “ungodly people” had flagrantly profaned or despised the name of God and the sacraments, and they ought to be buried underneath gallows or other places outside the churchyard as warning examples for other ungodly people.

Translations into Danish of the Norwegian medieval Christian laws were circulating in various versions, and Bugge Amundsen found that they were important when the Norwegian superintendents in 1604 made a draft of a Norwegian church ordinance. The draft of 1604 has an extensive chapter on churches on churchyards, which is not included in the final version of the church decree of 1607 but, as noted by Bugge Amundsen, the draft can tell us how Post-Reformation ecclesiastics reflected and debated on this matter. The churchyard should be available for “every honest human being”. Characteristically for Lutheran notions, which considered faith alone sufficient for salvation, the draft added that “being interred in the churchyard is no guarantee of salvation; likewise, being interred outside the churchyard does not automatically lead to perdition”. Then follows a familiar quote from the Christian laws on exclusion from burials, and then with a novel twist referring to Jeremiah 22:19, stating that there are people who are deserving of “the burial of a donkey – dragged away and thrown outside the gates of Jerusalem”.⁹¹ The church ordinance of 1607 does not contain such details, but it suffices to decree that all Christians were to be buried in the churchyard or in the church, but with the knowledge of the “leading men” of the church, presumably a priest or bishop. The rule went on to stipulate that no one was to be buried outside the churchyard who deserved to be in it, a formulation which presupposes that there were dead people who did not belong in the churchyard.⁹² As Bugge Amundsen points out, the Church obviously tried to ensure some sort of control over burials in consecrated ground. The Church Ritual from 1685 and King Christian V’s Norwegian and Danish laws from the same period decreed that executed criminals were not be buried before the authorities and the claimants were satisfied.⁹³

91 Bugge Amundsen 2015.

92 Bugge Amundsen 2015.

93 Bugge Amundsen 2015, refers to Danmarks og Norgis Kirke-Ritual 1685, 335; *Kong Christian Den Femtis Norske Lov*, 1687, 2-10-4.



Picture 2. This scene shows the execution of Philotas, son of Parmenion who was Alexander the Great's general. Philotas was accused of failure to report a conspiracy against Alexander. For this, was tried, tortured and executed in 330 B.C.E. Medieval miniaturists depicted the execution as a beheading, befitting a high-ranking soldier and nobleman.

From Principles to Practice

A handful of legal cases have survived which show that the rules excluding outlaws from the churchyard were known among the populace, who occasionally tried to evade these rules in order to give deceased relatives who died as outlaws burial in the churchyard. On the other hand, the authorities tried to ensure that the rules that excluded the same outlaws from the churchyard were applied. Because the medieval rules on burial still had effect in the sixteenth century after the Reformation, a few late sixteenth-century cases will also be referred to.



Picture 3. This burial scene is from a fifteenth-century German manuscript telling the story of Barlaam and Josaphat, early Christian saints. However, the legend is modelled on the life of Prince Siddhartha Gautama, the Buddha.

In 1443, the bishop of Bergen instructed all the priests in town to command the monks who had buried a criminal in their churchyard to dig him up and remove him. If this command was disregarded, the monks would be excommunicated and the churchyard placed under interdict.⁹⁴ Whether the monks did as they were told we do not know, but a diploma from 1492 gives evidence that commands to remove illegally buried corpses from the churchyard were not always adhered to.

⁹⁴ DNI no. 786.

The diploma narrates how Bishop Eilif of Stavanger (d. 1512~1513) pardoned a family for failing to carry out the dean's order to exhume and remove the body of an outlaw from the churchyard. The bishop stated rather laconically that the outlaw's body "shall have to rest in the churchyard because it is buried together with the corpses of other good Christians" (*maa liggæ nu framdeles i kirkæ gardh som kommen er med andhrom godæ kristnæ manne liik*).⁹⁵ The bishop's resignation in this situation reflects stipulations in the revised Christian Laws of the mid-thirteenth century which state that bodies that had been buried illegally, but which had been in the ground for so long that it was no longer possible to "distinguish their bones from the bones of other Christian people" (*skilia bein thieris fra annar christna manna beinom*), should remain *in situ*.⁹⁶

Fear of damnation was always present in medieval people, who viewed their short and brutal earthly existence as merely preparation for the eternal life. In an age where the belief in the resurrection of the body on the Day of Judgement was firmly dependent upon whether the deceased had received a Christian burial or not (although theologians may not have taken such a clear-cut view), the question of whether punishment precluded burial in consecrated ground was an important one. Similar principles applied in the Protestant tradition.⁹⁷ Therefore, threats of heavy fines and expenses relating to the re-consecration of the churchyard did not stop people from at least trying to bury their outlawed relatives and friends there.

Although serious attempts were made to keep condemned criminals out of the churchyard, this process also worked the other way. It was imperative that people who had a place among the society of the Christian dead were not excluded, and the mid-thirteenth century Christian laws stipulated a fine if someone interred a body entitled to a Christian burial outside the churchyard.⁹⁸ I have not come across any evidence of medieval legal practice regarding this, but the process of including people wrongfully excluded from the churchyard is evidenced in two cases which were brought before the *Herredag* in the late sixteenth century. When the king and the Council of the Realm sat together during meetings (called *Herredag* in Denmark in the sixteenth and the first part of the seventeenth century), they were acting as the highest court in the kingdom. The first is a case of adultery, which was reopened by the *Herredag* in Oslo in 1585.⁹⁹ The court concluded that judicial murder had been committed. The previous judgement was annulled, and the twelve jurors who had passed it were ordered to exhume the body from the place of execution and to transfer it to the churchyard for a proper burial.¹⁰⁰

95 DN I, no. 975.

96 NB II 10, *NgL* IV, 166–167, NB I 8, *NgL* II, 296, NG I 16, *NgL* II, 314–315, J 16, *NgL* II, 350.

97 Koslofsky 1995, 327–328.

98 See references in Appendix 1.

99 Protocols from the *Herredag* have been preserved, beginning in 1578; they continue until the early 1660s, and have been published in six volumes by Thomle 1893–1903.

100 Thomle 1893–1903, III, 63–67.

Towards the end of the sixteenth century, documents from the *Herredag* in Trondheim from 1597 show that a man called Mikkel brought an action against the steward. In the name of the relatives of the poor tailor Søren Madsen, Mikkel had paid the steward 10 *riksdalers* to assure that the heretic Søren was buried in the churchyard. Exactly what crime the heretic had committed we do not know. During the later Middle Ages and early modern period it seems that sexual perversion in particular became associated with ideas about religious/moral perversion, and the term *kjetteri* [heresy] occasionally appears in legal documents and judgements in connection with the most reprehensible sexual crimes.¹⁰¹ In this case, it cannot be ruled out that the term *kjetteri* denotes controversial theological views. It was, after all, only sixty years since a new confession had been introduced. Discussing Lutheran funerals in the post-Reformation sixteenth century, Craig Koslofsky shows how popular conceptions of pollution influenced questions pertaining to burial. The deceased without the proper “confession” were seriously at risk of being considered heretics, and thus denied burial in the communal churchyard.¹⁰² To proceed with the case above; when the steward had the heretic’s head “placed on a pole and his corpse placed underneath” (*sette paa en steigle och legemit under neden*), Mikkel of course asked to have his money back. The steward argued in his defence that he had received the ten *riksdalers* in order to change the punishment from burning at the stake to beheading, but the court was not convinced. When it could be shown that the governor Ludvig Munk (1537–1602) had issued an open letter to the effect that the tailor was to be buried in the churchyard, the 10 *riksdalers* were returned to Mikkel.¹⁰³

These few cases give a glimpse of how burials were controlled. The oldest Christian laws had already prescribed fines to the bishop for improper burial, and snapshots from the late Middle Ages indicate that the bishop may have played an active part. One of the cases shows that the dean was also involved, but without any effect. After the Reformation, secular courts clearly had some control over this process, but we only have evidence from two cases, which were dealt with by the *Herredag*, the highest court in the kingdom. At a local level, priests might have been more actively involved; Johannes Steenstrup discusses how Danish priests in Seeland towards the end of the sixteenth century were reluctant to grant burial to outlaws and other criminals.¹⁰⁴ The situation in Norway might have been similar. Admittedly, the evidence from legal practice is rather meagre, but it is enough to show that rules denying the burial of outlaws in consecrated ground were applied to a certain extent. But where were outlaws buried?

101 Riisøy 2009, 50–54.

102 Koslofsky 1995, 327–329, 332, 336–337.

103 Thomle 1893–1903, IV, 45–46.

104 Steenstrup 1930–1931, 408–409.

Disposal of Outlaws Excluded from Christian Burial

According to the Old Christian Gulathing Law, the most suitable place to inhumate outlaws excluded from Christian burial was on the shore (*flōðar male*) where “the tide meets the green sod.”¹⁰⁵ A similar stipulation is enacted in the Old Christian Law of the Eidsivathing,¹⁰⁶ and it was retained in the mid-thirteenth century Christian laws. Nilsson points out that this ruling has no parallels in canon law, and he suggests that this location was chosen to avoid corpses being placed back in the heathen burial mounds.¹⁰⁷ It should be noted that the Old Christian Gulathing Law explicitly prohibits burials in “a mound or heap of stones.”¹⁰⁸ Nilsson puts forward the plausible suggestion that the inhumations of outlaws mirror their outcast status in life. Thus in death, they did not belong to the earth, nor to the water.¹⁰⁹ Andrew Reynolds quotes a similar rationale from early modern England. When the case of the Gunpowder Plot, the failed assassination attempt against King James I (r. 1603–1625) of 1605 undertaken by English Catholics, was heard in 1606, the convicted were to be “hanged up by the neck between heaven and earth, as deemed unworthy of both, or either.”¹¹⁰

But why, exactly, was the shore chosen? It seems that only one episode from the Old Norse sources describes the shore as appropriate for burial. According to the *Book of the Settlement of Iceland (Landnámabók)*, one of the earliest Christians in Iceland expressed her wish to be buried on the shore (*flōðarmálet*) in order to avoid burial in unconsecrated ground. Since the shore was not consecrated either, it was a geographical location which was neutral.¹¹¹

This particular placement of the dead was perhaps not connected with deviant burial in the first place. As Leszek Gardela points out, Viking Age burials showed great variety, and some so-called deviant burials may in fact have been relatively normal.¹¹² An analysis of Viking Age burials at Kaupang (Skiringssal) situated along the coast of South-Eastern Norway also concludes that there were various contemporary concepts relating to death and burials. However, the placement of the burials in the landscape relates to transitional zones, the mountains or the shore. As ship burials attest, the sea was also somewhat related to concepts of death. The idea of the “holy mountain” can be traced in Iceland (*Eyrbyggjasaga*), and is probably a tradition brought over from Norway but later forgotten in the

105 G 23, *NgL* I, 13: “*scal grava i flōðar male. Þar sem særr mœtesc oc grøn torva*”; Larson 1935, 51.

106 E I 50, *NgL* I, 392.

107 Nilsson 1989, 276.

108 G 23, *NgL* I, 13; Larson 1935, 51–52.

109 Nilsson 1989, 276; Reynolds 1997.

110 Reynolds 1997, 38.

111 Nilsson 1989, 277.

112 Gardela 2013.

home country.¹¹³ However, after the change of religion when all dead Christians belonged within the sacred churchyard, the outsiders had to be placed somewhere else, and the shore was known for burials after all. An interesting addition in the New Christian Borgarthing Law, NB II 10, explains that the shore was chosen for deviant burials because here they cannot cause damage or desecration.¹¹⁴ A shore is normally stony, and stones heaped on top of executed corpses, may have prevented the unruly dead from walking. Perhaps there was also an idea that the sea, washing over the deviant dead, had some cleansing and regenerative effect.

The anthropologist Mary Douglas has been highly influential on questions of purity versus impurity in her studies of the differences between the sacred, the clean and the unclean in various societies. In agreement with the notion proposed by the historian of religion Mircea Eliade in *Patterns of Comparative Religion*, Douglas maintains that because water dissolves everything, it also gets rid of impurities as well as regenerating.¹¹⁵ Moreover, as Nancy Caciola points out, water was an important barrier in medieval thought about the dead; rivers, for instance, are often depicted as barriers between the realms of the living and the dead.¹¹⁶

In Viking Age and early medieval Norway and Iceland, water played an important part in the sentencing of sorcerers and witches, who were to be drowned and sunk to the bottom of the water. Folke Ström lists several examples from the sagas, which show that it was common practice to tie a stone round the neck of the culprit and then push him or her into the water. The practical advantage of the stone was that it facilitated the drowning while at the same time ensuring that the sorcerer would remain at the bottom of the sea or lake.¹¹⁷ Sexually abused animals were also drowned.¹¹⁸ Sorcerers, witches, revenants as well as sexually abused animals were clearly connected with moral perversion or pollution, and as a last resort they were also often burned. Some hundreds of years later, after the Reformation, possibly reinforced by Biblical inspiration, fire and burning had taken over as a more exclusive cleansing remedy in such cases. Once upon a time, however, water may have played a far greater part in getting rid of impurities.

In addition, some outlaws, in particular if they were considered to remain quiet after death, may have been buried where they were executed. For the post-Reformation period, Bugge Amundsen has found that an executed person was normally buried without further ceremony at the place of execution, which probably

113 Lia 2001, 45–46, 116–117.

114 *NgL* IV, 166: “*der som ingen er till meins eller skade*”. This addition does not seem to appear in the other manuscripts of the new Christian laws. According to *NgL* V, 441, *mein* has meanings like damage, outrage or desecrate.

115 Douglas 2002, 198–199.

116 Caciola 1996, 30.

117 G 28, *NgL* I, 17. See comments by Robberstad 1937, 43, Larson 1935, 56–57; Ström 1942, 171–173.

118 G 30, *NgL* I, 18, Larson 1935, 57.

accords well with medieval practice.¹¹⁹ The Old Frostathing Law (F XIV 12) points out that the king's bailiff should take a thief to the assembly, and from the assembly to the shore (*fiöru*) where he should find a man to slay the thief.¹²⁰ Although the paragraph does not state that the thief should be buried at the place of execution, it is perhaps not unreasonable to assume that this is what happened, in which case, the burial would have taken place on the shore. *Grágás* places the execution of an irredeemable outlaw as well as the burial of his body in one and the same location: "a place beyond bowshot of anyone's home field wall, where there is neither arable land nor meadow land and from where no water flows to the farm; [...]".¹²¹ It seems that *Grágás* also conceptualises a geographical neutrality or no-mans-land, a place which evades neat classification. Besides, the formulation "no water flows to the farm" might actually fit the description of the shore, because water which flows from the farm, would sooner or later normally flow to the shore on its way to the ocean. In any case, as outlaws were outcasts in life as well as in death, burial at a liminal place was appropriate. Burial under heaps of stones away from settlements was probably also an attractive option. For instance, *Sturlunga Saga* describes how criminals and outlaws were caught, summarily executed and buried under heaps of stone or in a rockslide.¹²² Burial under heaps of stone is also explicitly prescribed as suitable for deformed newborns in the Old Christian Borgarthing Law.¹²³

Separate cemeteries for criminals are not attested in early or high medieval Norway, but this might have changed during the later Middle Ages. Excavations of a cemetery in the small town of Skien in southern Norway, published by Gaute Reitan, evidences deviant burials from the period around the Reformation. The cemetery was in use from the late tenth century until approximately 1600. It went out of general use after the plague in the mid-fourteenth century but there are indications that it was subsequently used to bury people whose death sentence had been carried out at the town's place of execution Galgeholmen (i.e., Gallows skerry), which was a mere fifty metres away. This place name resembles other places of execution located outside Norwegian towns during the Middle Ages.¹²⁴ Three skeletons of people who had been beheaded were excavated, probably dating back to the Reformation period.

119 Bugge Amundsen 2015.

120 *NgL* I, 252–253; Larson 1935, 397–398.

121 §§ 2 and 131, Dennis *et al.* 1980, 30, 236. *Grágás* distinguishes between two types of outlaw; a lesser outlaw was sentenced to a three-year exile from Iceland, while a full outlaw or the so-called *skóggangsmadr* could be slain with impunity.

122 Kålund 1904 (vol. 1), 150 (year 1187) and 260–261 (year 1209).

123 Olavsson 1914, 3.

124 These have been discussed by Gade 1985, who included place-names with the prefix "gallows" in Iceland; see also Blom 1960, 163–165.



Picture 4. This *Allegory of Death and Fame* from 1518 relates to the *memento mori* theme by reminding that even the famous and the mighty end up as skeletons. The winged skeleton represents death, but it may be that the party is debating the deeds of the supine skeleton. The presence of Envy, the old hag with sagging breasts, may imply slanderous talk.

Two of the heads were facing downwards; the third had also been burnt in addition to the beheading, and the head had been placed between the legs. This is probably a very ancient and derogatory custom, perhaps to prevent the deceased from returning from the dead, and this practice is attested in other cultures too, in Anglo-Saxon England, amongst other places.¹²⁵ Prone burial had little to do with orthodox Christianity; Kristina Jonsson claims that it may possibly be set in relation to popular religion rooted in pre-Christian times.¹²⁶ As Jonsson also observes, people who had died a violent or dishonourable death would be more at risk of returning from the dead. Prone burials are often connected with punishment and humiliation, and it may also have prevented the dead from walking. John Blair points out that an inversion of the corpse would cause it to dig downwards when it tried to dig out, and such corpses therefore had to “bite the dust” as Gardela aptly puts it.¹²⁷

The same chronological layer at the cemetery in Skien also yielded five other skulls, nicely arranged in a half-circle. As Reitan explains, it is possible that these skulls had been displayed on posts as a warning to others before their burial in the

¹²⁵ G 241, *NgL* I, 80–81; Larson 1935, 160: “When the wergild shall be increased” states that if the head is severed from the body, and the head is placed between the feet, the wergild shall be doubled. As regards deviant burial and the dangerous dead in Anglo-Saxon and early medieval England, see Reynolds 2009; Blair 2009, 39–59.

¹²⁶ Jonsson 2009a, 97–98.

¹²⁷ Blair 2009, 549–550; Gardela 2013.

disused cemetery.¹²⁸ Decapitation followed by burning reflects a very conspicuous effort to make sure the dead had really been killed and gone once and for all. Whereas the medico-theological way of thinking the afterlife is spiritual, however, there clearly was a parallel tradition in Northern European beliefs, probably with roots in pre-Christian times, which saw the life force held within the flesh and bone.¹²⁹ Thus a corpse may possess vitality as long as it remained partly intact. A living dead who was able to hurt other people or animals, was clearly more flesh than spirit, and the Icelandic family sagas attest to this way of thinking.¹³⁰ Elements of such popular beliefs lingered on for centuries; in fact life after death was still considered to have a corporeal side well into the twentieth century. Among the general populace there were no contradictions between viewing life after death as a physical existence and the soul as being an immaterial substance which moved on.¹³¹

Conclusion

During the Viking Age, some acts were considered so reprehensible that the perpetrators were defined as the worst kind of outlaws, described in terms centring on the *vargr* and the *níðingr*. Thus they were forever declared “not humans” and placed outside the law. This way of thinking influenced the rules on burials in the earliest Christian laws, because with the arrival of Christianity the irredeemable outlaws were also outlawed from the community of the Christian dead. In practice, this means that certain categories of criminals were denied burial at the sacred churchyard, and the Church tried to enforce this prohibition. With some modifications, typically when the Church during the High Middle Ages added new categories of criminals to the list of categories of people excluded from Christian burial, this principle carried through the Middle Ages and well into the early modern period. The impurity of the bodies of dead outlaws did not cease with death and therefore burial at a liminal place such as the shore or under heaps of stones away from settlements was deemed appropriate.

128 Reitan 2005, 183–184.

129 Caciola 1996, 36–37.

130 This is further discussed in Kanerva 2011; Kanerva 2013a; Kanerva 2013b. See also Riisøy & Knutsen 2007.

131 Jonsson 2009b.

Abbreviations

Full bibliographical references to the works mentioned in the list below are given in the footnotes.

B	Old Christian Borgarthing Law
DN	<i>Diplomatarium Norvegicum</i>
E	Old Christian Law of the Eidsivathing
F	Old Frostathing Law
G	Old Gulathing Law
J	Archbishop Jon's Christian Law
KL	<i>Kulturhistorisk leksikon for nordisk middelalder fra vikingetid til reformationstid</i>
L	Landlaw of 1274
NB	New Christian Borgarthing Law
NG	New Christian Gulathing Law
NgL	<i>Norges gamle Love indtil 1387</i> (5 vols), I–V
SSGL	<i>Corpus iuris Sueo-Gotorum antiqui: Samling af Sweriges gamla Lagar</i> (13 vols)

Appendix 1: reference to particular outlaws and which law/paragraph they are listed.

	G 23	E II 40	E I 50	NB I 8; NG I 16, NB II 10	J 16
Traitors	X	X	X	X	X
Murder-wargs	X	X	X	X	X
Breakers of truces and pledges	X	X	X	X	X
Thieves	X	X	X	X	X
Breakers of temporarily legal protection		X	X	X	X
Arsonists		X	X		
Violent house-breakers		X			
Hired assassins			X	X	X
Robbers			X	X	X
Excommunicates			X	X	X
Usurers			X	X	X
(Male) adulterers				<i>horkallar</i> (2 MSS in NG I 16)	

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