Response to William Ian Miller, “Drawing Lines in the Sand”

Burton J. Westermeier

First of all, I would like to thank Professor Miller for sharing his paper with us and welcome him back to Yale, where he received his PhD in English and JD. It was a pleasure for me to read Professor Miller’s work, which employs a variety of examples drawn from medieval Icelandic law (in particular, the thirteenth-century collection of legal texts known as the *Grágás*) to examine the legal phenomenon of ‘line drawing.’ When do laws draw ‘bright lines,’ that is to say, clearly defined rules or standards, and how do they come to be blurred or vice-versa?

In particular, Miller is interested in the figure of the outlaw in Icelandic law: where is the line between ‘in’ and ‘out’ of the law, as it were? As Miller points out, this question is especially interesting due to the spatial significance of the word *lag* (‘law’) in Norse, which means not only a set of rules as it does in English, but also the space in which the rules established at Things (i.e. governing assemblies) were to be in force. To be out of the law also meant to either be outside of the land in which the law applied or be subject to violence. Given that, according to *Grágás,* outlaws in Iceland were prohibited from leaving the country, outlaws in medieval Icelandic society were thus both deprived of legal rights and relegated to the most marginal environments on the island.

How did medieval Icelanders define the *lag*, that space in which the rules made at the Things applied and from which outlaws were forbidden? Before answering this question, Miller first examines a pair of other methods by which medieval Icelanders created boundaries of space and time. He discusses the legal concepts of the *gildingr*, a cod placed on the side of a boat in order to measure, based on its visibility, the boundary line between private property and the open sea for the purpose of salvaging timber; and the shaft-high sun, a means of determining, based on the relative distance between the sun and a spear set upright at the beach, the time at which work must stop on Saturday in preparation for Sunday. As Miller points out, what both of these provisions have in common is a high degree of specificity in service of measures which can be applied only in a very relative, inexact way (i.e. the success of *gildingr* is determined by the quality and character of the seer, the condition of the tides, and the available light and the success of the shaft-high sun method of telling time is likewise determined by a number of variable factors).

The same can be said, according to Miller, for two of the measurements associated with outlawry: the arrowshot and the dog’s bark. The arrowshot, Miller notes, “figures prominently in defining what is in and out for a particular type of “lesser outlawry” that allowed for sanctuary within an arrowshot of specifically designated safe houses,” and, likewise, was used to determine the distance from settlements at which the bodies of outlaws and other undesirables were to be buried and also the distance away at which a court for the confiscation of outlaws’ property could be convened. Similarly, drawing on material found in *Gisli’s saga*, Miller discusses ‘the dog’s bark’ as an ambiguous way of demarcating the line between the settled zone of the householder and his dog and the outside area home to the stranger or the outlaw. Medieval Icelanders, Miller notes by way of conclusion, “lived by making compromises, and many of them were forced upon them by the give in their measurements and the units of measurement themselves.”

If I, too, may be permitted a slight digression, I would like to briefly point out that the notion of ‘blurred lines’ is a particularly relevant one today, as evidenced, for example, by the reaction to the 2013 song of that name by singer Robin Thicke. The pop hit, which contains lyrics such as “I hate these blurred lines” and “I know you want it,” found itself at the center of controversy for addressing a perceived gray area between consensual sex and sexual assault. The song troubled people because it seemed to undermine the legal and ethical hard line of consent in sexual relationships; blurred lines are useful for those (such as the protagonist of Thicke’s song) who want to cross them, but potentially uncomfortable for those who would prefer the divisions between one thing and another to be more concrete. This example demonstrates, I think, the great significance of what Miller calls ‘line drawing’ even for those of us who are not lawyers or legal historians.

Now, on to questions, of which I have three (two short and one longer)

1) You speak a lot in the paper about the ‘lawyerly mind’ and the tendency of lawyers to develop hyper-specific legislation as an “almost necessary consequence…of lawyerly expertise,” but you do not say much about medieval Icelandic lawyers. What was the social context in which these laws were produced? What would have a “law school” in medieval Iceland looked like? How does this relate, for example, to the context in which the sagas were produced?

2) You seem to take a different approaches in your interpretation of *gildingr* than in your interpretation of the shaft-high spear method of calculating time. You talk about how *gildingr* “worked in practice,” suggesting that there might have been “a man who was the district’s official *gildingr* spotter,” while you describe the shaft-high sun method as “pure virtuality” or an “imagined determination.” Why should we understand *gildingr* as “real,” but the shaft-high sun method as “fiction?”

3) As Thomas McSweeney has pointed out, the two surviving manuscripts of *Grágás* were produced around the time that Iceland was being brought under the rule of the king of Norway. Although the laws in the *Grágás* were not made up from whole cloth, it is likely that the compilers of the *Grágás* drew selectively upon the pre-existing oral legal tradition in such a way as to emphasize the free, self-sufficient character of Icelandic society at a time when Iceland itself was no longer independent as it had been in the eleventh and twelfth centuries; just like the sagas are combinations of history and fiction, *Grágás* is a combination of fiction and law. Might thinking about the laws recorded in *Grágás* as fictions (or, if you prefer, selectively organized truths) marshalled in order to construct an Icelandic golden age change the way we understand the lines they draw? Could it be that, paradoxically, the compilers of *Grágás* emphasized the blurry nature of medieval Icelandic law as a means of hardening the line between Icelandic and Norwegian society?