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PLEADING THE CAUSE OF HANSA-ÞÓRIR

For the past century Hænisa-þórir has been described as a scoundrel, as a most disgusting upstart, as the very soul of meanness, by saga-commentators all over the world. Almost all the entanglements of the saga are usually said to originate in his faults. The aim of this paper is to show, by drawing conclusions from other sources, that this universal condemnation is not justified.

The society of which Hænisa-þórir is a part, obviously shares many traits with the one in which the author was living, i.e. the latter half of the 13th century. Evidence has been given that the saga was most probably written between 1275 and 1281. For the entire argument regarding the dating as well as for some other material of importance for my comprehension of the case, I would like to draw your attention to Björn Sigfússon, *Staða Hænisa-þóris sögu í réttarþróun 13. aldar*, Saga 1962, a paper to which I am greatly indebted, since it inspired me to a new trial of the case.

In my opinion Hænisa-þórir is not a scoundrel, but an extraordinarily unlucky fellow. At the beginning of the story he is disliked, but unblemished. A decadent society, represented by chieftains without integrity, despising, deriding and robbing him, turns him step by step into an unbalanced, perhaps irresponsible man, who finally incurs guilt by his desperate raid against Herstein. I assert that this attitude of society against Hænisa-þórir would have been considered unworthy in the period before Iceland lost her independence - even amongst the more hardboiled characters of the Sturlung age. In order to produce evidence I will have to refer not merely to the laws, but

also to some comparable scenes from other 13th century texts.

We are without information as to what Hænsa-þórir looked like, what habits he had, and how his personal affairs had developed during his youth. Thus I feel free to treat him just as an ordinary member of society.

Nothing is said about Hænsa-þóris parents, and the only relative of his makes his living as a tramp. So if anything at all may be said about the family from which Hænsa-þórir descended, it must be that it was extremely poor. Hænsa-þórir, however, was willing to work and persistent enough to make a fortune without being blemished. But he stuck to his rather simple way of life, and there is, of course, no reason to believe that þórir made any effort to become a man of social accomplishments. Besides, poor people most probably envied him, rich people were mocking at him, as we may understand from his nickname. Thus he lives as a man without support from anybody, a man without friends, and, after all, it is difficult to imagine where he should find them. He is a lone wolf, but he does not feel comfortable in that state of things. He tries to get out of it. He makes up his mind and pays a visit to Arngrímr goði, intent on investing money in useful contacts. Hænsa-þórir offers to foster the son of Arngrímr, Helgi, and as he finds Arngrímr rather reluctant, he offers to give half of all his property to Helgi. His only term is, and it is said twice, protection in order to get his rights. The weaker one in that scene is Arngrímr. He betrays a lack of conduct as well as a lack of character, first expressing his disdain towards Hænsa-þórir in the most straight-forward way, and then, in spite of that opinion, accepting the offer, obviously just for the money and without consideration of the fact, that his own son will then have to stay with that disdained man. We understand immediately, that it was not that kind of chieftain who could possibly make Hænsa-þórir believe

that these people were really superior to him in anything but power.

By incident we have a scene with approximately the same ingredients in a somewhat older saga, showing how a chieftain probably ought to behave. Þórðr goddi in Laxd. ch.16 is known as a greedy and cowardly fellow, and just then he is scared by the rumour, that his former wife is likely to lay claim to part of his money. He feels that he is in need of support:

Þá bauð þórðr Høskuldi fé til liðveizlu ok kvazk eigi mundu smátt á sjá... Síðan vil ek bjóða Ólafi, syni þínum, til fósturs ok gefa honum allt fé eptir minn dag, því at ek á engan erfingja hér á landi ...Þessu játtaði Høskuldr ok lætr binda fastmælum.

Høskuldr, as may be seen from his conversation with Melkorka, does not appreciate the conduct þórðr has betrayed so far, but Høskuldr handles the case as a kind of business, and he proves to be fair in that business: þórðr goddi gets all the support he has paid for.

So it was not dishonorable to have one's child fostered by a man of lower rank. Quite the opposite, it was the rule, according to what is suggested in Laxd. ch.27 (er sá kallaðr æ minni maðr, er qðrum fósturarn barn). In fact, we know of even more prominent children fostered by upstarts than the son of that uppish Arngrímr. I would just like to remind you of the case related in the saga of Hvamm-Sturla ch.2:

Hallr, sonr þórðar gufu, var húskarl undir Felli ok græddi fé, þar til er hann keypti land ok gerði bú í Flekkudal. Hann elskaði Sturlu, er hann var ungr, ok gerðist fóstur hans.

In the light of such remarks we realize that already Arngrímr goði's very first words to Hønsa-þórir betray a fundamental misunderstanding of the case:

svá lízk mér, sem lítill hofuðburðr muni mér at þessu barnfóstri

It was not Arngrímr, but Hønsa-þórir, who should gain some hofuðburðr - in return for the money he was willing to pay. Already after that haughty remark of Arngrím's one may wonder if it had been a really good idea to ask him.

At all events, the agreement turns out to be of some advantage for Þórir. He gets some support and we are told about his increasing wealth. Moreover, he can not be knocked off his perch as easily as before: "ok náir hann nú réttu máli af hverjum manni." That sentence indicates as clearly as might be desired, that Þórir has suffered injustice in his former life, probably more than once, and without any real chance of defending himself. So there is, obviously, good reason for the bitterness and hardness in his mind, which is displayed in his first conversation with Arngrímr.

Now we are ready for the chapters, where Blund-Ketill does injustice three times, towards three different parties and on three succeeding occasions. It is only what might be expected according to ancient epic laws, that the third case is the worst one. First of all, he defies the command of Tungu-Oddr, who had been down to the shore in order to assess the merchandise Qrn was about to import. The assessment being refused, Tungu-Oddr issued an injunction against the merchandise being moved to any other place, and against any kind of help to Qrn and his crew. Obviously, within Hænsa-þóris saga Tungu-Oddr has a right to such assessment, since it is said that he was used to do so "þvíat hann hafði heraðsstjórn". Assessments of that kind were scarcely customary during the tenth century, but we know of chieftains from the beginning of the thirteenth century who practised them (cf. Íslendinga saga ch.15), and they were at least not prohibited until Jónsbók became the law in force. Thus Blund-Ketill acts against a customary law when helping Qrn, and it is only for political reasons that Tungu-Oddr decides to ignore the affair.

The next time Blund-Ketill does injustice is towards his landseta, when after the grasleysusumar he suddenly finds out "at hann vildi heyleigur hafa af öllum löndum sínum". As Björn Sigfússon has pointed out, according to Grágás Ib, 136 and II, 499, 502 all obligations of a lessee had to be determined in advance, and no other claims could

be made later, during the time of the contract. Hence Blund-Ketill acts in defiance of ancient law. And, in fact, he does so, even if Jónsbók should be regarded as the law in force. We take for granted that the lessor had the right to claim a certain part of the tribute in hay. Furthermore, we may concede that in bad times the lessor could get some more hay from the lessee than had been settled upon previously, subject to the agreement of both parties. Nevertheless Blund-Ketill's claim is illegal, since he takes more hay from his tenant farmers than they could do without. And Jónsbók states it explicitly that the prior claim to the hay is with the lessee who produced it.

Landsleigubálkrch.⁴ says:

Sá maðr er jorð leigir, á grasnautn alla á jorðu þeirri ok alt at vinna á henni þat sem hann vill, þat er hann þarf til húsa umbóta eða garða.

The outmost Blund-Ketill could have done without violation of any law, would have been to say to his lessees: Please, let me have all the hay you can do without. But he claims much more, and in order to avoid an open conflict with the law he tries to reduce his lessees' normal needs by prescribing how many animals they should slaughter during the autumn. But, as far as I can see, no law gives to the lessor the right to fix slaughter-quotas for his lessees.

It is small wonder, then, that Blund-Ketill later in the story must try everything to procure hay for his lessees in order to meet their immediate needs. In a fairly diplomatic way he only expresses regret for their not-following his tillög concerning the slaughter. Obviously, he is well aware of the fact, that he had no right to issue orders concerning that business. So he has put himself into a rather shaky position, irrespective of whether we refer to Grágás or to Jónsbók.

When once again two lessees hopefully come to him, he remembers, after having the question put to him more than once: "sagt er mér, at Hænsa-þórir muni hafa hey til sglu". He knows about þórir, but - as we may assume - until now it has been below his dignity to speak to

that upstart. Even now he would not do so without having been asked by his lessees to go with them.

It goes without saying that Þórir knows, what has been going on in the district during the winter. As far as we know, nobody has asked him for support. I dare say, he would gladly have given it, if asked in the right way. But, as we have seen, Blund-Ketill preferred to slaughter 40 horses rather than extend some kind words to Þórir. Even now, when finally standing in Þórir's house, that affable Blund-Ketill cannot hit on any obliging remark. In a rough, haughty way he says: "Svá er vaxit, at vér viljum kaupa hey at þér, Þórir." Þórir refuses to sell. The humiliations he has suffered in the past, the long winter, during which nobody wanted his help, finally the address resembling a command rather than a request, make his "no" psychologically the only possible reaction. Furthermore it must be said, that the arguments used by Þórir are far from being as silly as generally supposed. For instance his question "hvat skal ek hafa annan vetr, ef þá er slíkr vetr eða verri?" can't be dismissed as mere subterfuge. There is historical evidence for as many as five subsequent bad years in Iceland (cf. Bj. Sigfússon, p.365). Þórir, therefore, is right in finding it not altogether convincing, that Blund-Ketill will return all the hay the next year: "ef þér hafið nú yðr eigi heybjörg, hvat munu þér þá heldr hafa í sumar". - Anyway, Blund-Ketill takes away all the hay he has calculated as being dispensable and puts the payment in its place.

To remove hay against the owner's will was according to Grágás ch.228 gross robbery (raudarán), and the perpetrator could be outlawed. According to Jónsbók, landsleigubálg ch.12 such taking away of hay was admissible on certain conditions. Consequently, we would have to speak not of robbery, but of compulsory sale only. One of these conditions was, that a sufficient quantity was left to the owner to meet his needs until the next summer. Another condition was, that the whole price for the hay had to be paid immediately. Blund-Ketill fills these claims. Never-

theless he incurs guilt, even according to *Jónsbók*. According to landsbrígðabálk ch.4 everybody intent on buying or bartering land, stranded goods or hay had to inform the other party in advance, so that the other party had a fair chance to mobilize some kind of attendance, - "svá at um lið megi sýsla". This rule was probably meant as a security measure, issued with regard to exactly such difficult cases as we have to pursue. Since Blund-Ketill ignores the law and bluntly says "munu vér...njóta þess at vér erum fleiri", his buying of hay is, in fact, robbery, even according to *Jónsbók*. Hænsa-þórir does not even try to stop the intruders, his assessment of the situation is a perfectly sober one:

veit ek at sá er ríkismunr okkar, at þú munt taka mega hey fyrir mér, ef þú vill.

All the same, these words contain a severe reproach, and Blund-Ketill should have been warned by them. Þórir's comprehension of the case - as robbery - was right according to Icelandic legal concept at any time. This is confirmed not only by the laws, but also by an episode which took place in the autumn of 1252. In þorgils saga skarða ch.14 we are told that þorgils with some of his adherents pays a visit to two brothers in order to buy meat from them. The brothers are not willing to sell. þorgils, however, tries to get along with his business, first by means of kind words, somewhat later by means of threats. The brothers then say, exactly as Hænsa-þórir does, that þorgils certainly could rob them, if he liked to do so, but still they do not want to sell:

þeir sögðu þorgils mundu mega ræna þá, ef hann vildi...Munu vér eigi selja því heldr.

As might be expected, þorgils did not like that answer. They get into a fight, but þorgils, in fact, leaves the farm without taking away anything. So even þorgils skarði, who was one of the more hard-boiled chieftains of the Sturlung age, flinched from violating the right to private possession on such an occasion, a right that Blund-Ketill

does not hesitate to disregard.

It is small wonder, then, that Þórir is furious. Hence he exaggerates somewhat in the reports given at Arngrímr goði's and at Tungu-Odd's respectively. We have to emphasize, however, that Hænsa-Þórir exaggerates only with regard to the quantity taken away. As far as the trespassing upon his rights is concerned, no exaggeration may be stated with reference to any law. But it is characteristic for the attitude of his dubious friends towards Hænsa-Þórir, that they make no effort to calm him down, they do not even try to ask for further details pertinent to what actually had happened at Helgavatn. No sooner is realized that Hænsa-Þórir is exaggerating, than the whole affair is brushed aside - although scarcely any chieftain of the 10th century would have gone as far as telling the injured party in plain words: "munda ek svá hafa gort, ef ek þyrfta".

But the disregard of Þórir is made still clearer. People feel rather reluctant to get into trouble for his sake. Hence they do what has been considered the most appropriate device on such occasions at any time: They avoid talking with him in order to learn as little as possible about the case. Thus in ch.8 Þórir is left to stand between the benches, nobody is willing to leave a seat to him. And he, of course, is so grievously aware of his secondariness, that he would not dare to claim one. Obviously, all the honorable people assembled do their best to avoid getting involved in that hay-business. The only one to express the traditional legal concept is Þorvaldr, who - without further knowledge of the hostile parties - judges the case just as a case:

Bærr er hvern at ráða sínu...ok kemr honum fyrir lítit vinfengi við þik, ef hann skal þó undir fótum troðinn.

On the grounds of his conviction and the payment offered by Þórir, Þorvaldr agrees to take over the law-affair.

Although the hurry displayed by Þórir, and Þórir's small retinue the next morning make him feel uncomfortable, Þorvaldr carries on the law-suit as expected by Þórir.

Over and over again it has been maintained, that it made no sense for Þorvaldr to reply to Blund-Ketill's offer "Determine everything as you like" with the words:

svá lízk mér sem eñgi sé annarr á gorr en at stefna. But that answer is anything but senseless, taken into consideration, that Þorvaldr here speaks of the criminality of Blund-Ketill's action (logmálsstaðr). Outlawery, which was at stake, implied confiscation of the outlaw's property, and the plaintiff was not only given damages, but also a half of the confiscated property. Þorvaldr asks: How much are you willing to pay, if we do not enter the criminal procedure as we are authorized to do? Blund-Ketill is a cunning fox and leaves the sentence to Þorvaldr. When nothing was said beyond that, the punishment could neither be outlawery nor confiscation of part of his property: According to Grágás I, ch.71 only a suitable amount of money could be imposed as damages. Þorvaldr, obviously, knows the laws as well as Blund-Ketill and hence refuses. Already before serving the summons the party of Þórir had been more interested in the question of right and wrong in the case than in the payment of some incidental fine. If Blund-Ketill had really been keen on a reconciliation, he could at least have said some words expressing remorse. But his impertinence, betrayed in his words towards Þorvaldr "sem þú ert meira verðr en Þórir", were not likely to improve the state of affairs. His offer as it stands, meant, therefore, next to nothing.

Provided we are to regard Jónsbók as the legal basis, then Þorvaldr, too, had good reason to turn down the offer made by Blund-Ketill, as being petty in relation to the legal punishment at stake. Björn Sigfússon has pointed out that if Blund-Ketill's taking away hay is considered robbery - and that is, of course, what I am doing - then the whole affair could be treated according to mannhelgi ch.2 + 3, which allow pursuit without pardon of everybody having accomplished robbery or wanton destruction of property. Two sentences particularly pertinent in our context are

to be found in ch.3:

Nú rana menn eða herja, þá eru allir skyldir til eptir þeim at fara, nema fjórmenningar at frændsemi eða mægðum, þeir sem sýslumaðr krefr eða sá er fyrir ráni eða hernaði verðr...

Nú róa menn skipi skipuðu at bónda, eða gengr flokk mannanna at garði ok bera hann ofríki ok brjóta hús bónda ok bera út fé hans, þá er þat útleigðarverk.

Jónsbók, in fact, was even more rigorous in respect of such crimes than Grágás had been. According to Jónsbók no longlasting and complicated law-suit was claimed: In cases of robbery and ravage the culprit was outlawed already by his deed.

After the summons, when Þorvaldr, Þórir, Arngrímr and their followers are in the process of leaving the estate in Örnólfsdal, Helgi is shot by Örn the austmaðr, who had been staying with Blund-Ketill during the winter. Þórir is likely to be hit hardest by the loss, since he in Helgi sees the pledge of his social ascent falling dead. Hence I cannot see any exaggeration in his words "mér mun mest um hugat". At this point, if anywhere, Þórir is telling the plain truth. And his grievous remark "er lítill mátttrinn, fóstri minn?" is clearly motivated by his despair. But that leads to his next statement, which cannot be true, if the boy really was dead, when Þórir bent down over him. Probably he is beside himself with rage, and this makes him maintain, that the dying boy said "brenni, brenni Blund-Ketill inni". As Arngrímr points out immediately afterwards, one cannot be quite sure about that, and, after all, we should rather not go further in our conclusions than the witnesses did.

Anyway, Blund-Ketill is actually burnt to death the following night, and all the people staying with him. This is an act of vengeance, for which Hænsa-Þórir cannot be held responsible alone. I will go as far as to say that he is the least responsible of all the brennumenn of the party. To start with, if he had been the only person in the party who liked the idea of a brenna, then they could easily have stopped him, and there would not have been any brenna at all.

To my knowledge, until now little attention has been paid to the fact, that nobody in the saga accuses Þórir of being the leader of the expedition. Ch.10 begins:

Svá er sagt, at þegar er náttaði, ríða þeir þorvaldr at bænum í Qrnólfsdal.

At the end of ch.11 we read:

Þorkell segir, at þorvaldr Oddsson var upphafsmaðr at ok Arngrímr goði.

And, last but not least, when in ch.13 the heitstrengingar are set forth against the different people involved, no mention is made of Hænsa-Þórir. It seems reasonable to suspect, that the party of Hersteinn flinched from getting into trouble with what is said in Jónsbók, mannhelgi ch.2: "þat er niðingsvíg, ef maðr hefnir þjófa".

On these grounds I cannot agree with Björn Sigfússon, when in respect of the brenna he outlines the author's intention as follows:

hygg ég hann láti illmennið Hænsa-Þóri framfylgja rökrett staðhæfingu sinni, að Blund-Ketill með liði sínu öllu megi teljast ránsmannaflokkur,...

As far as I can see, it is not only the assumption of Þórir, that Blund-Ketill and his attendance may be called a ránsmannaflokkur. Þorvaldr shares that opinion, and he acts according to it. Moreover, Arngrímr had to avenge the death of his son. According to Grágás I, ch.86 the culprit, in this case Qrn, fell "óheilagr...til jafnlengðar annars döggrs". And for Blund-Ketill outlawery was at stake here too, because he sheltered Qrn, see Grágás I, ch.86:

er maðr stendr fyrir þeim manne eða veitir lið er man hefir vegin eða særðan aþeim vetvangi oc varðar þat skoggang.

Anyway, a brenna is not regarded as a fortunate way to settle an affair in any law, and some punishment had to be expected.

As to the robbery of hay the author wisely arranged the story so that the case is not discussed at any assembly (þing). The fall of Þórir is brought about by his attack on Hersteinn, and that attack is a treacherous one. Unfortunately,

we do not learn what Þórir has been doing during the last months before this desperate action. But what did he see?

Hersteinn, the son of his worst enemy, has a fóstri, Þorbjörn, who by means of witchcraft hauls all movable property from Qrnólfsdal to Þorkell trefil. By means of a rather dubious persuasiveness of different persons Hersteinn himself succeeds in making a good match, the purpose of which is to gain mighty allies. At the Þingnes-þing as well as later at the alþing the affair develops in neat accordance with the sarcastic remark of Gunnar in ch.12:

er nú vel, at þér reynið eitt sinn, hværr yðar
drjúgastr er höfðingjanna, þvíat þér hafið lengi
úlfsmunni af etizk.

There is no reasonable discussion whatsoever of the legal aspects of the different attacks. The chieftains' only concern is to gain over as many men as possible, by fair means or foul, in order to win their law-suits by pure power. These chapters may be read as an excellent illustration of what R.George Thomas in his Introduction to Sturlunga saga, 1970, called "a cynical disregard for the very concept of law". The "confusion of ancient loyalties", otherwise characteristic of the later stages of the Sturlunga age, had its bad influence even on Hænsa-Þórir. Demoralized by the experiences made so far, he gets the fallacious idea to make politics on his own with brute force. He incurs guilt by his raid against Hersteinn and is put to death. This might be called the right punishment according to legal as to epic standards, but it does not mean, that Hænsa-Þórir was worse than any of his enemies. In my opinion, the case of Hænsa-Þórir shows how in times full of illegacies and corruption a man, despite of his industry and good will, may be hardened to a terrifying extent.

We are well informed about the reaction of the Icelanders, when the content of Jónsbók was announced to them in 1280. According to the Árna saga biskups they struggled particularly against the imposed sale of hay in bad times, because they regarded it as depriving them of their oldest

and simplest right, the right to private possession. Unfortunately the author did not make it quite clear, whether he was aware of all the legal implications to be considered in respect of Þórir's highly unwilling sale of hay. It seems, indeed, as if he did his best to draw a favourable picture of Blund-Ketill, a fact which has been looked upon as a justification of his case. Still, the saga as we have it, reveals something different. As the case stands between Blund-Ketill and Hænsa-Þórir, Blund-Ketill is the guilty one, both according to ancient and new law. A story about a dispute, however, in which Jónsbók, on the grounds of different concepts, ought to lead to the same conclusion as Grágás would have done, was, as far as I can see, the very best recommendation anyone could give Jónsbók in the tumultous year of 1280.

This exceptional quality of Hænsa-Þóris saga, once recognized, may even be a key to a mystery so far unsolved, namely why the late Sturla Þórðarson, having been lawman for many years, was so intrigued with Hænsa-Þóris saga, that he - abandoning his otherwise highly appreciated critical sense - took over into his Landnámabók some doubtless unhistorical details.