THE NORTHERN WORLD

A Punishment for Each Criminal

Gender and Crime in Swedish Medieval Law

By

Christine Ekholst

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BRILL

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The Northern World

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Abbreviations and Reference System

Abbreviations for the Laws

ÄVgL	Äldre Västgötalagen (The Older Västgöta Law)
YVgL	Yngre Västgötalagen (The Younger Västgöta Law)
ÖgL	Östgötalagen (The Östergöta Law)
DL	Dalalagen (The Dala Law)
UL	Upplandslagen (The Uppland Law)
VmL	Västmannalagen (The Västmanna Law)
HL	Hälsingelagen (The Hälsinge Law)
SdmL	Södermannalagen (The Södermanna Law)
SmL	Smålandslagen (The Småland Law)
MEL	Magnus Eriksson's landslag (Magnus Eriksson's Law of the Realm)
MESt	Magnus Eriksson's stadslag (Magnus Eriksson's Town Law)
KrL	Kristoffers landslag (Christopher's Law of the Realm)

Other Abbreviations and Short Forms Used

DS	*Diplomatarium Suecanum*, (Swedish medieval diploma). DS—number according to: Svenskt diplomatariums huvudkartotek över medeltidsbreven.
KLNM	*Kulturhistoriskt lexikon för nordisk medeltid från vikingatid till reformationstid.* ["Historical dictionary of the Nordic Middle Ages from the Viking Age to the Reformation"]. The title of the entry and country (if applicable) as well as the author of that specific entry will be given.
Schlyter's dictionary	Carl Johan Schlyter, *Corpus iuris sueo-gotorum antiqui. Samling af Sweriges gamla lagar, på kongl. maj:ts nådigste befallning utgifven af d. C.J. Schlyter. Vol. 13, Glossarium ad Corpus iuris Sueo-Gotorum antiqui = Ordbok till Samlingen af Sweriges gamla lagar.* Lund, 1877.
Söderwall's dictionary	Knut Fredrik Söderwall, *Ordbok öfver svenska medeltidsspråket*. Lund, 1884–1973.

Reference System

In the footnotes common abbreviations for the laws are used (not for *Bjärköarätten*) while the names of the section have been modernized and follow Holmbäck and Wessén's editions. I have used the modernized section names from Magnus Eriksson's Law also for Christopher's Law. I depart from Holmbäck and Wessén's section names in two cases where their translations are too far from the actual names. The sections *Såramålsbalken I* & *II* (The Section on cases of wounds I & II) in the two Laws of the Realm are in my references referred to by their original names: *Sår med vilja* and *Sår av våda* ('Wounds with intent' and 'Wounds out of misadventure'). The same principle is used for *Dråpamål I* and *II*, ('Cases of homicide' I & II) which I refer to as *Dråp med vilja* and *Dråp av våda* ('Homicides with intent' and 'Homicides out of misadventure').

The references thus consist of an abbreviation of the law, the name of the section (*balk*), and a number for the paragraph (*flock*) and/or subparagraph. If the reference is solely to a subparagraph I mark this by having the subparagraph immediately follow the paragraph number (ex: 1 §1) while if I want to refer to both the main paragraph and the subparagraph I use the sign & (ex: 1 & §1). When I cite Holmbäck and Wessén's modernized interpretation/edition I name the authors as well as the law, not the entire work since many of the editions contain several laws. This is followed either by a reference to the page number or by stating the name of the section and paragraph. Holmbäck and Wessén's modernized editions contain a wealth of information in the abundant footnotes. I most often provide the footnote number but in some cases I have given the page number since the explanations are part of the introduction. In those cases when I cite the introduction to the entire edition I refer to all laws that the work contains.

Introduction

In the Older Västgöta Law from the first half of the thirteenth century, we find a provision which states that women should not be sentenced to death, because they are legal minors. Some one hundred years later, around 1350, we are faced with a different situation: the newly introduced Law of the Realm stipulates capital punishment for all female perpetrators who had committed serious crimes. In one hundred years a quite remarkable change had taken place. Women had emerged as legal subjects and had become personally responsible for their crimes, at least serious crimes. However, we can also note another tendency: the legislators consistently chose different methods of execution for men and women. While men were hanged or broken on the wheel, women were buried alive, stoned, or burned at the stake. This book aims to examine the various ways in which gender influenced the Swedish medieval law codes. It explores how ideas of gender affected both how crimes were described and how they were to be punished. A more specific purpose is to examine and explain the development of female criminal liability in medieval Sweden.

Surprisingly little research has been done on female criminal responsibility and gendered punishments in medieval Sweden.[1] We find fragmentary information in various sources. Ing-Mari Munktell writes that that the medieval woman was a legal minor and that punishments for female criminals often tended to be more lenient. She states that the woman's legal guardian, in general her father or husband, often took the penalty for her.[2] Other scholars write that legal responsibility for women is something that emerged during the Swedish Middle Ages (which covers the period from around 1050 to 1500). Women were not legally responsible during the earlier parts of the Middle Ages, and a male relative had to take the punishment for her if she committed

1 It is not an unfamiliar phenomenon that women and men could be punished differently for the same crime in medieval Europe. A few scholars claim they were punished more harshly, others that they were treated much like men and yet others that they were treated more leniently. For some examples see: Shulamith Shahar, *The Fourth Estate: A History of Women in the Middle Ages*, 2nd ed., trans. Chaya Galai (London: Routledge, 2003), 19, 21. Barbara Hanawalt, "The Female Felon in Fourteenth-Century England," *Viator* 5 (1974): 256. Ellen E. Kittell, "Reconciliation or Punishment: Women, Community, and Malefaction in the Medieval County of Flanders," in *The Texture of Society: Medieval Women in the Southern Low Countries*, ed. Ellen E. Kittell and Mary A. Suydam (New York: Palgrave Macmillan, 2004), 8–9, 19 and references there.

2 Ing-Marie Munktell, "Forntidens och medeltidens kvinnor," in *Handbok i svensk kvinnohistoria*, ed. Gunhild Kyle (Stockholm: Carlsson, 1987), 22–23.

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a crime. Over time, women's responsibility gradually increased.[3] It is the purpose of this book to examine this process and to show that the picture of a simple and steady increase in liability ignores the complex reality. This analysis will demonstrate that female criminal responsibility was introduced unevenly but, at least partly, very deliberately.

Gender is a key factor in order to understand the structure of the Swedish medieval laws. At first glance it is even unclear whether the law codes actually applied to women in general. The way the laws are formulated makes it seem like they were directed at men and only applied to women in specific cases. I will claim that this tendency can be explained by the fact that the legislators thought in terms of households. The laws refer to the master of the household, and this was assumed to be a man who was responsible for the other individuals in his charge. Only in certain cases was there a need to emphasise that women were responsible for their own crimes. This book examines the reasons why women seemingly were made criminally liable for some crimes but not for others. In some cases, the legislators obviously connected particular crimes to women but not to men, meaning that legal responsibility for women was introduced for crimes that women committed or were expected to commit. The uneven introduction of female legal responsibility thus can expose the gendered nature of crime in Sweden, which, in fact, often corresponds to contemporary continental patterns.[4] However, this book also argues that female criminal liability was introduced for ideological reasons that at times had little, or nothing, to do with which crimes women or men were thought to commit.

Indeed, a main argument in this book is that female criminal liability did not emerge through a "natural process" or in accordance with legal practice. Quite the opposite is true. Legal practice demonstrates that female criminal liability had not been successfully introduced for all crimes by the end of the fifteenth century. Women were punished more leniently than men for certain crimes, although the law clearly stated that women were to be held equally responsible

3 Niklas Ericsson, *Rätt eller fel?: moraluppfattningar i Stockholm under medeltid och vasatid* (Stockholm: Almqvist & Wiksell International, 2003), 189–192, 196. Torsten Wennström, *Tjuvnad och fornæmi: rättsfilologiska studier i svenska landskapslagar* (Lund: Gleerup, 1936), 82–83. *KLNM*, 'Tyveri' article written by Per-Edwin Wallén.

4 As Trevor Dean points out: "Gender dictated not only women's generally lower participation in crime, but also the specific pattern of their criminality." Trevor Dean, *Crime in Medieval Europe, 1200–1550* (Harlow: Pearson Education, 2001), 78. It should be noted that this refers to crime in reality or legal practice and not legislation.

for these crimes.[5] The introduction and emphasis of female criminal liability can be explained by several interconnected phenomena. It can first of all be connected to a general and ongoing individualisation of guilt and liability in the Middle Ages. Second, it can be connected to the increasing use of the death penalty, which often replaced pecuniary punishments or compensation. The death penalty in itself contributed to an individualisation of liability. It was one thing to sentence a man to a fine, albeit high, for crimes committed by a woman under his guardianship. It was quite a different story to sentence him to death for something he had not personally done. Finally, it will be argued that these different developments were instigated by the king and his council. The king aimed to put all serious crimes directly under his responsibility and wanted to fashion himself as the guarantor of justice in society. However, it was not in the king's interest to break up the patriarchal households. The Law of the Realm, which marks the end point of this study, represents a balance between these two tendencies. It maintains the patriarchal household structure and male responsibility for all lesser crimes, while it successfully introduces individual criminal liability for serious crimes.

Disposition

The purpose of this book is to examine how gender influenced Swedish medieval legislation. A thread that runs throughout the book is the development of female criminal liability and, in connection with this, how the presumed gender of the perpetrator impacted how the crime was described and how it was punished. Each chapter will follow a chronological structure, but the main changes that can be seen throughout the laws will be outlined in the first chapter and the last one. This first chapter will also analyse the general structure of the Swedish medieval laws and highlight how they can function as sources to the past. Swedish medieval laws have been much debated in Nordic scholarship, and it is therefore necessary to make clear how the laws will be used in this analysis. The chapter aims to clarify the legal subject of the laws. I argue that the main legal subject is assumed to be the master of a household. The main consequence of this is that the legislation can be seen as primarily directed at the household, not at all individuals.

5 Eva Österberg and Dag Lindström, *Crime and Social Control in Medieval and Early Modern Swedish Towns* (Uppsala: Studia historica Upsaliensia, 1988), 110. Ericsson, *Rätt eller fel?*, 113, 189–192, 196.

Each chapter compares different but related crimes in order to facilitate a discussion of the development of female criminal liability. Chapter 2 discusses property crimes and compares the milder forms of property crimes with more serious ones such as robbery and theft. This chapter will argue that basically all regulations of lesser property crimes had the household as their target, not an individual perpetrator. This can be contrasted with the more serious property crimes, robbery and theft, which are treated differently. Robbery assumed a male perpetrator, while the concept of theft obviously activated thoughts of female criminal liability. The rules on theft not only targeted female perpetrators specifically but also addressed female criminal liability in general. Violent crimes are examined in two chapters. Chapter 3 consists of a general discussion of the meaning of violence in medieval society along with a study of assault. Chapter 4 deals with lethal violence, homicide, and different types of murder, including the type of witchcraft called 'destruction', which the laws defined primarily as poisoning. Two chapters treat crimes linked to sexual acts. Chapter 5 examines fornication, adultery, and bestiality. Chapter 6 compares the two closely related crimes of rape and abduction in order to highlight differences and similarities. The final chapter summarises the results and conclusions of this book. This last chapter also aims to highlight the main chronological changes that took place in Swedish law and that can be seen in the treatment of these various crimes.

CHAPTER 1

The Swedish Medieval Law Codes

The normative sources studied in this book are primarily the law codes of mainland medieval Sweden.[1] The purpose is to study how gender influenced legislation, not legal practice. There are, in fact, no court records from the period that could be used to illuminate legal practice. Preserved court records are not only from a much later period, the end of the fifteenth century, but also from urban communities. As such, they do not shed light on the changes that took place in the main time period of this study, the first half of the thirteenth century to the mid-fourteenth century.[2] The Swedish medieval laws consist of provincial laws, two town laws, and the two Laws of the Realm.[3] The provincial laws were used in different regions of Sweden and are usually divided into two groups: the Göta Laws and the Svea Laws. The Göta Laws were valid in Götaland: the southern and western part of Sweden. The Svea Laws were valid in Svealand: the northern and eastern part of Sweden. The Older and Younger Västgöta Laws, the Östgöta Law, and the Småland Law (or the Tiohärad Law, as it is also called) all belong to the western Göta Laws. However, the only part of the Småland Law that has been preserved is the Church section. The Svea Laws consist of the Uppland Law, Västmanna Law, Hälsinge Law, Dala Law, and Södermanna Law. Of the provincial laws, the Uppland and Södermanna Laws distinguish themselves by having confirmation charters. The Uppland Law was confirmed by the king in 1296 and the Södermanna Law in 1327. In addition to these laws, specific town laws were established early on. The oldest municipal law in Sweden is *Bjärköarätten*, which is believed to have been compiled for

1 This means that the southern part of Sweden, Scania, which at the time belonged to Denmark has been excluded, as has the Guta Law. Gotland belonged to Sweden, but its ties to the main land were weak at times. The Guta Law, or Gotland Law as it is also called, is highly interesting, but its legal culture so particular that it deserves its own analysis.

2 The end point of the analysis is 1442 (Christopher's Law of the Realm), but the main changes in legislation took place with the creation of Magnus Eriksson's Law of the Realm around 1350. See below.

3 An excellent introduction to Swedish medieval legislation is Thomas Lindkvist, "Law and the Making of the State in Medieval Sweden: Kingship and Communities," in *Legislation and Justice*, ed. Antonio Padoa-Schioppa (Oxford: Clarendon, 1997).

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Stockholm. However, the only manuscript version that remains is one that was valid in the city of Lödöse, located on the west coast.[4]

A major change occurred in the legal history around 1350, when a law for the entire kingdom was compiled. This law is usually called Magnus Eriksson's Law of the Realm, named in honour of the reigning king. A new law for the towns in the kingdom soon followed: Magnus Eriksson's Town Law, which replaced the older *Bjärköarätten*. Barely a century later, in 1442, the Law of the Realm was revised; this version is called Christopher's Law of the Realm. This medieval law code, along with certain important additions, would actually remain valid throughout the early modern period until the Law of 1734 replaced it.

Western Sweden—Göta Laws
The Older Västgöta Law
The Younger Västgöta Law
The Östgöta Law
The Småland Law (only the Church section)

Eastern Sweden—Svea Laws
The Uppland Law
The Dala Law
The Västmanna Law
The Hälsinge Law
The Södermanna Law

Town Laws
Bjärköarätten (the older town law)
Magnus Eriksson's Town Law

Laws of the Realm
Magnus Eriksson's Law
Christopher's Law

It took time for the Law of the Realm to be implemented in society, so the provincial laws and Magnus Eriksson's Law were used simultaneously for a long period of time. The belief that "old law was good law"[5] led to a reluctance to replace law codes or omit older regulations, which might explain why many laws contain conflicting rules. When this was the case, a plaintiff could invoke the rule he thought was oldest or, indeed, best.[6] Additionally, Magnus Eriksson's Law lacked a Church section, due to disputes between representatives from the Church and the king. Therefore, it became necessary to use Church sections belonging to the provincial laws. From the start, each province seemed to have used its own law's Church section. Over time, however, the Uppland Law's Church section was used by more and more provinces and came to be regarded

4 Holmbäck and Wessén, Äldre Västgötalagen, Yngre Västgötalagen, Smålandslagen och Bjärköarätten, Inledning, xcii.

5 Per Norseng, "Gammel rett, ny lov—ett fett?," *Norsk Historisk Tidsskrift* 66 (1987): 65.

6 Norseng, "Gammel rett, ny lov," 66.

as valid for all of Sweden.[7] The provincial Church sections thus were bound together with manuscripts of the Law of the Realm. This might explain why the Church section of the Småland Law remains, while the rest has disappeared.

The law codes are a pillar of our knowledge of Swedish medieval society and have been used extensively in historical writings. They indeed are very rich in information, but they have been contested as historical sources. Part of the problem is that we know very little about the practical and theoretical background to Swedish medieval legislation. The groups, and even individuals, that were active in the various legislative processes can sometimes be traced; however, the thinking behind the legislation remains very uncertain. Scholars have argued that Swedish medieval law was not used to enforce change; rather, legislation was altered to better represent a society that had already changed.[8] The view that laws should reflect existing customs can be found in the preamble to the Uppland Law. Whether laws are seen as tools for change or true representations of existing customs, of course, affects how they can be used as sources. The scarcity of information regarding legislative processes has led to varying interpretations and extensive scholarly debates. The provincial laws in particular have been much debated in Nordic scholarship. The controversies primarily concern the origin of the provincial laws and the age of the legislation.[9] The laws only exist in manuscripts that are considered to be younger than their content, the actual legislation. In some cases, there is quite a gap between the assumed law-making and the manuscript.[10]

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7 Patrik Åström, *Senmedeltida svenska lagböcker. 136 lands- och stadslagshandskrifter. Dateringar och dateringsproblem* (Stockholm: Almqvist & Wiksell International, 2003), 180–182. Lindkvist, "Law and the Making of the State in Medieval Sweden," 215.

8 Maria Ågren, *Att hävda sin rätt. Synen på jordägandet i 1600-talets Sverige, speglad i institutet urminnes hävd* (Stockholm: Institutet för rättshistorisk forskning, 1997), 21. Claes Peterson, "1734 års lag—en medeltida lagbok eller en upplysningskodifikation?: Till frågan om synen på lagändring i det förliberala samhället," in *Studier i äldre historia. Tillägnade Herman Schück 1985*, ed. Robert Sandberg (Stockholm: Historiska institutionen, 1985), 277–280.

9 For an excellent review of the debate see Per Norseng, "Lovmaterialet som kilde til tidlig nordisk middelalder," in *Rapporter til den XX nordiske historikerkongres, Reykjavik 1987*, Band 1, ed. Gunnar Karlsson (Reykjavik: Sagnfræðistofnun Háskola Íslands, 1987). Also published in English as: Per Norseng, "Law Codes as a Source for Nordic History in the Early Middle Ages," *Scandinavian Journal of History* 16 (1991).

10 In certain cases, the dating of the laws is based upon somewhat uncertain assumptions, but it has gained general acceptance. Norseng, "Lovmaterialet som kilde," 49–50. Patrik Åström shows that Schlyter's dating of the Laws of the Realm is problematic and should be redone. However, Schlyter's stance on the relative age of the laws, meaning the internal

Most of the manuscripts were written around the mid-fourteenth century. The main part of the legal content of the provincial laws (excluding the Older Västgöta Law) is thought to have been compiled between the 1290s and the 1330s.[11] Many researchers believed, and some still do believe, that parts of the laws are far older than that. Some parts even were thought to stem from the period before the Christianisation of Sweden (which was completed in the eleventh and twelfth centuries) and, thus, to have been transmitted orally for hundreds of years before they were recorded.[12] Other scholars criticise this way of viewing the laws and their genesis. They have specifically argued against a tendency to use the laws retrospectively, as sources to time periods long before they were compiled.[13] Currently, legal scholars tend to emphasise the close connection between the Swedish medieval laws and contemporary continental legislation, and they stress that the laws should, indeed, be regarded as written legislation, not as orally transmitted customary law.[14] Nonetheless, a general view of the provincial laws as a mix of old and new legislation still prevails.[15] Helle Vogt summarises: few scholars argue that the provincial laws express a codified customary law originating in antiquity; on the other hand,

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chronology of the texts, seems to be correct. Åström, *Senmedeltida svenska lagböcker*, 20, 55, 175.

11 Holmbäck and Wessén, Östgötalagen och Upplandslagen, Inledning, xii. Lindkvist, "Law and the Making of the State in Medieval Sweden," 213.

12 Holmbäck and Wessén for example write that we can see glimpses of pagan times when the oath-taker is asked to pray the *gods* to be kind in the Västgöta Laws. Holmbäck and Wessén, Östgötalagen och Upplandslagen, Inledning, xvi.

13 Elsa Sjöholm, *Sveriges medeltidslagar. Europeisk rättstradition i politisk omvandling* (Stockholm: Institutet för rättshistorisk forskning, 1988), 25, 50–51, 236–237. See also Christer Winberg, *Grenverket. Studier rörande jord, släktskapssystem och ståndsprivilegier* (Stockholm: Institutet för rättshistorisk forskning, 1985), 20. Elsa Sjöholm, "Sweden's Medieval Laws: European Legal Tradition—Political Change," *Scandinavian Journal of History* 15 (1990): 71–72. Thomas Lindkvist, "Svar till Elsa Sjöholm," *Historisk tidskrift* 110 (1990): 559. Norseng, "Lovmaterialet som kilde," 66. Thomas Lindkvist, "Medeltidens lagar," *Historisk tidskrift* 109 (1989): 417–418. Ole Fenger, "Middelalderlig retshistorie" in *Dansk Historisk tidskrift* 79 (1979): 115. Concerning the interconnected problem with linguistic dating of manuscripts, see Åström, *Senmedeltida svenska lagböcker*, 64.

14 Ditlev Tamm, "How Nordic are the Old Nordic Laws?," in *How Nordic are the Nordic Medieval Laws*, ed. Ditlev Tamm and Helle Vogt (Copenhagen: DJØF, 2005). Lindkvist, "Law and the Making of the State in Medieval Sweden," 214.

15 Agneta Breisch, *Frid och fredlöshet. Sociala band och utanförskap på Island under äldre medeltid* (Uppsala: Uppsala University, 1994), 48. Janken Myrdal, *Det svenska jordbrukets historia. Band 2, Jordbruket under feodalismen. 1000–1700* (Stockholm: Natur och Kultur, 1999), 22–25. Tamm "How Nordic are the Old Nordic Laws?," 17–20. Mia Korpiola, *Between*

virtually no researchers say that all the decrees of the laws are new and created at once.[16]

Indeed, the laws are a mix of customary law and new legislation, the latter mainly stemming from king, Church, and aristocracy. Some regulations are certainly imported from external legal sources, but it is beyond the scope of this book to determine whether the legislation had foreign origin. Since the rules were included in the laws, they must have filled a function in Swedish society even if they were taken from canon law or another source. The regulations that deal with what can be called "the village level" could certainly be customary law, reflecting the organisation of the local communities.[17] Indeed, there is no need to believe that the king or the ruling groups had an immediate interest in all the regulations of the law.[18] However, it is equally unlikely that the ruling groups would have approved regulations that went directly against their interests. All regulations in the law have been filtered in some sense and have been accepted by the elites. Customary law portrays local society not necessarily as it was but, rather, how legislators and communities *believed* it

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Betrothal and Bedding. The Making of Marriage in Sweden, ca. 1200–1610 (Saarijärvi: Vantae, 2004), v.

16 Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010), 61. Helle Vogt, *Slaegtens funktion i nordisk højmiddelalderret. Kanonisk retsideologi og fredsskabende lovgivning* (Copenhagen: Jurist- og Økonomforbundets Forlag, 2005), 85. The critics of Elsa Sjöholm are correct in stating that this view has been a common stance among scholars since the second half of the twentieth century. See for example: Erik Anners, *Europas rättshistoria. Några huvudlinjer*. Del 1 (Stockholm: Almqvist & Wiksell, 1971), 96–97. Ole Fenger, *Fejde og mandebod. Studier over slaegtsansvaret i germansk og gammeldansk ret* (Copenhagen: Juristforbundet, 1971), 433–434.

17 Archaeological evidence shows that the provincial legislation indeed corresponds to regional differences in farming that existed at the time. Myrdal, *Det svenska jordbrukets historia*, 23–25. Janken Myrdal, *Medeltidens åkerbruk. Agrarteknik i Sverige ca 1000 till 1520* (Stockholm: Nordiska museet, 1985), 21–22. The term customary law does not imply that the law or the regulation is, therefore, old. Many scholars have emphasised the flexible character of customary law. Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford: Clarendon, 1997), 14.

18 Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 85. By "ruling groups", I mean the men of the aristocracy and the Church. Of course, it is not unproblematic to speak of these groups as uniform and coherent. James Brundage writes: "It is deeply misleading to think of the medieval church as if it formed a single, uniform, monolithic institution." James Brundage, *Medieval Canon Law* (London: Longman, 1995), 86. This is valid also for the aristocracy, which cannot be seen as a uniform group. Analysing the power relationships within and between these groups is beyond the scope of this book. Thus, a simplification of the structure and nature of the political actors has been necessary if perhaps not ideal.

to be or, indeed, *wanted* it to be. One should be cautious about viewing the laws as direct reflections of how conflicts were handled and solved in the local community; however, they do reveal how members of the local society were expected to behave. The laws were a result of negotiations between different groups that had different interests.[19] They are normative sources with a clear ideological character, and one of their main functions was to define and order social relationships.[20] As ideological texts they are characterised primarily, but definitely not exclusively, by the views of the elites.

The various regulations contained in the laws were important and meaningful when they were written down, or else they would not have been included in the laws. Thus the medieval laws should primarily be used as sources for the time period in which they were compiled. Of course, the laws may contain older layers and even regulations that were obsolete and no longer valid. Since no court records have been preserved from the period, we cannot know the ways in which provincial laws were used in legal practice, or even *if* they were used. However, if a regulation was recorded in the law even though it had lost its practical legal function, then it must have filled another need. This need could have been part of the more ideological function of the laws: to define social relationships. Moreover, the ideology and worldview of the ruling groups and those of the larger groups in society need not be marked by conflict or contrast. There must have been a dialogue between the different groups in society in order to define not only mutual but also differing views on societal organisation. The laws were an important part of this, and we should not be surprised to find several interpretations of, for example, gender. The laws should be seen as representing a dialogue, although strongly tilted in favour of the elites.

Most of the individual provincial laws were compiled within quite a short time span but cannot be dated with any precision or certainty. It is therefore difficult to compare specific provincial laws and, based on that, to draw conclusions about change over time. It is also possible that differences are due to regional cultural variation rather than chronology.[21] The chronological comparisons in this study are therefore based upon a grouping of the laws. The

19 Sjöholm, *Sveriges medeltidslagar*, 24–25. Janken Myrdal views the laws as the result of negotiations in which the large group of peasants also had influence. Myrdal, *Det svenska jordbrukets historia*, 23–24. Also see: Lindkvist "Law and the Making of the State in Medieval Sweden," 212.

20 Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden: Brill, 1993), 4.

21 Lindkvist, "Law and the Making of the State in Medieval Sweden," 214. Thomas Lindkvist, *Landborna i Norden under äldre medeltid* (Uppsala: Uppsala University, 1979), 83.

Older Västgöta Law represents an older layer in the legal history of Sweden. An extant fragment of the law dates this phase to the first half of the thirteenth century. The Older Västgöta Law also lacks a specific type of legislation known as the *edsöre*, discussed below, which was introduced in the mid-thirteenth century. This too shows that it belongs to an older legal phase than the rest of the laws.[22]

The other provincial laws represent a middle period, from the end of the thirteenth century up to the 1330s. The provincial laws, excluding the Older Västgöta Law, represent regional versions of basically contemporary legislation. The Uppland and Östgöta Laws contain the most elaborate and advanced legislation. There are significant differences between these two laws, as there are general differences between the laws of western and eastern Sweden: the Göta and Svea Laws. The various Svea Laws are quite similar to one another; in fact, many paragraphs correspond verbatim. The usual explanation for this is that the Uppland Law served as a source of inspiration for the other Svea Laws.[23]

The making of Magnus Eriksson's Law of the Realm and Town Law represent the next chronological phase in the grouping of the laws. They were compiled around or after 1350. Magnus Eriksson's Law of the Realm is a compilation of new legislation, of various royal statutes and of regulations taken from the provincial laws. The influence of the Uppland Law and the Östgöta Law is evident; many of their regulations have been copied verbatim. In comparison, the two Västgöta Laws were used very little in the compilation of the new law. Magnus Eriksson's Town Law is, without a doubt, secondary to the Law of the Realm.[24] The Town Law is in parts very similar to the Law of the Realm; however, many regulations have been taken from the older town law, *Bjärköarätten*.

Magnus Eriksson's Law constitutes a new phase in Sweden's legal history. We find for the first time an entire law code meant to be valid throughout the realm. This legal phase is characterised by attempts to centralise legal practice and to tie

22 Holmbäck and Wessén, Äldre Västgötalagen, Yngre Västgötalagen, Smålandslagens kyrkobalk och Bjärköarätten, Inledning, xviii. Myrdal, *Det svenska jordbrukets historia*, 22. Lindkvist "Law and the Making of the State in Medieval Sweden," 213.

23 Lindkvist, "Law and the Making of the State in Medieval Sweden," 213.

24 Kjell Kumlien claims that the Town Law, the version we have, is a second script of the law. This second version was compiled and sent out to the town hall courts after Magnus Eriksson's regency. Kjell Kumlien, "Stadslag, statsmakt och tyskar i senmedeltidens Stockholm: några problem," in *Skrifter / utgivna av Institutet för rättshistorisk forskning. Bd 14* (Stockholm: Institutet för rättshistorisk forskning, 1988), 30–31, 43–44. For the dating of the manuscripts see Holmbäck and Wessén, Magnus Erikssons stadslag, Inledning, xxii, and Åström, *Senmedeltida svenska lagböcker*, 55.

law-making and justice to the king and his council.[25] The changes that occurred in the shift from provincial laws to the older Law of the Realm from 1350 are thus by far the most important ones for this analysis. These legal changes were based on active choices during the compilation process, in which certain provincial regulations were chosen and others rejected. In some cases, it is the rejection of certain legal terms or the choice to rewrite entire sections that illustrate changes that the legislators intended to implement. Christopher's Law, confirmed in 1442, marks the end point for the study. This law is basically an updated version of Magnus Eriksson's Law. Approximately one-fourth of the regulations constitute new legislation, and some of the differences between the Laws of the Realm are of importance for this study. In general, however, Christopher's Law repeats the legislation from 1350 and does not constitute a major legislative change.

"The Peasant"—Legislation and Legal Subjects

Most scholars agree that the Swedish medieval laws were created in a farming society and that the laws reflect the needs of this agrarian culture.[26] The exception is the so-called *edsöre*, which in contrast has been interpreted as an agreement between king and aristocracy on certain rules of behaviour. This legislation did not primarily concern the peasantry.[27] Even if several scholars stress that the king was important both as a legislator and as a symbol for justice, the main bulk of the regulations are often assumed to stem from the farming communities themselves.[28] This view has been influenced by the fact that

25 Lindkvist, "Law and the Making of the State in Medieval Sweden," 228. Sjöholm has a different, and hardly generally accepted, view. She sees an increased decentralization. Sjöholm, *Sveriges medeltidslagar*, 50–51, 176, 242–244. The provincial laws can, indeed, be an expression for a regional particularism however this culminated before the compilation of the Law of the Realm.

26 Erik Anners, *Den europeiska rättens historia 1* (Stockholm: AWE/Geber, 1975), 170, 187. Göran Inger *Svensk rättshistoria* (Malmö: Liber ekonomi, 1997), 12. Sjöholm, *Sveriges medeltidslagar*, 22, 50.

27 Gabriela Bjarne Larsson, *Stadgelagstiftning i senmedeltidens Sverige* (Stockholm: Institutet för rättshistorisk forskning, 1994), 34. Thomas Lindkvist, "The Politics of Violence and the Transition from Viking Age to Medieval Scandinavia" in *Crudelitas: The Politics of Cruelty in the Ancient and Medieval World: Proceedings of the International Conference, Turku* (*Finland*), *May 1991*, ed. Toivo Viljamaa, Asko Timonen and Christian Krötzl (Krems: Medium Aevum Quotidianum, 1992), 146.

28 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 1. Carl Johan Schlyter, *Juridiska afhandlingar. Första häftet* (Uppsala: Leffler och Schell, 1836), 19 footnote. Åke Holmbäck and Elias Wessén, Östgötalagen och Upplandslagen, Inledning, xiv–xv.

the fundamental legal subject in the laws is referred to as a 'peasant' (*bonde*). In her analysis of the power structure in the provincial laws, Elsa Sjöholm identifies two parties that have rights or obligations: the individual and the authorities. She describes the individual as a landowning free man who, in the laws, is usually referred to as a 'peasant.'[29] She adds that the peasant is a tax-paying landowner, sometimes considered as part of a group, the village community, which can stand as a collective bearer of rights or obligations. In Sjöholm's analysis, the authorities include the king and the bishop, as well as the local authorities, for example, the bailiff or the district court judge. These authorities are regarded as an opposing party to the individual.[30]

Several scholars have argued that the legal term 'peasant' also included tenants.[31] One clear exception is the specific crime of assault committed in someone's home which was part of the *edsöre*, see below.[32] For example, Gabriela Bjarne Larsson opines that the peasant was a full worthy member of society if he was a permanent resident in the region.[33] This means that the term 'peasant' did not necessarily refer to a landowner; what is most important is that he permanently lived on the land within a village. However, it is obvious from how the laws are formulated that land ownership was a fundamental element in the legal concept of the peasant. Tenants were not what the legislators had in mind when they formulated the laws; 'peasant' primarily denotes someone who is a landowner.[34]

Several scholars also have noted and commented upon the fact that the legal provisions that concern peasants seem to reflect an egalitarian society.[35] Indeed, one striking feature of the Swedish laws is that they do not prescribe fines and rights according to social status, as do the Norwegian laws, for example.[36] But such an assertion does not correspond to what we know about Swedish medieval society, which was hardly an egalitarian "peasant culture."

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29 Sjöholm, *Sveriges medeltidslagar*, 22.

30 The Swedish terms are *länsman* and *häradshövding*. Sjöholm, *Sveriges medeltidslagar*, 22.

31 Thomas Lindkvist and Kurt Ågren, *Sveriges medeltid* (Stockholm: Esselte studium, 1985), 32.

32 Lindkvist, *Landborna i Norden under äldre medeltid*, 119.

33 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 1, 133–136.

34 See for example ÖgL, Dråpsbalken 3. SdmL, Kyrkobalken 1 §1.

35 Sjöholm, *Sveriges medeltidslagar*, 22. Lindkvist, "Law and the Making of the State in Medieval Sweden," 216. Ruth Mazo Karras, *Slavery and Society in Medieval Scandinavia* (New Haven: Yale University Press, 1988), 156–157.

36 The Frostating Law, Mannhelgebolk 49. The Gulating Law, Mannhelgebolk, kap 36. I have used *Frostatingslova, Omsett av Jan Ragnar Hagland og Jørn Sandnes* (Oslo: Det norske samlaget, 1994) and *Gulatingslovi, umsett frå gamalnorsk ved Knut Robberstad* (Oslo: Det norske samlaget, 1937). Breisch, *Frid och fredlöshet*, 70–71.

There is plenty of evidence of strong hierarchies and social differences long before the medieval period.[37] Furthermore, the very period in which the laws were compiled and written down was a time when social differences became more pronounced and an aristocracy was formed. This discrepancy between the law texts and social reality has led some scholars to see the laws as reflecting an older period, not the era in which they were compiled or written down. Their egalitarian character supposedly demonstrates that they are remnants of an earlier kinship society, when equally powerful kin groups were the very foundation of society. But this view has been refuted by many scholars, as will be discussed below.

Furthermore, hierarchies are definitely present in the laws. Especially the Södermanna and Uppland Laws reveal an established system of royal servants consisting primarily of fief lords and bailiffs. The fief lords were the commanders of the crown's castles and are depicted in the laws as part of a permanent institution between the king and the peasantry.[38] Moreover, as Elsa Sjöholm has pointed out, the peasant is juxtaposed with a representative of the authorities in several important paragraphs on judicial procedure. These representatives include the bailiffs, district court judges, judges, or what is referred to as 'lawmen,' *lagmän*. The 'lawman,' *lagman*, was the chief judge of the entire jurisdiction of a provincial law.

Many provisions that mention representatives of the authorities stipulate general rules for judicial procedures and actually often impose important limitations for the authorities. A typical example is the Uppland Law, which states that the bailiff cannot sue a peasant unless the right plaintiff is present.[39] This obviously shall be interpreted as a generally valid provision and demonstrates that the peasant is considered the symbol for a defendant or a plaintiff. The peasant was thus the average person in the law. Several regulations also use the collective term 'peasants' in opposition to the representatives for the authorities. Many of these are cases when the court proceedings could not take place, either because the peasants did not show up or because the judge or the bailiff was not present.[40] The equivalent term 'burgher' (*byaman*) is used in the town

37 Else Roesdahl, *The Vikings* (London: Penguin, 1998), 52.

38 Birgitta Fritz, *Hus, land och län. Förvaltningen i Sverige 1250–1434*, Del 1. (Stockholm: Almqvist & Wiksell, 1972), 75–77.

39 UL, Rättegångsbalken 7. Other examples of the legal subject 'the peasant' in this symbolic position are VmL, Rättegångsbalken 7, 14. ÖgL, Rättegångsbalken 3 & 21. SdmL, Rättegångsbalken 4 §2. DL, Rättegångsbalken 3, 4, 5, 16.

40 UL, Rättegångsbalken 4. VmL, Rättegångsbalken 4. SdmL, Rättegångsbalken 3. HL, Rättegångsbalken 6.

laws as an opposition to the sheriff and the aldermen.[41] In Swedish law, the term 'burgher' referred to an urban resident who had the right to practise a trade or craft and who paid taxes to the city.

In the provincial laws the congregation of peasants was a necessary part of the judicial system that centred on the local court assembly. The local court assembly—or the *thing*, as it is also called—was a very important feature in Scandinavian legal but also political and economic culture. The local court assembly dealt with not only legal matters but also communal matters and political issues. To be able to participate in these activities was part of adult manhood. There were two types of judicial procedures: one which used oath-takers and one which used a jury. Both tended to consist of twelve men, but while the number of jurors stayed the same, the number of oath-takers could be doubled or tripled in certain trials. In most cases it is not clear why one type of procedure was preferred over the other.[42] At these court assemblies the peasants constituted the group with which the authorities communicated. The Law of the Realm displays the same tendency. The peasants as a group and the individual peasant emerge in contrast to, and in dialogue with, the authorities.[43] The depiction of this dialogue is important. Even if the laws have been, and in certain ways still are, regarded as "the peasants' laws," these regulations clearly show that the law and the officiates of the legal system did not come from within the community. The laws portray the legislators as speaking *to* the peasants—not in the capacity of being part of the collective but as outsiders. The image of the peasant is thus not self-created. The peasant is the creation and expression of a group that did not, in fact, belong to the peasantry, which brings us back to the fact that the laws represent an ideological understanding of society.

One development that is of central importance in order to understand the character of Swedish medieval legislation is the state formative processes that took place at this time. Medieval Sweden has been described as a federation of provinces with independent lords controlling the various regions while the central powers were weak. According to Thomas Lindkvist, the main period for the medieval state formation coincides with the period when the provincial laws were compiled, culminating with the Law of the Realm. The unification of the realm is thus symbolically manifested in the creation of the new law in 1350.

41 MESt, Rådstugubalken 2 §3–4.

42 Holmbäck and Wessén, Östgötalagen och Upplandslagen, Inledning, xxv, xxvii. Holmbäck and Wessén, Hälsingelagen, Inledning, lxvi–lxvii. Holmbäck and Wessén, Södermannalagen, Inledning, xxxxvii.

43 MEL, Rättegångsbalken 6, 17. KrL, Rättegångsbalken 1, 7, 25, 26, 39.

During this period there are clear signs of centralisation and formalisation of political power; societal hierarchies became more defined and pronounced.[44] The mere fact that laws were being compiled and written down can be seen as part of the state formation. Laws and legislation were ideological tools for the king, aristocracy, and Church in their effort to create borders and to define separate spheres of power. The Law of the Realm can, in some ways, also be seen as a contract between the people and the king—a contract that the king too was obliged to uphold.[45] Kings were associated with, and actively sought to associate themselves with, legislation during the Middle Ages. The king, if he was a good king—a *rex iustus*—was considered a guarantor of justice.[46] How much the individual kings actually influenced legislation, of course, varied greatly.[47] The *edsöre* legislation, often referred to as an example of peace legislation, is the clearest expression of royal legislative efforts in medieval Sweden. All Swedish medieval law codes, with the exception of the Older Västgöta Law, contain provisions that refer to the king's *edsöre*, a word usually defined as stemming from 'sworn oath.' Usually these provisions are placed in specific and separate sections. Scholars have debated the origin and significance of the *edsöre*. It seems clear that it is connected to the somewhat older continental peace movement.[48]

The provisions have been interpreted as originating from an oath, an agreement, between the king and the aristocracy concerning certain norms of behaviour. The king and the aristocrats agreed upon certain rules of behaviour during periods of feud or aggression. Typical crimes against the *edsöre* are the following: home intrusion; to break a settlement; to take revenge after a

44 Lindkvist, "Law and the Making of the State in Medieval Sweden," 211, 228. Another important aspect of this process is the building of defensive castles, which increased substantially by the end of the thirteenth century. Christian Lovén, *Borgar och befästningar i det medeltida Sverige* (Stockholm: Kungl. Vitterhets-, historie- och antikvitetsakad, 1996), 454.

45 Olle Ferm, *State-formative Tendencies: Political Struggle and the Rise of Nationalism in Late Medieval Sweden* (Stockholm: Runica et mediævalia, 2002), 14.

46 Helle Vogt correctly stresses that we should see not only the practical, but also the ideological and symbolical background for legislation. Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 126. Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (1956; repr., Princeton: Princeton University Press, 1997), 93, 191–192. Kristin Drar, *Konungens herravälde såsom rättvisans, fridens och frihetens beskydd. Medeltidens furstеideal i svenskt hög- och senmedeltida källmaterial* (Stockholm: Almqvist & Wiksell, 1980).

47 Lindkvist, "Law and the Making of the State in Medieval Sweden," 214–215. As noted, it is for example doubtful whether Magnus Eriksson approved or issued the town law that carries his name. Kumlien, "Stadslag, statsmakt och tyskar," 31.

48 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 23–25.

settlement had been made or on someone who had not committed the deed; to attack someone in church or at court; or on the way to or from these places. To rape or abduct a woman also fell under the category of crimes against the *edsöre*, as did certain qualified forms of assault such as mauling and mutilation. Another distinguishing trait of this legislation is that it was valid all over the realm, unlike the rest of the provisions in the provincial law codes.[49] In the *edsöre* legislation, the penalty of outlawry became extended to the entire realm, not just the province. This type of outlawry was called becoming *biltog*, a term that has been introduced in all provincial law codes with the exception of the two Västgöta Laws.[50] As mentioned previously, the fact that this legislation was not included in the Older Västgöta Law has been used as a criterion for dating the Law to an earlier period.[51]

The origin of the *edsöre* might have been a sworn oath between two parties, and it originally defined the relationship between the king and the aristocrats. However, the validity of the provisions must have been successively extended, for they later were valid for the rest of the population. Evidence from the sixteenth century shows that the provisions were definitely regarded as generally applicable by this time, since a person, categorised in the court rolls as a peasant, was condemned for breaking the *edsöre*.[52] This development was preceded by a change in judicial procedure. Christopher's Law from 1442 stipulates that the crimes of the *edsöre* were henceforth to be handled by the district courts (*häradsrätt*) rather than the royal courts.[53] This indicates that by the mid-fifteenth century the regulations were seen as generally applicable and, subsequently, not just valid for aristocrats.

In fact, it is nowhere directly stated that the *edsöre* legislation concerned only magnates or aristocrats. As a matter of fact, the phrasing of the provisions reveals that a home intrusion was assumed to take place at the farm of

49 Christian Häthén claims that the *edsöre* is the origin of a public criminal law, this is separated from an older "kinship justice" based upon fines. Christian Häthén, *Stat och straff. Rättshistoriska perspektiv* (Lund: Studentlitteratur, 2004), 47.

50 Larsson *Stadgelagstiftning i senmedeltidens Sverige*, 23, footnote 26.

51 Holmbäck and Wessén, Äldre Västgötalagen, Yngre Västgötalagen, Smålandslagens kyrkobalk och Bjärköarätten, Inledning, xviii.

52 Karin Hassan Jansson, "Våldsgärning, illgärning, ogärning. Könskodat språkbruk och föreställningar om våld i den medeltida landslagen," in *Våld: representation och verklighet*, ed. Eva Österberg and Marie Lindstedt Cronberg (Lund: Nordic Academic Press, 2006), 147, and footnote 12.

53 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 128–129.

a *peasant* or that the servants of a peasant were victims.[54] It is clear that the landowner was the central figure of this legislation and the assumed target of the attacks. This can be seen in rules dealing with an attack on a tenant. Home intrusion was considered a crime directed towards the land owner, who would be the plaintiff in such a case, no matter who actually lived on the land or who had been exposed to the violence.[55] The *edsöre* legislation also uses the peasant as its main legal object, which reinforces the interpretation that it was assumed that a peasant owned his land.

The sections of the various laws which deal with the *edsöre* are linguistically different from the other sections. Generally, the *edsöre* sections enumerate all crimes that were counted as crimes against the *edsöre*. After this list comes a general stipulation of the punishment, which was usually to be condemned to outlawry throughout the entire kingdom and to the loss of all movable property.[56] There are a couple of exceptions: in Magnus Eriksson's Town Law, for example, the crimes against the *edsöre* led instead to extremely high fines.[57] There are also certain crimes against the *edsöre* that were punishable by death instead of outlawry. The *edsöre* provisions clearly diverge from the rest of the regulations and have been added to the laws. This is also made clear from the fact that certain crimes are regulated twice: both in the *edsöre* sections and in other sections. This shows that the provisions had different purposes when they were written down and were most likely aimed at different groups in society. One could argue that different codes of behaviour were being regulated or enforced for different groups. However, as we shall later see, these behavioural norms are actually not at all essentially different; in fact, they largely coincide in the provincial laws.

Another important aspect of this legislation concerns women and female criminal liability. As mentioned previously, many paragraphs of the provincial laws are unclear as to whether the general rules were applicable to women. This is because they have a male legal subject and in some cases contain specific provisions for female perpetrators (see below). However, it is clear that women

54 ÖgL, Edsöresbalken 1. UL, Konungabalken 5 §1. SdmL, Konungabalken 5 §1. VmL, Konungabalken 2 §1. DL, Edsöresbalken 2 §3.

55 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 24. Lindkvist, *Landborna i Norden under äldre medeltid*, 119. Differently in MEL, Edsöresbalken, 10.

56 ÖgL, Edsöresbalken 8. SdmL, Konungabalken 9. VmL, Konungabalken 6. HL, Konungabalken 6. DL, Edsöresbalken 6. UL, Konungsbalken 9. MEL, Edsöresbalken 24. KrL, Edsöresbalken 21.

57 MESt, Edsöresbalken 26. Also in Bjärköarätten 12 & §1. Holmbäck and Wessén, Magnus Erikssons stadslag, Edsöresbalken, footnote 76 and 77.

were excluded as perpetrators of crimes against the *edsöre*. The Östgöta Law, which is assumed to contain the most genuine *edsöre* legislation, states that: "Now: a woman may not break the *edsöre* because she cannot be outlawed."[58] If the provision is interpreted literally, then it actually states that a woman could not commit this crime because she could not be sentenced to the punishment associated with it. The provision further states that neither minors nor thralls (slaves) could break the *edsöre* because the thrall could not be made an outlaw. A subsequent comment explains that if the thrall could be outlawed, then he would love to break the *edsöre* to receive this punishment and, subsequently, be freed. The next paragraph stipulates that if a thrall commits a crime of this type, his owner should pay the fines and compensate the victim. If the owner did not want to pay, then the thrall was to be hanged on his owner's farm.[59] There are no regulations in the Östgöta Law concerning the punishment for a woman who had committed a crime against the *edsöre*. The other laws, however, state that if a woman or a minor commits such deeds, they should be fined according to the law: "a woman or a minor may not be outlawed."[60] The same phrasing is found in the Laws of the Realm, which also explain that a minor cannot break the *edsöre*. If a minor is prosecuted, then he is to be fined according to the section on wounds.[61] The provisions are incomplete; however, one can extrapolate that a woman also would be judged according to another section of the law if she had committed a crime which would count as an *edsöre* crime for a male perpetrator.

Women were thus excluded from this type of crimes; these were truly provisions referring only to men. There can be no doubt that in reality women could commit the acts that were included in the *edsöre*. This was also clear for the legislators who had to stipulate that, if a woman committed 'such a deed,' then it was not a breach of the *edsöre*. It can be interpreted as meaning that women were excluded from the type of feuding that was connected to the aristocracy. The legal texts describe them as potential victims in a feud:

58 ÖgL, Edsöresbalken 15. I use the word *outlawed* both for the provincially limited version and the one that extended over the entire realm.

59 ÖgL, Edsöresbalken 15 §1–2, 16.

60 SdmL, Konungabalken 8 & §1. VmL, Konungabalken 5 & §1. HL, Konungabalken 5 & §1. DL, Edsöresbalken 5 & §1. UL, Konungabalken 8. These paragraphs have been strangely edited and seem to refer to a specific clause on mutilation and not be a general rule. The interpretation that this was meant as a general rule is supported by the fact that the paragraph on female perpetrators has been properly separated from the preceding provision in the Laws of the Realm.

61 MEL, Edsöresbalken 32. KrL, Edsöresbalken 36. Magnus Eriksson's Town Law lacks provisions on female perpetrators of the *edsöre* crimes.

they could be raped or abducted; however, they were not considered appropriate participants.[62] If they did participate in feuds, their actions should not be considered as a violation of the peace that was to be upheld at home, in court, or in the church. The fourth term used, 'women's peace,' shows that women were considered as objects, not active parties in this legislation. The *edsöre* legislation can be seen as an attempt to maintain the peace throughout the entire realm, not only within the local community. Women were not regarded as threats to the general peace. It was men who were thought to act in this public sphere, not women; consequently, only men could disturb the public order on this societal level.

To conclude, the 'peasant' in the peace legislation confirms the assertion that the term 'peasant' in the law texts refers not to a specific class or estate but to a landowner, rich or poor, who was the master of a farm and, thus, a household. The term as such must be regarded as a judicial abstraction. The fact that the law texts mention that a woman could not commit a crime against the *edsöre* demonstrates that the term 'peasant' was ambiguous. In other words, it was obvious that the regulations *could* be interpreted as applicable to all, also women, unless it was stated otherwise. To a certain extent, one can see this as a conscious ideological choice. The provincial laws are structured around a concept: a male individual who is judged according to his place in the local community and according to his male role as the master of a household. The provincial laws all seem to assume that every free man owned land, which was not the case in reality. The independent egalitarian peasant of the provincial law codes was a legal and an ideological fiction during the end of thirteenth century and the beginning of the fourteenth. It is possible, however, that the concept reflects the fact that the term 'peasant' denoted a higher social stratum in earlier times. A provision in the Older Västgöta Law suggests this: it asserts that only the son of a peasant can be elected bishop.[63] This stands in stark contrast to the stratification of male individuals, and their wives and daughters, which we find in the Laws of the Realm. In the Laws of the Realm, a peasant clearly did not belong to the higher stratum.[64]

62 However, it will soon be made clear that the situation is more complex than this. Women were not completely excluded from feuding or blood vengeance in other parts of the law codes.

63 ÄVgL, Rättlösabalken 2, 3. YVgL, Rättlösabalken 2, 3.

64 MEL, Konungsbalken 5 §7, 11 & §1–3, 20, 22, Giftermålsbalken 8 & §1–8, 10. KrL, Konungsbalken 4 §7, 11 §1–3, 21 & §1, 22 & §1, 23, Giftermålsbalken 8 §1–7, 10.

Legal Subjects and Gender

James Brundage summarises the prevailing view of women in the Middle Ages when he states that the position of any given woman in the social hierarchy was inferior to that of every man of the same rank or class.[65] Female subordination is to be regarded as a systematic idea and this model does not always reflect social reality, where there are always variations and exceptions to any rule or norm. Nonetheless, Swedish medieval law often limits female agency and assumes that women should be subordinate to men. According to the law codes, the 'peasant' was the only full worthy member of society and the only legal subject with full rights. Other categories basically had limited rights in one way or another. Swedish medieval women had very limited legal capability; they were excluded from most court-related activities. They could not, as a general rule, represent themselves at court, function as witnesses, be part of juries, or be appointed as judges or district judges.[66] A common exception to the rule that women could not function as witnesses or take oaths is in cases when the issue was whether a child was born alive or not.[67] The reason for this was undoubtedly that the delivery of a baby was a female activity where men were excluded or even prohibited from participating.[68]

Another expression of women's subordinated status and dependency can be found in the restrictions put upon their economic transactions. If a married woman were to buy or sell something over a certain value without her

65 James Brundage, "Sexual Equality in Medieval Canon Law," in *Sex, Law and Marriage in the Middle Ages* (Aldershot: Variorum, 1993), 66.

66 In the Dala and Södermanna Laws, a woman had the right to be the plaintiff in cases when she wanted to prove that a married man was the father of her child. In the Södermanna Law, the woman should herself stand in the so called pre-oath, which meant that she functioned as a oath-taker. SdmL, Kyrkobalken 15 §4. DL, Giftermålsbalken 8.

67 UL, Rättegångsbalken 11. SdmL, Ärvdabalken 3 §4. HL, Rättegångsbalken 12. VmL, Rättegångsbalken 20. MEL, Giftermålsbalken 23 §1. MESt, Ärvdabalken 4. KrL, Giftermålsbalken 22 §1. In MEL, MESt, and KrL, it is the case of testimonies and not oaths. Other cases when women could appear as witnesses and stand in oaths include: whether a child had been murdered (as opposed to stillborn), when an animal had hurt a person or another animal, and cases of adultery. UL, Rättegångsbalken 11. HL, Rättegångsbalken 12. VmL, Rättegångsbalken 20. In the Östgöta Law, a woman could function as a witness when a woman had died during childbirth. Female witnesses were also allowed in the case of a serious accident when an entire family had died at the same time. Their role in this case was to establish the order of inheritance; that is, the order in which the parents and children had died. ÖgL, Ärvdabalken 6 & §1–2.

68 The Södermanna Law accordingly states that those *women* who were present when the child was born should bear witness. SdmL, Ärvdabalken 3 §4.

husband's knowledge, then the laws either stipulated a fine for the person who engaged in the transaction or gave her husband the right to undo the transaction. It should be noted that this rule seemingly did not apply in the cities, the place where this would have had the greatest impact. Magnus Eriksson's Town Law limits the right to purchases for children and servants, but not for wives.[69]

Swedish medieval law allowed women to inherit. It is very hard to know anything about the system of inheritance in Sweden prior to the thirteenth century; however, it has been assumed that female right to inheritance was secondary in older times. This meant that a daughter inherited only if there were no sons in the family.[70] This system can be found in two of the provincial laws: the Older Västgöta Law and the Dala Law. In turn, the Östgöta Law refers to this system as 'the old law' and regulates how to deal with cases when the inheritance had been divided according to the old system rather than the new one. This indeed indicates that the primary right to inheritance for women was a novelty in the province.[71]

The introduction of female right to inheritance is usually dated to the mid-thirteenth century.[72] In the countryside (with the exception of the laws mentioned above), the female right to inheritance was half of a man's, which meant that if there were both a daughter and a son in the family, the daughter inherited one-third and the son inherited two-thirds. The situation was different in the cities, where the right to inheritance for men and women was equal, and this seems to have been the case early on.[73] The question concerning female right to inheritance is complicated by the fact that the woman usually received a dowry from her family when she married. It cannot be established with any certainty how much a woman received as a dowry before the new inheritance

69 The limits vary between 4 *penningar* and 1 *öre*. UL and SdmL set the limit to 4 *penningar*; ÖgL to 8 *penningar*; HL to 1 *örtug*. The higher limit, 1 *öre*, can be found in VmL, DL, MEL, and KrL. 1 *mark* was worth 8 öre or 24 *örtugar* or 192 *penningar*. In the fourteenth century, one ox was worth 3 *marks*. ÖgL, Köpmålabalken 8 §1, 9. UL, Köpmålabalken 4. SdmL, Köpmålabalken 4. HL, Köpmålabalken 2. DL, Byggningabalken 32. VmL, Köpmålabalken 5. MEL, Köpmålabalken 3 §1. KrL, Köpmålabalken 4. MESt, Köpmålabalken 3 §1.

70 Winberg, *Grenverket*, 23–24. Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 198. The most recent study of Nordic inheritance legislation is found in Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 198–228.

71 ÄVgL, Ärvdabalken 1. DL, Giftermålsbalken 11. In the Dala Law, a daughter comes after both son and son's son in the succession order. ÖgL, Ärvdabalken 2.

72 Helle Vogt claims that the Swedish rules on inheritance were taken over from the Danish regulations. Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 207.

73 Bjärköarätten 25. MESt, Ärvdabalken 1. Göran Inger suggests that this might be an influence from Hanseatic law. Inger, *Svensk rättshistoria*,. 32.

system was instituted, so it is actually hard to say whether the new system was more beneficial for women or not.[74] However, during the time of the provincial laws, any dowry a woman had received was to be returned to the estate when the inheritance was distributed among the heirs. Furthermore, the introduction of female inheritance in the laws meant that a woman's property rights became formal and not based upon either customary right or subjective criteria. To conclude, Swedish women were not excluded from inheritance, but in the countryside they were at a disadvantage compared to men.

The medieval view of gender was also clearly expressed in the unequal relationship between husband and wife, and marriage was seen as a representation of the societal order. The subordination of the wife and, consequently, the domination of the husband were seen as natural, primordial, and God-given.[75] A woman's social status would follow that of her husband or father; and her symbolic, economic, and legal status was affected by her marital status.[76] The relationship between man and wife is exemplified in the saying: "In marriage, man is the head and the woman is the body."[77] We should, of course, not

74 Winberg, *Grenverket*, 23. Birgit Sawyer, "Fromheten, familjen och förmögenheten. Kristnandets följder för kvinnor i det medeltida Skandinavien," in *Hans och hennes. Genus och egendom i Sverige från vikingatid till nutid*, ed. Maria Ågren (Uppsala: Historiska institutionen, Univ., 2003), 47. Gösta Åquist seems to claim that, due to the dowry and the morning gift, the economic position of a woman in many cases was just as good as that of a man's. Gösta Åquist, *Kungen och rätten. Studier till uppkomsten och den tidigare utvecklingen av kungens lagstiftningsmakt och domsrätt under medeltiden* (Stockholm: Institutet för rättshistorisk forskning, 1989), 29.

75 Georges Duby, *Makten och kärleken. Om äktenskapet i feodaltidens Frankrike*, trans. Britt-Sofi Isaksson (Stockholm: Norstedt, 1985), 24. Inger Dübeck, *Kvinder, familie og formue. Studier i dansk og europæisk retshistorie* (Copenhagen: Museum Tusculanum, 2003), 15–20. Judith M. Bennett, *Women in the Medieval English Countryside: Gender and Household in Brigstock Before the Plague* (New York: Oxford University Press, 1987), 6. Olle Ferm, *Abboten, bonden och hölasset. Skratt och humor under medeltiden* (Stockholm: Atlantis, 2002), 216.

76 Maria Sjöberg, *Kvinnors jord, manlig rätt. Äktenskap, egendom och makt i äldre tid* (Hedemora: Gidlund, 2001), 75. Breisch, *Frid och fredlöshet*, 73. Ruth Mazo Karras, *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia: University of Pennsylvania Press, 2003), 145.

77 The saying can be found in Christopher's Law of the Realm. KrL, Såramål med vilja 19. The expression is from the First Epistle to Corinthians. Kari Elisabeth Børresen, *Subordination and Equivalence. The Nature and Role of Woman in Augustine and Thomas Aquinas*, Reprint (Mainz: Matthias-Grünewald-Verlag, 1995), 32.

forget the equation between the head and *government* or *control*.[78] The husband was the head of his wife and the head of his household. He was the 'husband' in the original meaning of the word: male leader of a household. An obvious consequence of this was that a married woman was under her husband's guardianship, and it was assumed that he managed her property. For an unmarried woman, her father or other male relative functioned as her guardian. Swedish law also had a special title for the person who was responsible for a woman's marriage; he was called the 'marriage guardian.' The 'marriage guardian' often functioned as the woman's general legal guardian as well. Widowhood gave women rights that they did not have before. A widow could manage her own property and the property of her children. She could also function as her own legal guardian.[79] However, later legal practice shows that this was not automatic and, furthermore, did not mean she held the status of the master of the household.[80]

Most often the master of the household is assumed to be a husband and a father. In fact another important usage of the term 'peasant' is to denote husband. It is strikingly common that the term 'peasant' is used in relation to 'wife.'[81] The marriage legislation in the Västmanna Law provides us with important information regarding this. The provisions are introduced by describing that a man asks for a wife. Her guardian then gives (marries) the woman to

78 Alcuin Blamires, "Paradox in the Medieval Gender Doctrine of Head and Body," in *Medieval Theology and the Natural Body*, ed. Peter Biller and A.J. Minnis (Suffolk: York Medieval Press, 1997), 19.

79 ÄVgL, Ärvdabalken 4 §2. YVgL, Ärvdabalken 6. This is the only law that seems to allow a woman to manage the property of her children also after she had remarried, if the paternal relatives of the children had consented to the new marriage. ÖgL, Giftermålsbalken 18. UL, Ärvdabalken 7 §3. VmL, Ärvdabalken 8 §2. HL, Ärvdabalken 8 §1. MEL, Giftermålsbalken 15. MESt, Giftermålsbalken 11. KrL, Giftermålsbalken 15. In ÄVgL, YVgL and ÖgL, the mother is explicitly not the legal guardian for the children in the meaning that she answered for them at court.

80 Gabriela Bjarne Larsson, "Kvinnor, manlighet och hushåll 1350–1500," in *Hans och hennes. Genus och egendom i Sverige från vikingatid till nutid*, ed. Maria Ågren (Uppsala: Historiska institutionen, Univ, 2003), 83.

81 For example: ÄVgL, Tjuvabalken 5 §2. YVgL, Ärvdabalken 25, Giftermålsbalken 17. Tjuvabalken 33. DL, Byggningabalken 32. VmL, Ärvdabalken 6 & §1, 8 §2–4. Rättegångsbalken 17 §1. ÖgL, Giftermålsbalken 14 & §1–2. UL, Rättegångsbalken 8 §1. HL, Ärvdabalken 9 & §1. SdmL, Köpmålabalken 4. Bjärköarätten 15. The same tendency can be seen in other Nordic laws. Lis Jacobsen, *Kvinde og mand. En sprogstudie fra dansk middelalder* (Copenhagen: Gyldendal, 1912), 55. Kjell Venås, "Kvinne og mann i Gulatingslova. Etter ein idé av Lis Jacobsen," in *Festskrift til Finn Hødnebø på 70-årsdagen, den 29. desember 1989*, ed. Bjørn Eithun and Erik Simensen (Oslo: Novus, 1989), 299.

the man; however, the day after the wedding, he is no longer called 'the man'; he has now become her *bonde*, literally 'her peasant'.[82] The word is thus used at the point when he is regarded as her legal guardian and, subsequently, her master. This can also be exemplified by the wording in the Uppland Law: "A peasant is his wife's guardian."[83] This transition was important; it meant that the man became responsible for people other than himself, which was a very significant aspect of medieval manhood.[84]

The master was meant to represent the household in all external matters. As such, he represented not only his wife but also eventual children, dependent relatives, and servants or thralls (slaves). This status gave him power as well as duties and responsibilities. Larsson states that, according to the laws, the owner had to 'answer for' crimes committed by minors and women.[85] The term 'to answer for' must be interpreted as an expectation to act upon their behalf at court; it indicates that the master of the household was considered the defendant. It is important to note that, even though the husband was his wife's guardian and could be considered the defendant in a court scenario, this did not automatically mean that he was supposed to pay the fines or take any other kind of punishment for her.

The most common way to express legal subjects in the laws is the even more ambiguous *maþer* or *man*, which could mean either 'man' or 'human being/person.' The regulations in the laws can be expressed in a standard axiom: "if *maþer* does this, then this shall be performed and this punishment imposed." It is often unclear whether *maþer* refers to a person in general or a male person. Indeed, the word must have been ambiguous already in the Middle Ages, since there are some Norwegian examples where the legislators or scribes wanted to strengthen the male connotation by adding the prefix *karl*: *karlmaðr*, which can literally be translated to 'man-man' or 'man-human being.' We also find evidence from fourteenth-century Iceland that contemporary interpreters had difficulties with the ambiguous 'man.' In a discussion on whether a provision that uses the word 'man' should be interpreted as valid for both men and women, Bishop Jón Sigurðarson concludes that it must be interpreted that way. The bishop compares this with the Bible where the word 'man' is interpreted as referring to everyone.[86] This is, in fact, a very revealing comparison,

82 VmL, Ärvdabalken 1, 2 §1, 3, 4.

83 UL, Rättegångsbalken 11.

84 Karras, *From Boys to Men*, 161–162.

85 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 5.

86 Lára Magnúsardóttir, *Bannfæring og kirkjuvald á Íslandi 1275–1550: Lög og rannsóknarforsendur* (Reykjavik: Háskólaútgáfan, 2007), 379–380, footnote 420.

as it indicates that many normative texts have an implicit male subject and that it is not always obvious whether they apply to women.

So when does *maþer* mean 'a man' and when does it refer to 'a person'? In their modern interpretations of the laws, Elias Wessén and Åke Holmbäck have solved the problem by generally interpreting the noun as the gender neutral 'someone.'[87] But, in fact, many of these supposedly generally valid regulations are ambiguous, for they are followed by provisions that specifically apply to female perpetrators of the same crime. It is thus unclear whether the previous regulations applied to women at all. If the rules were generally applicable, why would they then need to be followed by specific rules for women? Indeed, regarding the use of 'man' as a legal subject, Kjell Venås states that in many cases we seem to end up in a grey zone between 'human being' and 'a man.'[88]

The explanation for this is that many of the laws' regulations are aimed at the household, not the individual. More specifically, they are implicitly aimed at the master of the household, the peasant. The laws centre on the idea of a specific hegemonic man, a man who was assumed to be a husband and the master of his household. He furthermore owned land and permanently resided in a village. The free self-owning peasant of the laws actually had a counterpart in real life. Self-owning peasants were far more common in Sweden than elsewhere in medieval Europe. From an economic perspective, the peasants corresponded to the societal group that pays tax to an authority. However, as noted, the peasant, as we meet him in the laws is, to a certain extent, a legal fiction. We find in Swedish medieval law a figure that is a combination of the concepts of 'man,' 'landowner,' 'farmer,' 'husband,' and 'master.' These positions were interlinked in society, and in the laws they created an abstract figure, 'the peasant,' which is the basis for the laws. In reality, people must have actually lived in a variety of ways that differed quite substantially from this. In practice, one can also find flexibility in the system: if necessary, gender could be of less importance than a person's position as a master of a household. However, situations such as these were obviously not of interest for the legislators.

Most provisions were valid for both men and women, even if this remained implicit in many cases. In the majority of the criminal cases it was not important whether a woman could commit the crime that was regulated, for the pre-

87 Wessén is not completely consistent, see Holmbäck and Wessén, Äldre Västgötalagen, Ärvdabalken 13 & §1–4. Compare Otman, Äldre Västgötalagen, Ärvdabalken, 11, 13 & §1–4. The laws have many examples of phrases that do not have a subject at all. Bo-A Wendt, *Landslagsspråk och stadslagsspråk. Stilhistoriska undersökningar i Kristoffers landslag* (Lund: Lund Univ. Press, 1997), 125.

88 Venås, "Kvinne og mann i Gulatingslova," 300.

ponderance of provisions are practical rules for farming or small wrongdoings that led to low fines or compensation. These regulations were aimed at the household or, in certain cases, the village community.[89] In these cases the rules referred to men as masters of households yet applied to all individuals, since the laws presupposed that every individual belonged to a household. The fines were aimed at the household, and the man was supposed to answer for the actions of his wife, children, or servants/thralls. The fines could be paid from the household estate, and the master of the household had the right to further discipline members if he so wished. In many cases, using the man as a norm created no problem, since it corresponded well to the patriarchal structure of medieval society. This aspect of the laws reveals a strong wish to organise society into smaller units in which one person was responsible for the members of his household.

Collectives and Individuals

In the struggle to reinforce the status of marriage in the Middle Ages, it has been claimed that there was an emphasis on the two spouses as one legal entity. In English legal tradition this is called the "unity of person."[90] The household as a tight legal unit in which the husband had responsibility for all members of the household was clearly an ideal for many medieval legislators. As mentioned, one main argument in this book is that legislators struggled to maintain the household as a legal unit while imposing personal liability on women. The household was probably the most important social unit at the time, yet it was obviously not the only important one. The communal character of medieval society has been emphasised: extended families, village communities, guilds, etc. were all important legally, socially, and economically. Being a member of

89 This will be made clear in the next chapter: the study of property crimes.

90 Margaret Kerr writes that the principle was not consistently used in legal practice. Margaret H. Kerr, "Husband and Wife in Criminal Proceedings in Medieval England," in *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M Sheehan, C.S.B.*, ed. Constance M Rousseau and Joel T Rosenthal (Kalamazoo: Medieval Institute Publications, 1998), 234–237. Christopher Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," in *Medieval Crime and Social Control*, ed. Barbara Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 258, 260.

a group in some sense defined a person.[91] A lone person was generally a poor person; and those who travelled alone were regarded with great suspicion.[92] An older research tradition strongly emphasised the role of the kin group (the *Sippe*) in Germanic societies, claiming that kinship was the very foundation of society and structured its legal institutions. If a person did not belong to a kin group, then he or she had no place in society and, furthermore, completely lacked protection. The Nordic medieval laws, although much younger than other Germanic law codes, were long believed to be the best sources to this aspect of the Germanic past. In fact, studies of the Nordic laws often provided the basis for the idea of a kinship society.[93] This view permeates almost all older scholarship in one way or another.

Recent scholarship has emphasised that early Scandinavian kinship structure was based upon choice and alliances rather than blood relations. Even if relatives were prioritised, there was always a possibility to choose the people one wanted as part of one's network.[94] Helle Vogt elaborates on this and claims

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91 Dag Lindström, *Skrå, stad och stat. Stockholm, Malmö och Bergen ca 1350–1622* (Uppsala: Uppsala University, 1991), 229. Susan Reynolds, a strong advocate for the collective nature of the medieval society, also opens for the interpretation that, at the end of the period, one can see an increased individualization. Reynolds, *Kingdoms and Communities*, 1, 337–338.

92 Barbara Hanawalt, *The Ties That Bound. Peasant Families in Medieval England* (New York: Oxford University Press, 1986), 9.

93 The impact of this view is profound and the consequences this has had for scholarly work on the Nordic medieval laws must always be kept in mind. Winberg, *Grenverket*, 19–20. For some examples see: Åke Holmbäck, *Ätten och arvet enligt Sveriges medeltidslagar* (Uppsala: Almqvist & Wiksell, 1919). Anners, *Den europeiska rättens historia 1*, 95. Lizzie Carlsson, *"Jag giver dig min dotter". Trolovning och äktenskap i den svenska kvinnans äldre historia.* Del 1 (Stockholm: Institutet för rättshistorisk forskning, 1965), 29–30. This is also the point of departure for the modern interpretations and translations of the provincial laws. Holmbäck and Wessén, Östgötalagen och Upplandslagen, Inledning, xxii–xxiii. For a discussion of the use of the term *kinship society* (German *Sippe*, Swedish *ätt*) see Thomas Lindkvist, *Plundring, skatter och den feodala statens framväxt. Organisatoriska tendenser i Sverige under övergången från vikingatid till tidig medeltid*, 3rd ed (Uppsala: Historiska institutionen, Univ., 1993), 5–6.

94 Lars Hermanson, "Makten, individen och kollektivet. Ett alternativt perspektiv på det danska 1100-talets politiska historia," in *Ett annat 1100-tal: individ, kollektiv och kulturella mönster i medeltidens Danmark*, ed. Peter Carelli, Lars Hermanson and Hanne Sanders (Gothenburg: Makadam and Centrum för Danmarksstudier at Lunds University, 2004), 79, footnote 35. Lars Hermanson, *Släkt, vänner och makt: en studie av elitens politiska kultur i 1100-talets Danmark* (Gothenburg: Historiska institutionen, 2000), 9–11. It would be foolish to deny the importance of kinship in medieval society. Heikki Ylikangas has for example

that the kinship structure we find in the Nordic medieval laws is not at all reminiscent of an older dynastic society. She argues that the family structure we find in the laws is brand new and part of a very conscious effort on behalf of king and Church to introduce a structure based upon a canonical way of defining and counting kinship. Unlike the previous kinship system, the new system was founded upon blood relations.[95] An obvious advantage, from legal and economic perspectives, was that the responsibility to pay higher fines could be placed on a controlled and well-defined group instead of a loosely gathered alliance or, worse, an individual with no means to pay the fine himself.

The importance of kinship had significant consequences within certain legal fields; it was, for example, considered to be of utmost importance to keep land within the family. This affected inheritance rules and severely limited the ability to freely buy and sell land. A tool to achieve this was the 'kinship right to land' (*bördsrätten*). This legal right meant that any sale of inherited land should be announced at the local assembly and the land should be publicly offered to relatives before it was sold to people outside the family. One consequence of the strong connection between the family and the land was that spouses did not inherit directly. If a married couple were to die without children, then their inherited land went back to their respective original families. Land that a person had inherited was clearly separated from the land he or she had bought. The latter, land that had been bought by either spouse, was considered their mutual property, as were their chattels. The medieval laws in general stipulate that a woman is married to one-third of the household property and the man to two-thirds.[96]

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convincingly demonstrated how important kinship and family was in Finnish legal practice during the sixteenth century. Heikki Ylikangas, "What Happened to Violence? An Analysis of the Development of Violence from Mediaeval times to the Early Modern Era Based on Finnish Source Material," in *Five Centuries of Violence: In Finland and the Baltic Area*, ed. Mirkka Lappalainen (Helsinki: Academy of Finland, 1998), 42–50.

95 For a summary of the two kinship structures, see Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 17–32.

96 SdmL, Giftermålsbalken 3 §3. UL, Ärvdabalken 3. VmL, Ärvdabalken 3, 8. HL, Ärvdabalken 3. MEL, Giftermålsbalken 5. KrL, Giftermålsbalken 5. In the town laws, the spouses have equal rights to the joint household property. Bjärköarätten 24. MESt, Giftermålsbalken 5. The three-part division of the property seems to be a common phenomenon in the Middle Ages and Early Modern era. Amy Louise Erickson, "The Marital Economy in Comparative Perspective," in *The Marital Economy in Scandinavia and Britain, 1400–1900*, ed. Amy Louise Erickson and Maria Ågren (Aldershot: Ashgate, 2005), 10.

The emphasis on kinship thus could create possibilities for women, and a female member of the family would be preferred to a male non-relative in issues of inheritance. Another implication, and a difference between men and women, was their relationship to their family. A man always belonged to the same family, while a woman belonged to two: her original family and that of her new household. This could certainly create conflicts of loyalty, but it also provided protection and safety. For example, Guy Halsall mentions that the only cases of wife assault that were taken to court in the early Middle Ages were those in which the woman's original family brought the case to a judge.[97] As we will see later, under Swedish law, a woman's family could serve as protection against her own husband in cases of assault.

The collective tendencies were, indeed, strong and have dominated much of the scholarship on the Nordic laws. However, ideas regarding individuality were not alien to medieval society. Individualism became increasingly important and influential throughout the Middle Ages.[98] It is also clear that an emphasis on individualism could pose a challenge to the patriarchal family.[99] A corresponding development can be seen in the medieval Church. During this time, the Church further developed and emphasised individual guilt and individual responsibility.[100] This also applied to Christian women.

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97 Guy Halsall, "Violence and Society: An Introductory Survey," in *Violence and Society in the Early Medieval West*, ed. Guy Halsall (Woodbridge: Boydell & Brewer, 1998), 15.

98 Colin Morris and Walter Ullmann both argue that the idea of the individual as a clearly discernible autonomous unit emerged during the medieval period. When this development supposedly began, as well as what was its underlying force, has been the source of much debate. Colin Morris, *The Discovery of the Individual, 1050–1200*, Reprint (Toronto: University of Toronto, 1987), 43, 46, 73, 139, 152. Walter Ullmann, *The Individual and Society in the Middle Ages* (Baltimore: Johns Hopkins University Press, 1966), 54–57, 64–65. Carolyn Walker Bynum, *Jesus as Mother. Studies in the Spirituality of the High Middle Ages* (Berkeley: University of California Press, 1982), 109. Ullman and Morris speak solely of men as individuals. In fact Colin Morris is strikingly oblivious to the idea that women might also be individuals. Morris, *The Discovery of the Individual*, 44–45.

99 Jacqueline Murray, "Individualism and Consensual Marriage: Some Evidence from Medieval England," in *Women, Marriage, and Family in Medieval Christendom: Essays in memory of Michael M. Sheehan*, ed. Constance M. Rousseau and Joel T. Rosenthal (Kalamazoo, Michigan: Medieval Institute Publications, 1998).

100 Morris, *The Discovery of the Individual*, 73–75. Sverre Bagge, *Den politiske ideologi i Kongespeilet* (Bergen, 1979), 159–162, 195. Knut Helle, *Gulatinget og gulatingslova* (Leikanger: Skald, 2001), 87. Kristoffer Vadum, *Dom og straff i Kongespeilet. En analyse av verkets rettslære i forhold til en norsk og europeisk bakgrunn* (Oslo: Senter for studier i vikingtid og nordisk middelalder, 2004), 32.

While it is hard to deny that misogyny is a strong trait in writings of medieval clerics,[101] a Christian woman was also a human being who was created by God. So, even if women were often viewed in a negative or contemptuous way, the fact that Christian women were God's creation led to a far more complex and multi-layered view of women than is sometimes acknowledged. Kari Elisabeth Børresen has compared the view of women in the writings of St. Augustine and St. Thomas Aquinas. Børresen points to a dual view that is characterised both by subordination and equality. On earth, a woman was naturally subordinate to her husband or her father, but in the next stage, that of salvation, she was equal to man. As a human being or *homo* she was to be regarded as equal, but as a woman, *femina*, she was not. She is both a representative of her gender and a human being—both subordinate and equal. This dichotomy begins, and is created by, the female body. In the sense that she was corporeal, a woman was subordinate, but her soul could be considered equal to a man's.[102] These tendencies provide the framework for some of the contradictions we find in Swedish medieval law regarding female criminal responsibility. A woman was seen both as a subordinate without responsibility and as an individual with the possibility, as a Christian, to expiate her sins and pay for her crimes.

The changes toward individualisation also affected the legal sphere. Virpi Mäkinen and Heikki Pihlajamäki conclude that the "development of criminal law and criminal procedure in the thirteenth and fourteenth centuries can be understood in the context of the simultaneous trend toward individualization that took place in moral philosophy and theology as well as in canon

101 Jacques Dalarun, "Regards de clercs," in *Histoire des femmes en Occident. II Le Moyen Âge*, ed. Christiane Klapisch-Zuber (1991; repr., Paris: Perrin, 2002), 34. Niklas Olaison, "Otukt är världens lön: kön och sexualitet i den kristna traditionen," in *Från Sapfo till Cyborg. Idéer om kön och sexualitet i historien*, ed. Lena Lennerhed (Hedemora: Gidlund, 2006).

102 Børresen, *Subordination and Equivalence*, xvii, 25–28, 171–178, 329. Also René Metz stresses that the paradox in the Church's view on women is only apparent and can be explained by the fact that it concerns two different levels: earthly life and salvation. René Metz, "La femme en droit canonique," in *La femme et l'enfant dans le droit canonique médiéval* (London: Varorium, 1985), 112. For examples of paradoxical views of women in legal systems, see: Arlette Bigre, "Imbecillitas sexus," in *Histoire de la Justice* 5 (1992). Ross Balzaretti, " 'These are Things that Men do, not Women': The Social Regulation of Female Violence in Langobard Italy," in *Violence and Society in the Early Medieval West*, ed. Guy Halsall (Woodbridge: Boydell & Brewer, 1998), 186–187. It has also been claimed that an exception to women's subordination can be found in the equal right to divorce, in sexual matters, and in the choice of burial place. Charles J. Reid, *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids: Wm. B. Eerdmans Publishing, 2004), 150. Brundage, "Sexual Equality," 67.

law."[103] Similarly, scholars have emphasised how Nordic law changed from only emphasising the damages caused by a crime to also focusing on the intention that lay behind the deed.[104] The development of personal liability, as well as increased attempts to control misbehaviour, was an ongoing trend in the Middle Ages that continued well into the early modern period and beyond.[105]

The idea of individualisation of liability can help explain the process through which a person was separated from the collective to which he or she belonged and was seen as an autonomous person with responsibility for his/her own actions. This process seemingly contrasts with a contemporary emphasis on the household as a judicial unit and the collective responsibility of the family. However, this book will argue that the development of individual liability did not exclude a parallel emphasis on the collective, be it the kin group or the household, as a legal subject.[106] To find a balance between these two positions was somewhat of a problem for the legislators, and this may explain some of the contradictory and paradoxical regulations on women. It will be argued that

103 Virpi Mäkinen and Heikki Pihlajamäki, "The Individualization of Crime in Medieval Canon Law," in *Journal of the History of Ideas* 65:4 (2004): 526.

104 Poul Gædeken, *Retsbrudet og reaktionen derimod i gammeldansk og germansk ret* (Copenhagen: University of Copenhagen, 1934), 42–44, 47–48, 105. Ragnar Hemmer, *Studier rörande straffutmätningen i medeltida svensk rätt* (Helsinki: University of Helsinki, 1928), 12–17. Ditlev Tamm, *Retshistorie. Danmark—Europa—globala perspektiver* (Copenhagen: Jurist- og Økonomforbundet, 2002), 83. Henrik Stevnsborg and Ditlev Tamm, "Punishment in Scandinavia until the 18th century," in *La Peine. Recueils de la Société Jean Bodin pour l'Histoire comparative des institutions. LVI.* Part 2 (Brussels: De Boeck Université, 1991), 80.

105 Some scholars have stressed that major changes in legal practice and social control occurred in the late fourteenth century. Some of these changes may be connected to the social and demographic changes in post-plague Europe. See for example: Marjorie McIntosh, *Controlling Misbehavior in England, 1370–1600* (Cambridge: Cambridge University Press, 1998). Sara M. Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden: Brill, 2007). It should be emphasized that the changes described in this book are *legislative changes* that primarily occurred before the plague hit Sweden in 1350. They cannot be explained or connected to demographic or social changes due to the plague. In fact one main argument in this book is that the legislative changes are not reflected in fifteenth-century legal practice. However, there can be no doubt that local communities and local courts often encountered problems first and that legal practice affected policy. McIntosh, *Controlling Misbehavior*, 40. However, the major changes in criminal liability for women described in this book are not an example of that. In fact, my book can contribute with the perspective that the development of individual legal accountability was part of a very long and complex process.

106 Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 192–195.

in the Law of the Realm, the legislators actually managed to reach a balance by maintaining the patriarchal household structure for lesser crimes while emphasising women's responsibility for more serious crimes.[107]

107 Compare with the ordinances of Douai that went through the opposite change. They went from being gender inclusive to only referring to men in the fifteenth centuy. The authors argue that the male-patriarchal household in the fifteenth century was not a reflection of previously established norms. The aldermen had previously directed their decrees to both men and women. Ellen E. Kittell and Kurt Queller, " 'Whether Man or Woman': Gender Inclusivity in the Town Ordinances of Medieval Douai," *Journal of Medieval and Early Modern Studies* 30:1 (Winter 2000): 84.

CHAPTER 2

To Have and To Take: Property Crimes

Introduction

Issues concerning ownership and the managing of property take up a large part of Swedish medieval law. Owning land was part of identity formation for the peasant and a basis for his legal rights and legal capability. Even if the social position and number of self-owning peasants should not be exaggerated, it seems clear that the situation in medieval Sweden was different from that in many parts of continental Europe. In fact, scholars have claimed that respect for property and ownership was especially strong in Sweden due to the high number of self-owning peasants. The peasants cared for and defended their limited property, which in turn led them to respect the property of others and to not steal. Eva Österberg has argued that it was acceptable to fight but not to steal. Indeed, in late medieval Swedish towns, the number of thefts is small compared to many other places in Europe.[1] It should be noted, however, that even if theft was more common in other places in medieval Europe, stealing was a despised crime there too.[2]

This chapter deals with various types of property crime: theft, robbery, larceny, unlawful use of another's property, and vandalism. Present-day definitions of these crimes correspond to medieval ones to a certain extent; however, there are important differences that should be kept in mind. Thorsten Wennström defines theft in Swedish medieval law as illegally and secretively acquiring another person's property in order to keep it. Theft was distinguished from robbery by its secretive character. Thus, an important element in the legal definition of robbery was that it was an open act by which someone, with or without using force, acquired another person's property.[3] To a certain degree, this corresponds to the way in which theologians defined theft and robbery: theft is taking something furtively, while robbery is a theft taking place openly and with force.[4] Furthermore, Per-Edwin Wallén emphasises that

1 Österberg and Lindström, *Crime and Social Control*, 60.

2 Valérie Toureille, *Vol et brigandage au Moyen Âge* (Paris: Presses Universitaires de France, 2006), 3.

3 Wennström, *Tjuvnad och fornæmi*, 20, 70–71.

4 Nicole Gonthier, *Le châtiment du crime au Moyen Âge* (Rennes: Presses Universitaires de Rennes, 1998), 26.

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theft was a shameful crime, unlike open robbery, which was more honourable or at least did not damage the perpetrator's honour in the same way as theft.[5] In addition to these two serious crimes there are also many different lesser property crimes. In Swedish medieval law these are often collected under the terms *fornæmi* or *rättlösa*. Wennström defines *fornæmi*, as the unlawful use of another person's property but without the intent to keep it.[6] Yet, in the actual laws the distinctions between different types of property crimes are unclear, and the categories are hard to define with any precision.[7] What is evident is that property crimes are treated on a continuum, starting with petty incidents that require no penalty at all or just compensation and progressing to the most serious crimes that are regarded as threats to society and are punishable by death.

It has been argued that criminal intent was an important element in legal definitions of theft and robbery and that this was what separated them from lesser property crimes.[8] This chapter will illustrate that all property crime regulations, not just theft and robbery, show attempts to define and understand the intent behind an action. The legislators tried to determine the existence of intent through the acts themselves or through limits on iteration. Moreover, there are differing views on how theft and robbery were defined according to Swedish medieval law. This chapter will discuss the requisites for certain property crimes in some detail, in particular whether the use of force was a necessary requisite for robbery. The legal descriptions and requisites will help to explain in what way these crimes came to be connected to female and male perpetrators, respectively.

The first part of the chapter is an analysis of the lesser property crimes such as using someone else's rake, trespassing, or vandalising.[9] This section deals with what can be called the village level and will capture certain general aspects of the Swedish local communities. It was argued in the first chapter that the main legal subject in the laws is a man, 'the peasant' who represented a household. This chapter will strengthen the argument that the legislation is aimed at entire households represented by 'the peasant.' Furthermore, it will explore how these 'peasants' were thought to interact and it will show that honour was

5 KLNM, 'Tyveri' and 'Rån' (both: Sverige) and both articles are written by Per-Edwin Wallén.

6 Wennström, *Tjuvnad och fornæmi*, 71–72.

7 KLNM, 'Rån' (Sverige), by Per-Edwin Wallén. Wennström, *Tjuvnad och fornæmi*, 6.

8 Hemmer *Studier rörande straffutmätningen*, 18.

9 Cases in which an animal has hurt another animal have been excluded although, according to Swedish provincial law, these cases definitely count as property damage where the owner was responsible.

connected to one's property. The law codes' descriptions of everyday life will further uncover thoughts on openness and its opposite: the concealed actions that took place in secret. As noted above, property crimes were often defined by their approach. What was done secretively was not only frightening but also seen as far more negative than acts done openly. By consequence, this affected how the different crimes were connected to gender, since women were seen as more likely acting in secret, while men acted openly but with force.

An Open Society: Lesser Property Crimes

The provincial laws' regulation of life in the small Swedish hamlets is specific, concrete, and diverse. One is met by an astounding richness of detail, which is an invaluable source of information about the medieval society. Clearly, the bulk of these rules have their origin in customary law rather than in royal decrees and statutes. The fact that regional differences in the laws can be confirmed by archaeological evidence is a strong indicator that these rules were valid at the time the laws were compiled.[10] Nevertheless, there is reason to be careful when using the individual provisions of the laws as direct sources of real-life conflicts. The legislators tried to find all cases that potentially could occur, which means that there is some abstraction and legal exercises in this very casuistic form of legislation.[11]

It is difficult to find coherence among the regulations in the different laws. Many specific provisions only exist in one law; if the same crime exists in several laws, the fines imposed can vary quite substantially.[12] The diversity and lack of coherence enforces the impression that this is customary law compiled and written down in one or, more likely, several phases. The provisions reflect attempts to regulate and establish solutions in specific cases, and many provisions describe very concrete and detailed situations. For example, we find different rules concerning borrowing someone's tool, riding on another person's

10 See for example: Myrdal, *Det svenska jordbrukets historia*, 22–25, 84. Myrdal, *Medeltidens åkerbruk*, 21–22.

11 For an argument that the royal powers helped establish differences between lesser property crimes see: Holmbäck and Wessén, Äldre Västgötalagen, Förklaringar till förnämessaker, 186.

12 Holmbäck and Wessén criticise Wennström for overemphasising the consistency and uniform character of the legal terminology. Holmbäck and Wessén, Äldre Västgötalagen, Förklaringar till förnämessaker, 186–187. However, Wennström does provide examples of the differences that exist between the laws. Wennström, *Tjuvnad och fornæmi*, 329–330.

horse, or using someone's boat. Cases regarding chopping down someone's tree, or removing the bark from a tree, are also typical. These rules also concern vandalism: when someone drives a horse and wagon over another person's uncut meadow or destroys fences. It is easy to agree with the words that introduce the section on lesser property crimes in the Older Västgöta Law: "Many are the cases of *fornæmi*."[13]

Despite the fact that the rules are diverse and give a scattered impression as to how any specific crime was perceived and how each crime was supposed to be punished, there are still some very clear tendencies that provide us with a general picture of the local community and its legal culture. This overall structure between the different provincial laws is consistent and also characterises the Laws of the Realm, with the important exception that the two Laws of the Realm prioritise the owner's rights over any communal right to borrow and use tools. The town laws differ, as expected, since they regulate other types of property issues; however, the general tendencies are valid also for these laws.

The picture we get is of a very open and transparent society. Everything important had to be announced: at the local court assembly, outside the church in front of the parishioners, or for the villagers. Everything of importance had to be said out loud: neighbours and villagers had to be informed. You were obliged to announce if you had found another person's animal on your land or if someone had stolen something from you. You had to make it known if someone prevented you from searching his house in cases of theft. You had to make it public if someone had insulted you.[14] Not only cases of crime had to be publicised; potential threats to the safety of the villagers also had to be announced. If you had not informed the others, you might end up accountable for accidents that took place, for example, if someone got hurt in your trap, fell into your new well, or tripped into the pit that you had dug in order to catch a moose.[15] If you had found something, then you had better declare it immediately to the first people you met or, in the next hamlet or at the local assembly.[16]

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13 ÄVgL, Detta är förnämessaker 1.

14 ÄVgL, Rättlösabalken 5, Tjuvabalken 6, Förnämessaker 6§1. YVgL, Rättlösabalken 6, 8, Tjuvabalken 30. Förnämesbalken 4, 25. ÖgL, Vådamålsbalken 32 §4, Byggningabalken 34 §1. UL, Manhelgdsbalken 43, 44, 53§1, Byalagsbalken 7 & §1–2. HL, Manhelgdsbalken 36. SdmL, Byggningabalken 6 §3, 20 §2, 31, Tjuvabalken 13§1. VmL, Manhelgdsbalken 25 §8, 34, Byalagsbalken 6 §2. DL, Byggningabalken 36, 44§1, 45§1. Bjärköarätten 2, 3 §1. MESt, Byggningabalken 1, Tjuvabalken 13 & §1. MEL, Byggningabalken 9 §1, 22 §2, 29 & §1, 37, Tjuvabalken 12 & §1, 34. KrL, Byalagsbalken 10 §2, 38, 39 & §1, Tjuvabalken 13, 35 & §1.

15 DL, Byggningabalken 44 §1. SdmL, Byggningabalken 19 §2. MEL, Byggningabalken 35 §3.

16 ÄVgL, Tjuvabalken 14, 18. YVgL, Tjuvabalken 48, 53. ÖgL, Byggningabalken 37 & §1–2. UL, Manhelgdsbalken 51§1, 52 §1–2, 54 §1–2. HL, Manhelgdsbalken 34§1, 35. SdmL,

This was, in a direct translation of the term, called to 'un-thief' oneself. By making it public, you could free yourself from suspicions that you had taken the object, if it turned out that the object you had found was, in fact, stolen. This tendency, which can seem odd in societies that hold persons innocent until proven guilty, is not only found among the property crimes. We find a reverse burden of proof in many parts of the laws, which put the responsibility onto the respondent.

In other words, we are met by a legal culture in which you not only had to prove someone guilty but also had to be able to prove that you were innocent.[17] To avoid putting yourself in a situation where you could be accused of committing a crime, it was best to bring some company. You should always have others around who could testify to your innocence if it were needed. In order to buy or to pawn something of great value, you needed to bring witnesses (so-called "friends") who could testify that you had, indeed, bought the thing if someone accused you of theft later on.[18] The laws make it clear that it was best not to travel by oneself at all. This was a society in which it was hard and hazardous to act on your own; it was a very public society in which anything hidden, or rather not seen or heard of, was suspicious and potentially dangerous.

We also get glimpses of a tolerant society which understands that a person could end up in distress and that accidents could happen. For example, we find permission for poor people to take fruit and vegetables up to three times in order to lessen their hunger.[19] This rule can actually be found both in Gratian's *Decretum* and Thomas Aquinas' *Summa*. Virpi Mäkinen writes that the *Decretum* stated that when a person was hungry, "necessity excused

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Byggningabalken 30 & §1, Tjuvabalken 7, 14, 15, 16§1. VmL, Manhelgdsbalken 26§20, 27, 30 §4, 33, 35. DL, Byggningabalken 37. Bjärköarätten 19 §2. MESt, Tjuvabalken 11, 12, 14, 15, 17. MEL, Tjuvabalken 16, 31, 32, 33, 35, 36, 37. KrL, Tjuvabalken 32, 33, 34, 36 & §1, 37. Exactly how the public announcement was supposed to be done differs. Wennström, *Tjuvnad och fornæmi*, 123.

17 Inger, *Svensk rättshistoria*, 51–52. Elsa Sjöholm notes that this is alien to Roman law but in accordance with Mosaic law. Elsa Sjöholm, "Rättlösa. Ett testfall till projektet 'de svenska medeltidslagarna som historisk källa'," in *Rättshistoriska studier*, Band 11, ed. Stig Jägerskiöld (Stockholm, Institutet för rättshistorisk forskning, 1985). 136.

18 ÄVgL, Tjuvabalken 12, 19 & §1. YVgL, Tjuvabalken 44, 55, 56, 57. ÖgL, Köpmålabalken 1, 2, 3. UL, Köpmålabalken 1 & §1–2, 2 & §1–2, 5 §3 & §7. Byalagsbalken 7 §1. SdmL, Köpmålabalken 1. VmL, Manhelgdsbalken 30 §4, Köpmålabalken 1, 10. DL, Byggningabalken 30 (only concerning horses). Bjärköarätten 5, 32, 37 & §1. MEL, Köpmålabalken 1, 4, 5 §1, 7, Tjuvabalken 14. MESt, Köpmålabalken 1, 4, 6. KrL, Köpmålabalken 1. Tjuvabalken 15.

19 YVgL, Tjuvabalken 14.

theft."[20] This rule had been integrated into the teachings of the Church by the fourteenth century.[21] The Södermanna Law contains another rule that stresses tolerance and forgiveness: if a person had let his animals graze on another person's land, then he had the right to claim that distress had forced him to do so.[22] In several law codes, it was also permissible to take a limited amount of acorns, nuts, turnips, or peas.[23]

Other provisions directly or indirectly show that it was acceptable to temporarily borrow someone's boat or harrow.[24] In the Västgöta Laws it was acceptable to cut down another person's tree if the axle of your wagon had broken in the midst of the forest and you had to make a new one.[25] There was thus a certain acknowledgement that accidents and damages occur and a strong will to stem conflicts. Many of the provisions regarding lesser property crimes seem to encourage the parties to make a settlement. They demonstrate a will to preserve the peace in the village community and emphasise reconciliation.[26] The many civil cases where compensation was to be given, but no other fines imposed, are indications of this. Conflicts were meant to be solved amicably in the community and not at court. Several provisions mention that if the guilty party did not want to pay the compensation, then the issue should be taken to the local court assembly which would make the perpetrator pay a fine of three marks divided between the plaintiff, the district, and the king.[27]

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20 Virpi Mäkinen, "The Rights of the Poor: An Argument Against Franciscans," in *Nordic Perspectives on Medieval Canon Law*, ed. Mia Korpiola (Saarijärvi: Matthias Colonius Society, 1999), 42.

21 Richard Firth Green, " 'Nede ne Hath no Lawe': The Plea of Necessity in Medieval Literature and Law," in *Living Dangerously. On the Margins in Medieval and Early Modern Europe*, ed. Anna Grotans and Barbara A. Hanawalt (Notre Dame: University of Notre Dame Press, 2007), 19.

22 SdmL, Byggningabalken 31.

23 ÖgL, Byggningabalken 41 §1. DL,Tjuvabalken 2 §2. In DL it is allowed for a traveller, whose horse is exhausted, to help himself to some hay. To break open another person's barn when it was uncalled for was expressly not accepted. DL, Tjuvnadsbalken 14. VmL, Manhelgdsbalken 26 §11. SdmL, Byggningabalken 10 §2, 28 §2. But compare: SdmL, Byggningabalken 10 §1 and 10 §3–4.

24 ÖgL, Byggningabalken 27, 49. DL, Byggningabalken 28.

25 ÄVgL, Förnämessaker 2 §3. YVgL, Förnämesbalken 14.

26 Hemmer, *Studier rörande straffutmätningen*, 368.

27 Hemmer, *Studier rörande straffutmätningen*, 218, 221. See: DL, Byggningabalken 28. UL, Byggningabalken 14 §4. The Södermanna Law states that lower fines shall be collected after a conviction and, furthermore, that the men who were supposed to accompany the plaintiff when he collected the fines should be chosen and named at the local court assembly. SdmL, Byggningabalken 1.

(For comparison, in the mid-fourteenth century three marks was the value of an ox.) These provisions emphasise tolerance and understanding rather than retribution. Even if the provisions are found sporadically scattered in the provincial laws, they do demonstrate a rather generous view of borrowing another person's property or taking a small amount of vegetables.

But most of the provisions are of course focused upon those actions that were *not* allowed or tolerated. In general, the town laws have somewhat stricter rules concerning lesser property crimes. The older town law expressly prohibits the borrowing of someone's boat; a fine of three *öre* was to be paid for getting in, and another three for getting out. The same thinking applied to borrowing a horse: a fine was paid for getting up on the horse and yet another fine for dismounting. Moreover, it was not acceptable to take cabbage from someone else's garden.[28] The rights of the owner are being enforced in these laws, and the protection of the individual's property has increased. This tendency can also be detected in some of the Svea Laws. The Uppland Law ends its Section of the Village Community by establishing that no one can take or use another person's animals or tools in any way. If someone were to do so, then he is to 'get a thief's right,' meaning to be treated and punished as a thief.[29] This regulation was transferred to Magnus Eriksson's Law, which clearly states that it is not permissible to borrow another person's boat or tools; such actions will be treated as theft.[30] The Law of the Realm represents a more abstract and general view of ownership, a view that does not take into consideration all the specific circumstances that could lead a person to borrow a boat or a tool without permission.

Revenge and Conflict Strategies

At the same time, it is obvious that aggression and violence were expected in the local community. The many regulations concerning intentional destruction of another person's property reveal a society where violence was present. Some provisions are amusing in their detail. The Östgöta Law states that if a man comes home drunk, full of devilry, and intentionally smashes his neighbour's

28 Bjärköarätten 10 & §1, 23. The same type of provisions can be found in the younger town law. MESt, Tjuvabalken 6, 18.

29 UL, Byalagsbalken 29 §2. SdmL, Bylagsbalken 33 §3. HL, Byalagsbalken 24 §2. HL does not state that the perpetrator shall be sentenced as a thief.

30 MEL, Byggningabalken 38 §1.

fences, then he should compensate his neighbour and pay a small fine.[31] The Östgöta Law's regulation is not very original; in fact, most of the laws contain provisions on intentional destruction of fences. This is usually expressed as "wilfully hacking down another person's fence."[32] The latter description shows that intent clearly could be an important feature in the lesser forms of property crimes.

The legislators also assume that if a man found another person's animal on his land, then he could become angry and kill the animal. In some cases the injuries happened when the man tried to oust the cattle or the horse and hurt the animal or hit it "worse than he wanted to". However, just as often we find phrasings that presuppose that someone killed or hurt an animal out of anger.[33] Provisions regarding mutilation of animals are common and sometimes disturbingly detailed. The fact that several laws needed to establish a punishment for cutting out the eyes of a horse or cutting off a horse's tail do, indeed, indicate a rage projected on the animals.[34] The frequency of these provisions reveals an ulterior aggressiveness as well as vindictiveness in the local community.

These examples are hard to understand if they are not interpreted within the context of an honour culture. They all seem to assume some kind of prior infraction that has led to the determination to destroy another person's property. Assaulting an animal seems to be a way to hurt or get back at the owner. This is how the ambiguous term *fäfyling* has been interpreted. This referred to the crime of taking someone's animal and then trying to hide it. The Östgöta Law states: "Now: someone kills another person's animal and carries it to a hideout, he is called a *fäfyling*."[35] The word is sometimes translated as 'animal hider.' The regulations concerning this offence demonstrate how important it was whether an action took place openly or secretively and, similarly, whether

31 ÖgL, Byggningabalken 23.

32 ÄVgL, Förnämessaker 5 §2. YVgL, Förnämesbalken 20. UL, Byalagsbalken 6 §2. VmL, Byggningabalken 5 §4. HL, Byalagsbalken 5 §1. DL, Byggningabalken 40 §4. SdmL, Byggningabalken 2 §1, cp. 9 §2. MEL, Byggningabalken 8 §2–5. KrL, Byalagsbalken 9 §2–3.

33 ÖgL, Byggningabalken 24 & §1–3. UL, Byalagsbalken 7, 29 & §1. HL, Byalagsbalken 24 & §1, cp. 6 & §1. SdmL, Byggningabalken 33 & §2. VmL, Byggningabalken 6, 28 & §3. DL, Byggningabalken 39, 48 & §2, 50. Bjärköarätten 31. MEL, Byggningabalken 33 & §1–6. MESt, Byggningabalken 16 & §1–2, 17 & §1, 18 & §1. KrL, Byggningabalken 10.

34 ÄvgL, Rättlösabalken 9 §3. YVgL, Rättlösabalken 24. ÖgL, Byggningabalken 24 §4. VmL, Byggningabalken 28 §2. DL, Byggningabalken 48 §1. MEL, Byggningabalken 33 §6. MESt, Byggningabalken 18 §2.

35 ÖgL, Byggningabalken 24 §6. The hiding or denial of the crime is an important aspect also in Norwegian medieval law. Wennström, *Tjuvnad och fornæmi*, 28–31.

or not a deed had been publicly confessed. Torsten Wennström explains that the *fäfyling* had not only materially damaged the victim; the perpetrator had also affronted the owner of the animal, and this required redress.[36] To hurt and to kill someone's animals was one of the conflict strategies in the village. The laws show that it was self-evident that someone might respond with violence and that this violence could be directed towards another person's property.

The Limits of Tolerance and the Importance of Intent

Swedish medieval law has been described as focused upon the consequences of an action. The notion of analysing the intention behind an action entered Swedish legal thinking at a fairly late stage. Ragnar Hemmer, for example, has claimed that the effect of a deed was crucial for the sentencing.[37] This is undoubtedly correct, as proven by the fact that compensation was to be paid when an animal had killed another animal or the fact that fines were paid in cases of accidents. The Västgöta Laws, for example, mandated that compensation be paid when an animal accidentally had fallen into another person's well.[38]

It is undeniable that the consequence had great impact upon the criminal enforcement of an act. However, it is wrong that intent was not part of the legal thinking; in fact, intent is central in crime definitions of lesser property crimes. To start with, the provincial laws sporadically impose a tolerant attitude and reveal an acknowledgement that unforeseeable events happen and that compensation is not always necessary. This shows an awareness of a lack of criminal intent. Furthermore, the regulations demonstrate continuous attempts to define what was and was not considered tolerable. Many of the rules are indirectly centred upon establishing what was done without intention to hurt or cause damage. The point of departure is often that there was *no* will to hurt or cause damage to the other party and that a settlement should be possible, but the legislators have put much energy into determining the limits of these benevolent interpretations. If there was an intention to hurt or cause damage, then the crime was understood completely differently; this happened when a person acted despite knowing that it was illegal or against the will of the owner. This was definitely not accepted and generally led to much higher fines. For example, it was allowed in one law to borrow a boat until sunset, but

36 Wennström, *Tjuvnad och fornæmi*, 30.

37 Hemmer, *Studier rörande straffutmätningen*, 215–216.

38 ÄVgL, Rättlösabalken 9 §1. YVgL, Rättlösabalken 21.

a fine was imposed if you did not row back immediately if the owner called out to you.[39] It was also tolerated if a man happened to ride with a horse and wagon over another person's field or uncut meadow once; however, the fines increased significantly if it happened more than once.[40]

Iteration, the repetition of an act, is a recurrent theme in these provisions. The Södermanna Law states that a peasant could testify that he had mistaken where the border between his fields and those of his neighbours was located, and in this case he only would have to pay compensation if he had reaped or cut on his neighbour's land. In fact, he could do this for up to three land parcels. Beyond that number, the law states that he could not have gone further into his neighbour's land by mistake, and a fine is mandated.[41] The compensation is often doubled and then tripled for iteration; for example, three *örar* each for up to three incidents. After this, the pecuniary penalty is no longer cumulative; it is raised significantly following the third incident.[42] Moreover, this heightened penalty was no longer compensation to only the plaintiff; instead, it was divided into three parts, two of which went to the district and the king. The cases of iteration that are found in these provisions were a way to mark the boundaries of acceptable behaviour in the sense that it could be considered an accident or a mistake if it were within the limits of iteration. When someone passed this limit, then it was established that there was intention to cause damage and a will to make use of another person's property. By establishing these boundaries, the legislators define when an act should be interpreted as deliberate and with intent. The extent of damage done functioned as testimony of criminal intent. It is thus obvious that even the oldest laws were interested in and conscious of criminal intent. That the punishment went from compensation to a fine, where parts were to be paid to the authorities, indicates that intent defined it as a public crime.

The same line of thinking is found in the regulations that establish a quantitative limit for how much could be taken. This had its origin in a view that all consequences and damages should and could be measured. The laws often make a distinction between whether or not a person had taken a 'bound burden,' meaning that one had taken such a large quantity that in order to carry the goods one had to bind them together. It is also common for the laws to

39 ÖgL, Byggningabalken 27.

40 ÄVgL, Förnämessaker 4. YVgL, Förnämesbalken 16.

41 SdmL, Byggningabalken 3, 7 §2.

42 ÄVgL, Förnämessaker 2. UL, Byalagsbalken 14 & §1–2. VmL, Byggningabalken 14 & §1–2. SdmL, Byggningabalken 17 & §1 & §3–4. MEL, Byggningabalken 17 & §1.

stipulate a far higher fine for loading the items on a wagon.[43] These provisions must be interpreted as attempts to determine whether the crime was planned, which in turn meant there was a higher degree of intent behind it. To 'bind a burden' or to bring a wagon are hardly things one just randomly does without the intent to take another person's property. Furthermore, these provisions demonstrate that Swedish medieval law identified several levels of intent. Doing something intentionally could mean various things. There were higher degrees of intent if the action was seen as planned and conscious. With planned and conscious action, an act becomes classified as theft.

Iteration is unusual in the oldest law, the Older Västgöta Law, and there are fewer references to the limits for accidental acts. While this chapter demonstrates that concern for criminal intent is indirectly present in all Swedish medieval laws, one can still conclude that the importance of intent increased over time. This is most clearly seen in the way that the two Laws of the Realm categorised assault, so-called "cases concerning wounds," and homicide. These two crimes have been divided into different sections depending upon whether the crime took place with or without intent. The legal thinking concerning this concept is clearly something that developed over time. The development we see is connected to, and most likely strongly influenced by, the medieval Church's emphasis on individual guilt and the process from collective criminal responsibility toward that of an individual.[44] According to the Church it was wrong to punish a person for crimes committed by someone else. This was a main concern for the Church, and in this cause the Church was joined by the king. Individual responsibility and punishment were connected to subjective guilt and, by consequence, to the intention behind a deed. Accordingly, we find that a fine to the king and the district was generally only imposed when it could be established that there was intent to hurt or to cause damage. No fines were paid to the authorities or to the public in cases of accidents or misadventures.

Sentencing the Criminal

With very few exceptions, the punishment for lesser property crimes is a small fine: three marks is a common sum; but even lower sums in *örar* as

43 YVgL, Förnämesbalken 3, 4, 9, 10, 11. UL, Byalagsbalken 14 §2–4. VmL, Byggningabalken 14 §2–3. SdmL, Byggningabalken 10 §1–3, 17 §3–4. MEL, Byggningabalken 17 §2 & §4.

44 Gædeken, *Retsbrudet og reaktionen derimod*, 42, 47. As noted, Helle Vogt claims that the Church was an active part in the creation of a collective family responsibility. Vogt, *Slaegtens funktion i nordisk højmiddelalderret*, 192–195.

compensation are also common. In case of iteration the fines increase substantially, up to 40 marks, which is the fine imposed for a basic homicide. These high fines are nonetheless levied in quite exceptional cases; for example, for chopping down an entire forest.[45]

We can note two exceptions to the general rule of the punishment being a fine. The first example is if someone finds another man in the process of cutting off the bark of his oak trees. If the perpetrator cannot pay the fine, then the victim is allowed to whip him.[46] The corporal punishment is in this case secondary and replaces a pecuniary penalty. Another crime whose punishment departs from others is the act of tampering with boundary marks. This is also a very good example of how diverse the sentencing can be in the different laws. In a society with a clear focus on ownership of land, the boundaries between plots, fields, and meadows were of crucial importance. The boundaries were marked out, and it was considered a very serious crime to move these landmarks. We find in the Uppland Law that a person had the right to hang the perpetrator if he caught another person moving a landmark. The crime is punishable by death also in the Södermanna Law.[47] By contrast, tampering with boundary markers is not an exceptionally serious crime in the other provincial laws, which typically prescribe a fine of three marks, which was common for lesser property crimes.[48] In both Laws of the Realm, a very high fine, 40 marks, is imposed for tampering with a landmark.[49] Some scholars have claimed that boundary marks were considered holy during the Viking Age and earlier part of the Middle Ages and that the death penalty for this crime therefore was ancient. Both Wennström and Ragnar Hemmer refute this and conclude that the death penalty for this crime cannot be very old. Hemmer claims that the rules only concerned boundaries between villages, and he furthermore assumes that the origins of these boundaries could not be very old. He argues that the use of the death penalty can be explained by the fact that

45 UL, Byalagsbalken 14 §10. SdmL, Byggningabalken 15. VmL, Byggningbalken 14 §6.

46 UL, Byalagsbalken 14 §8. VmL, Byggningabalken 14 §7.

47 UL, Byalagsbalken 18 §1. SdmL, Byggningabalken 23. However compare: SdmL, Byggningabalken 4. It is stated that the criminal *misti halsen*, which can be translated by 'loses his neck.' This often means decapitation, but can also mean 'loses his life.' Schlyter's dictionary: 'hals.'

48 ÄVgL, Jordabalken 19 & §1. YVgL, Jordabalken 44, 45. VmL, Byggningabalken 18 §1. DL, Byggningabalken 20.

49 MEL, Byggningabalken 22 §1. KrL, Byggningabalken 27 §2.

the crime went against the ruling of the local court, which made decisions on boundaries between villages. He also claims that the crime resembled theft.[50]

Another important consideration is the fact that the two laws imposing the death penalty are the only two provincial laws that were officially confirmed by the king. The establishment of clear boundaries and the strengthening of ownership rights developed over time and, more important, under the influence of royal power. This was surely also in the interest of the Church and the aristocracy, both of whom owned a lot of land. The Laws of the Realm maintained a harsh punishment, although it should be noted that they no longer stipulated the death penalty for the crime.

We saw in Magnus Eriksson's Law that using another person's property without permission was defined as theft. This meant a harsher criminal enforcement for certain property crimes. A person risked being sentenced for theft if he had borrowed something of greater value. We see here a development toward a conceptual clarity and more abstract definition of crime in the legislation; we find one general rule rather than numerous specific cases. The Laws of the Realm were more closely connected to the central authorities than the provincial laws. As noted previously, changes that occurred in the shift from regional legislation to the Law of the Realm were part of an active and conscious legislation initiated by the highest strata in society, although sometimes this was done at the expense of the interests of regional aristocratic groups. Nonetheless, the change toward a stronger definition of boundaries and respect for ownership was imposed from above: from the royal power and high aristocracy. This development was probably in the interest of any landowner, big or small.

A Man's World?

This chapter has barely mentioned women; in fact, it has referred to male perpetrators as though women did not exist. This is not a coincidence, and it represents the picture that one gets from reading these law sections. The provisions on lesser property crimes seem to reflect a society almost completely without women. The medieval agrarian society is often depicted as being strongly gender divided, even if agriculture demanded close collaboration between members of the household. Janken Myrdal explains that women

50 See: Hemmer, *Studier rörande straffutmätningen*, 48–49. Ragnar Hemmer, *Dödsstraffet för rubbande av råmärken enligt äldre svensk rätt* (Helsinki: Finska litteratursällskapet, 1939), 164–165. Wennström, *Tjuvnad och fornæmi*, 362–365.

did all indoor chores as well as chores that took place close to the farm, such as carrying water, baking, cooking, taking care of the cowshed, and milking the cows. Women were also responsible for textile work and child care. Men did most of the outdoor chores, while everyone participated in harvesting of hay and grains. While Myrdal notes that it is possible that women's work sphere expanded during the late Middle Ages,[51] they still primarily worked in the home or close to the farm while men worked outside at a greater distance from the farm itself. Research on English medieval women would confirm this. Women's movement pattern seems to have been more limited than men's and to have centred around the farm.[52] Even during sowing and harvest, when men and women needed to collaborate, their work chores were gender divided. Men did the sowing and ploughing. Indeed, the plough and the scythe were regarded as male tools, while the rake was seen as a female tool.[53] Criminal law does not reflect this gender division. Although the laws include provisions concerning the use of another person's rake, a female tool, they do not mention women either as perpetrators or as victims.

In fact, female perpetrators are mentioned in only one case: that of illegally milking an animal. Milking was an area over which women had exclusive control in the pre-modern era; milking was a female area of competence and expertise.[54] Jonas Liliequist claims that milking was the chore that was the most femininely coded of all. The chore was so strongly connected to women that it was taboo for men to perform it.[55] It is obvious that several of the laws did not expect a man to illegally milk a cow. Some of the laws have the general 'man' (*maþer*) as legal subject; however, most of the laws refer to the perpetrator as a woman.[56] The female coding of this crime continues into the Laws of the Realm, where a female perpetrator is assumed; that these laws single out women as perpetrators is highly unusual.[57] This indicates that milking indeed was taboo for men. Could there be other reasons why the legislators assumed that the perpetrator was female in this case? In medieval wall paintings we

51 Myrdal, *Det svenska jordbrukets historia*, 95.

52 Bennett, *Women in the Medieval English Countryside*, 37–38.

53 Myrdal, *Det svenska jordbrukets historia*, 60–69.

54 Lena Sommestad, *Från mejerska till mejerist. En studie av mejeriyrkets maskuliniseringsprocess* (Lund: Arkiv, 1992), 28–29.

55 Jonas Liliequist, *Brott, synd och straff. Tidelagsbrottet i Sverige under 1600- och 1700-talet* (Umeå: Umeå University, 1992), 162.

56 ÄVgL, Förnämessaker 3. YVgL, Förnämesbalken 15. UL, Byalagsbalken 26. HL, Byalagsbalken 21. SdmL, Byggningabalken 29. VmL, Byggningabalken 26. MESt Byggningabalken 15. All except the first two have a female legal subject.

57 MEL, Byggningabalken 32. KrL, Byggningabalken 42.

find a strong connection between illegal milking and magic, performed under the devil's influence.[58] Unlike in contemporary wall paintings, the crime is not demonised or connected to witchcraft in Swedish medieval law. Any links to magic are completely absent in the laws, and the punishment imposed is a low fine, which corresponds to the criminal enforcement for lesser property crimes. However, one could possibly argue that the emphasis on female legal responsibility implies that it was a charged crime that could lead to conflicts if it were discovered.

Female perpetrators and any particular punishments directed at women are completely lacking in all other cases. In fact, there are few provisions that concern traditional female chores or the female work sphere. Except for the case of illegal milking, there was apparently no interest in regulating female criminal responsibility, either in the provincial laws or the Laws of the Realm. These are all examples of the type of general provisions directed at an unspecified 'man' discussed in the previous chapter. These crimes were seen as affecting the household, the primary unit in a small-scale agrarian society, and the master of the household, 'the peasant,' represented this unit. Despite the fact that they are described as altogether male acts, committed by men towards men, they should be interpreted as referring to the entire household: wife, children, and servants or thralls. Thus, the use of the legal subject 'man' did not exclude the possibility that a woman could commit the crime or that no fines were to be paid if she did; however, her criminal responsibility was not of interest. In these cases the responsibility of the master was not an issue or a problem. The crimes were generally not symbolically charged or particularly serious; they were regulated by compensations or low fines. English legal records, for example, sometimes only mention the master of the household, despite the fact that the actual the victim was a woman.[59] This is most likely the case in Swedish medieval legislation as well. The conflicts were between households and were solved by the masters of the households; it was the male master of the household who was assigned responsibility when it happened. It was most likely the men who were seen as victims or were targeted for crimes such as destroying another man's property or attacking his animals. The laws reflect a view that men were the ones who acted in public and defended their

58 Ann-Sofie Forsmark, "Den tjuvmjölkande kvinnan. Om ett medeltida motiv i uppländska kyrkor och om bilder som historiska källor," in *Uppland: Årsbok för medlemmarna i Upplands fornminnesförening och hembygdsförbund* (Uppsala: Upplands fornminnesförenings förlag, 2003), 8, 29–30.

59 Barbara Hanawalt, *Crime and Conflict in English Communities, 1300–1348* (Cambridge, Mass: Harvard University Press, 1979), 153.

honour with violence. They were the ones who should represent their family members and solve the conflicts that might have arisen between families or households.

Robbery: Taking Something the Wrong Way

Robbery in contemporary Swedish law means taking someone's property using violence or threat of violence. As noted in the introduction to this chapter, robbery in the medieval sense has been defined differently by various scholars. One definition of robbery in Swedish medieval law describes a person openly—that is, not secretively—taking something from another person. Johan Jacob Nordström argued that medieval robbery also meant some kind of coercion or use of violence, just like in modern Swedish law.[60] The Old Swedish word for robbery, *ran*, is used on its own in the laws, but also in several linguistic combinations, for example, in the expression "taken by robbery," which refers to when a woman had been abducted or raped.[61] The robbery could thus be specified by what had been taken and how. "Plot robbery" or "land robbery" refers to when someone tried to keep land from someone else, for example refusing to add the part they had already received when an inheritance was to be distributed among the heirs.[62] These cases allow us to dismiss another claim, that robbery only concerned the taking of movable goods. One could also be robbed of a right, such as the right to be a plaintiff in a case or the right to marry off a woman.[63] Therefore, robbery could be to openly withhold something from someone; it did not necessarily mean to physically take an object.

In fact, several provisions clarify that violence was not a necessary requisite. To withhold property or to rob someone of a legal right demonstrates that violence can hardly be seen as a necessary requisite. This is also true for the term 'corpse robbery,' which was to rob a dead person of her or his money.[64] Of course some specifications of robbery are harder to imagine without the use

60 Johan Jacob Nordström, *Bidrag till den svenska samhällsförfattningens historia*, 2:1 (Helsinki, 1840), 296.

61 See chapter 6.

62 UL, Manhelgdsbalken 34. HL, Manhelgdsbalken 19. SdmL, Manhelgdsbalken 16. ÖgL, Vådamålsbalken 30 §2, Byggningabalken 47. Robbery of a farm and of a plot can also be found in: DL, Byggningabalken 13 §1 and Lydekini excerpter 113.

63 VmL, Manhelgdsbalken 30 §9. DL, Byggningabalken 35, Tjuvabalken 13. ÖgL, Vådamålsbalken 14 §1, Jordabalken 4 §2.

64 ÖgL, Dråpsbalken 6. DL, Tjuvnadsbalken 16 §2. UL, Manhelgdsbalken 10. SdmL, Manhelgdsbalken 25. VmL, Manhelgdsbalken 25 §7. HL, Manhelgdsbalken 20.

of coercion or violence. An example of this is the concept of 'hand robbery,' which meant taking an object directly from another person's hand. Other examples are 'saddle robbery' or 'sleigh robbery,' which means taking a saddle or a sleigh from someone else.[65] However, even if violence is implied or seems to be presumed, it is not expressly part of the definitions of the crime.

Per-Edwin Wallén states that it is possible that the laws of western Sweden, the Göta Laws, put a stronger emphasis upon violence than the Svea Laws.[66] The Younger Västgöta Law, for example, states that if a man robs another and there are no witnesses or any traces of 'blue or blood,' then the defendant has the right to free himself with an oath of 12 men. If he cannot pass the oath, then he is fined three times 16 *örtugar*, which is not a very high fine.[67] Violence is definitely present in this description of robbery. Bruises, the "blue" in the provision, or blood were expected outcomes for a victim of robbery. However, violence is not a requisite for the crime in this case; rather, it is a way to determine whether the perpetrator had the right to prove himself innocent or not. Evidence of violence here acts as proof. If this evidence was lacking and there were no witnesses, then the accused had the right to prove himself innocent with an oath. Notwithstanding, the ensuing clause in the Younger Västgöta Law also connects robbery to violence and pronounces a harsher sentence. The clause stipulates that if a man gets robbed with what was called "full violence" and one can see marks on his body or finds witnesses to the deed, then the accused shall pay a high fine of 27 marks (three times nine marks).[68] We see interesting differences in the punishment for these two crimes: the first being very lenient and the latter one very harsh. It is definitely the use of violence that is reflected in the sentencing.

The Östgöta Law describes in dramatic detail a situation where the victim tries to prevent a robbery. The victim wants to call for help, but this leads to the robber gagging him. When the victim tries to escape, the robber restrains him. The fines for this are enormously high and amount to a total of 120 marks.[69] The robbery in itself shall be paid with 40 marks, an additional 40 marks follows

65 'Hand robbery': YVgL, Rättlösabalken 12. UL, Manhelgdsbalken 32 §1, 33. HL, Manhelgdsbalken 18. SdmL, Manhelgdsbalken 15. VmL, Manhelgdsbalken 25 §5. 'Saddle robbery'/'sleigh robbery': DL,Tjuvabalken 16 §1. VmL, Manhelgdsbalken 25 §6. A similar act is 'robbery of clothes': YVgL, Rättlösabalken 14.

66 KLNM, 'Rån' (Sverige), article by Per-Edwin Wallén.

67 YVgL, Rättlösabalken 12.

68 YVgl, Rättlösabalken 13.

69 ÖgL, Vådamålsbalken 31 §2. 120 is the total sum of the different fines.

for the gagging, and finally 40 marks are levied for tying the victim.[70] These examples clearly demonstrate that violence was an expected element in a robbery, although not necessarily a requisite. Other examples can be given. The many regulations of a crime that was defined as 'taking a bound thief by robbery' indicate this as well. To try to kidnap a thief who was being held in someone else's custody ought to have involved the use of, or threat of, violence.[71] High fines were imposed for 'robbing a thief' or any other criminal from someone's custody. This must be explained as an attempt by the royal powers to suppress self-help and obstruction of justice.

From the varying examples provided here there can be no doubt that robbery, or rather the Old Swedish crime *ran*, is not a precise crime category in the provincial laws. I will claim that the meaning of the term is simpler and not necessarily related to our modern definitions of robbery. The origin of the word can be found in the Svea Laws, which establishes that a person must be able to prove that he had taken or acquired something legally and not *by robbery*.[72] These cases deal with a specific way to collect evidence. A victim had the right to take a perpetrator's property, often the tool that had been used in the crime itself. For example, the victim would be allowed to take the perpetrator's axe in provisions dealing with the illegal chopping of trees. But the evidence could also be clothes or other items that would be used to prove that the perpetrator had been present at the scene of the crime. Of course, this was not done without conflicts and additional provisions deal with the conflicts that arose regarding whether the evidence was taken lawfully or by robbery.

But these expressions reveal that the basic understanding of the word *ran* is that a person had taken or withheld something without the right to do so or by doing so in an illegal way. This could mean using violence, which was expected in certain situations but was not necessary. The Old Swedish meaning of robbery seems to have been the opposite of legally acquiring something. One could take or acquire something in two ways: the right way or the wrong way: by robbery. How the latter had happened, with or without violence, was a further refinement of how the act had been done and was often assumed.

70 ÖgL, Vådamålsbalken 31 §2.

71 YVgL, Tjuvabalken 32. More examples: ÄvgL, Tjuvabalken 5 §1. ÖgL, Vådamålsbalken 34 §1. UL, Manhelgdsbalken 32. HL, Manhelgdsbalken 17. SdmL, Manhelgdsbalken 14. To rob or steal a person, a thrall or female thrall: ÄVgL, Tjuvabalken 17.

72 UL, Byalagsbalken 16 §1. SdmL, Byggningabalken 17 §6. VmL, Byggningabalken 16 §1. In all these cases the provision deals with whether evidence was taken lawfully or with robbery. See also: VmL, Byggningabalken 14 §10. Holmbäck and Wessén, Upplandslagen, Byalagsbalken, footnote 34.

This had an impact upon the criminal enforcement but was not a requisite for the crime. However, it was usually only considered robbery if it had taken place openly; if it had taken place secretively, then it would be defined as theft instead. As we shall see, some of the trouble other scholars have had with defining what robbery meant can be explained by the fact that the legal term *ran* also changed over time. In the Laws of the Realm the crime necessarily includes the use of violence or, rather, something that is called 'superior force.'

Circumstances of Robbery and Criminal Enforcement

As we have noted, there are many different types of provisions on robbery; some are general, while others tend to be very specific. Certain regulations imply a type of robbery that was executed by professional criminals: an element that is very rare in the laws. Per-Edwin Wallén refers to these perpetrators as highway robbers or a kind of pirate.[73] The content of the provisions support this interpretation. Most of the laws describe the circumstances of this crime as "men who lie on ships or in the forest in order to rob and murder." In the two Västgöta Laws, these men are referred to as *lösvittingær* and *löfvirkingær*, respectively.[74] None of these words exist in any other Old Swedish texts, which makes it very difficult to interpret the concepts. The term *lösvittingær* has been understood as a 'vagrant.' However, this interpretation demands that the word is misspelled in the only remaining manuscript of the Older Västgöta Law. An alternative interpretation is that the word referred to a "mindless" person. The younger law has added the explanation that the term describes a man who makes himself a *grimu maþer*, a 'man with a mask,' presumably covering his face.[75] If you were unlucky enough to meet these men, you could kill them without any penalty. Strangely enough, however, there is no punishment imposed for their actions.

Piracy is considered a very serious crime in other sections of these laws and is punished by outlawry as well as loss of all chattels. The description

73 KLNM, 'Rån' (Sverige), article by Per-Edwin Wallén.

74 ÄVgL, Om mandråp 10. YVgL, Dråparebalken 21.

75 Holmbäck and Wessén, Äldre Västgötalagen, Om Mandråp 10 and footnote 74 to the same paragraph. Schlyter's dictionary: 'lösvittinger.' Schlyter claims that the younger term *löfvirkinger* is the correct one and means a person that lives in a tree house, or rather a "leaf house." That is, the compilers of YVgL interpreted the word right and the compilers of ÄVgL wrote it incorrectly. See Schlyter's dictionary: 'grimu maþer.' The expression can also be found in the Frostating Law, Mannhelgebolk 62.

"a man lies on a warship" gives reason to interpret this particular crime as a more organised form of robbery.[76] The verb 'lies' also indicates a certain deviousness and sneakiness to the crime, since a person rarely actually lies on a ship. In several of the laws from eastern Sweden we find a similar expression but a different punishment. It is stated that he who "lies on a ship or in the forest and robs and murders" shall be sentenced to death: decapitation for the robber and breaking on the wheel for the murderer.[77] One can note that it ought to have required a fair amount of economic resources to "lie on a warship"—or on any ship, for that matter. One wonders who these criminals were and, in particular, what their social status was. It is interesting that these crimes are defined differently than other examples of robbery. The perpetrator is clearly described as coming from outside the local community. The robber is *in the forest* or on *a ship*. In a sense, the criminal is located on the periphery of organised society. He is not one of the peasants and seems to threaten the peace of the local community from the outside. At the same time, although the robber in one law possibly can be described as a vagrant, it is not evident that he is, therefore, a poor person.

Per-Edwin Wallén argues that the criminal enforcement of robbery is lenient in the provincial laws compared to the Laws of the Realm, where the crime is harshly punished.[78] This is only partly true. Some of the lesser offences that are called robbery in Magnus Eriksson's Law are not punished more harshly. For example, the Laws of the Realm stipulate that a 'robbery fine' consists of three marks, which cannot be described as a high fine.[79] In Magnus Eriksson's Law the punishment depends on the value of the goods. The punishment consists of a smaller sum for robbery of goods up to a value of three marks; however, for goods over this value, the fine increases from three marks to 40 marks. However, in this law, in the sections on *edsöre*, we find yet another type of robbery that was considered a crime against the peace of the home.[80] In Christopher's Law robbery of goods worth more than half a mark is punished with the death penalty, if the robber is caught red-handed.[81] In both cases, robbery has been made part of the *edsöre*. The regulations in the Svea Laws on "men who rob and murder" have been transferred to the Laws of the Realm but

76 Ävgl, Urbotamål §10. YVgL, Urbotamål §10.

77 UL, Manhelgdsbalken 31. HL, Manhelgdsbalken 16. SdmL, Manhelgdsbalken 13. VmL, Manhelgdsbalken 25.

78 KLNM, 'Rån' (Sverige), article by Per-Edwin Wallén.

79 MEL, Byggningabalken 20 §1. KrL, Byggningabalken 25 §1.

80 MEL, Edsöresbalken 44 & §1.

81 KrL, Edsöresbalken 40.

have been divided into two separate crimes: robbery and murder. Robbery has been placed in the *edsöre* legislation; however, apart from that, the phrasing of the crime and its enforcement has been copied from the Svea Laws, and thus the punishment for robbery is decapitation also in these laws.[82] Since these crimes were a threat to the peace and the public order, it makes sense that the crime has been moved to the sections on *edsöre* and, thus, within the framework of royal legislation. Robbery was part of what the ideal righteous king, the *rex iustus*, should prevent. The choice thus underlines that the king was the guarantor for peace and justice. Furthermore, in Christopher's Law one category of robbery has been moved to the King's Section. This signals that the crime was seen as very serious and, most important, that it was seen as a crime against the king and the king's peace. The use of violence has here become a necessary requisite. The crime is defined in the King's Section as: "someone takes something with force from the person."[83] The examples of the original use of the term robbery, in terms of taking something "the wrong way," are fewer in the Laws of the Realm. The earlier understanding of the crime of robbery has been replaced by a definition that strongly emphasises use of violence. In other words, the later medieval legal definition of robbery has approached the modern understanding of what the crime meant.

The Robber's Social Status and Gender

Robbery can be discussed from another perspective: that of social status. In Danish medieval law we find indications that the robber was considered to be of a higher social status than the thief.[84] Was this the case also in Swedish medieval law? The later understanding of the crime, to take something with force, certainly presupposed that the person had the strength and weapons to do this. The Older Västgöta Law gives interesting insight into this. If you had another person's cattle in your care, you should protect the animal and defend it against theft. You were held responsible and had to compensate the owner if the animal was stolen. Conversely, you were not considered responsible if someone robbed you of the animal. Robbery in this provision is classified as accomplished through an act of superior force, while theft of an animal

82 MEL, Edsöresbalken 45. KrL, Edsöresbalken 42.

83 KrL, Konungsbalken 28.

84 KLNM, 'Rån' (Danmark), article by Jens Ulf Jørgensen. Tamm, *Retshistorie*, 86.

in your care was considered an act of neglect on your part.[85] Clearly, one was not always expected to be able to protect oneself against an attack of a robber.

A clear example of robbery where the perpetrator was of higher social status than the victim can be found in the well-known regulations against unwelcome guests and their demands of lodging and full board (*våldgästning*). These regulations were directed at travellers of high social status who all too often took advantage of the medieval duty to lodge travellers. The 1280 royal Alsnö Statute is introduced with these words:

> For a long time a bad practice prevails in our kingdom, that men who travel around the realm, despite the fact that they are rich, do not hesitate to visit poor men's houses and expect to get all their board and lodging without paying for it. And soon, they have used up everything that the poor have long worked for.[86]

There can be no doubt about to whom the statute is directed. Furthermore, it is also clear that the king wanted to mark his loyalty to his peasantry and the poor people who are victims of the rich people's greed. The king seeks justice for the weak in society, or at least that is how he wants to appear. The statute establishes that the person who takes something against the will of the owner shall be taken into custody, without using violence, and shall be brought to the king. The perpetrator then has six weeks to pay for the robbery.[87]

The statute has been picked up in some of the Svea Laws and in the additions, *additamenta*, to the Younger Västgöta Law.[88] The introduction quoted above has been removed in these provisions, and the text has been edited, so that it no longer speaks from the king's perspective, first person plural. Instead the provisions inform us that "the king gave us this law." The provisions in the Svea Laws are almost identical, while the one in the addition to the Västgöta Law is briefer. None of the laws use the expression robbery as in the statute; the provisions' phrase instead is worded as "taking something with violence" or "doing violent deeds." The meaning of the term 'violence' in Old Swedish will be discussed in the following chapter. There can be no doubt, however, that this is a case of robbery. These robbers are treated differently than other

85 Ävgl, Förnämesbalken 6 & §1.

86 Alsnö stadga, DS 799. See also Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 22–29.

87 Alsnö stadga, DS 799.

88 UL, Köpmålabalken 9 & §1–6. VmL, Köpmålabalken 12 & §1–6. SdmL, Köpmålabalken 10 & §1–5, 11& §1–2. Yngre Västgötalagen, Additamenten 6 & §1–3.

perpetrators, though: they can be held in custody, without using violence, but should be taken to the king to be judged directly by him. This exemplifies that robbery was not a dishonourable deed; rather, it was something that was expected from the upper layers of society. This type of robbery is punished with a fine, quite high in the Svea Laws. We can notice a harsher punishment in Magnus Eriksson's Law, which introduces the death penalty for forceful lodging. The chosen method of execution is decapitation.[89]

Robbery was, thus, a way of taking something 'without right' and sometimes by using superior force and violence. The superior force used was connected to the social status of the perpetrator. An aristocrat's weapon and a horse must indeed have constituted a superior force compared to what a peasant might muster. These types of robbery must have been hard to separate from the plundering that took place in connection with warfare and battles during the many periods of unrest. In fact, such plundering was also connected to the upper layers of society, since they were the ones who participated in war expeditions. Finally, the higher social status of the robber can be detected also in the choice of death penalty for the most serious cases of robbery. Being decapitated was a punishment for the aristocrats, while the thief was sentenced to hanging, which was more dishonourable. The character of the crime and the presumed social position of the perpetrator were thus interconnected with the choice of death penalty.

Robbery was considered a male crime. Women were not expected to take part in this type of crime. As we shall see, most serious crimes usually led to some comment on female legal responsibility; this is not the case for robbery. It is never mentioned that the perpetrator could be a woman, nor how she should be punished. There was no need to emphasise female legal responsibility in this case. This is partly due to the fact that robbery was connected to violence and to superior force, which were not expected of a woman. The Laws of the Realm even exclude women from committing robbery, since a woman could not be sentenced for breaking the peace, that is, a woman could not commit a crime against the *edsöre*. In accordance with the interpretation provided in the previous chapter, women were not expected to disturb the public order. They could be the reason why it was disturbed, they could be the object that was robbed, but they could not be the subjects.

89 MEL, Konungsbalken 23 §5.

The Crime of Theft and Its Punishment

Although theft can also be an ambiguous category of crime, scholars seem to agree that a necessary element is some sort of secrecy or hiding: either of the act itself or of the stolen goods.[90] The provisions on theft are complicated and relatively diverse. There are highly specified and sometimes obscure systems for dealing with a presumed theft. For example, we find detailed descriptions on how to "lead the theft" to another person, as it is called in the laws. This meant to prove, with the help of witnesses, that one had legally acquired an object from someone and, in this way, one "had led the theft away" from oneself and onto someone else who, in turn, had to prove his innocence. As stated above, it was crucial in all cases of buying and selling to have witnesses; the transaction had to be done in a transparent way in order to be considered correct and honest.

We also find regulations on how to perform an investigation if someone suspected that stolen goods could be found in another person's house. These rules are also quite specific: for example, the men who investigated the matter had to be dressed in a certain way. This was done in order to prevent them from smuggling an object into the house and later claim that they had found the stolen goods. In order to preclude any possibility that someone from the outside had disposed of the stolen goods in the house, there were also rules on how to deal with the fact that there was a window in the room where the object was found. The underlying principle was simple: if something stolen was found in someone's house and it was deemed impossible that someone else had smuggled it in, then the peasant was considered to be caught red-handed. He thereby did not have the right to prove himself innocent of the theft.[91]

Just like robbery, theft is often characterised by the type of goods that were stolen: cattle, weapons, clothing, or grains. Some of these sub-categories have in turn produced specific names for the perpetrators. These obscure and imaginative terms have resulted in a vast amount of research.[92] The denigrating

90 Wennström, *Tjuvnad och fornæmi*, 70–71. Hemmer, *Studier rörande straffutmätningen*, 48, 159.

91 ÄVgL, Tjuvabalken 5 & §1. YVgL, Tjuvabalken 30, 34, 35. ÖgL, Vådamålsbalken 32 §3–4. UL, Manhelgdsbalken 47 &1–6. HL, Manhelgdsbalken 31 & §1–4. SdmL, Tjuvnadsbalken 12 & §1–5. VmL, Manhelgdsbalken 30 & §1–4 & §6. DL, Tjuvnadsbalken 7. MEL, Tjuvabalken 12 & §1–2, 13. MESt, Tjuvabalken 2 §1. KrL, Tjuvabalken 13 & §1–2, 14. Wennström describes the provisions in detail: Wennström, *Tjuvnad och fornæmi*, 148–164.

92 Wennström, *Tjuvnad och fornæmi*, 21–40.

name 'husk back' apparently denoted a person who stole grain, while the 'gore thief' or the 'gore wolf' was someone who had stolen and killed another person's animal (this resembles the 'cattle hider,' the *fäfyling*, whom we have already met). The concepts have led to much speculation on the shameful and taboo nature of these crimes. The 'gore thief' is found in the section on heinous deeds (*nidingsverk*) in the Older Västgöta Law. This indicates that it was a crime that was ill seen and regarded as very serious. The Younger Västgöta Law states that the 'husk back' and the 'gore thief' are the worst of thieves. Theft was ranked and characterised by the value of the stolen goods; see below. However, for the 'gore thief,' the punishment for full theft applied even when the value of the stolen goods was low.[93] So the enforcement of this crime was harsher than for ordinary theft.

In the Laws of the Realm the 'gore thief' is expressly punished more harshly than an ordinary thief. He was sentenced to death, as other thieves were; but in addition to this his chattels were to be confiscated. Also his wife's chattels were confiscated if she was sentenced as an accessory.[94] It is obvious that Swedish medieval law separates theft into various types according to the character of the stolen goods. It is difficult to determine once and for all whether or not this is an older trait. The explanation of what exactly is meant by being a 'gore thief' appears clearer in the younger laws than it does in the older. The need for explanations usually appears when the term is no longer as self-evident as it would have been in a society that used it actively. What one can say with certainty is that the regulations on theft become far more general and abstract in the Laws of the Realm than they are in the provincial laws. Various terms for different thieves might thus be an older trait.

The most important element in the definition of theft and its criminal enforcement is undoubtedly the value of the stolen goods. In provisions that can be considered the central theft regulations, since the rules are more general and fairly abstract, one can detect a gradual levelling of the crime in two or more steps. These steps are dependent on the value of the goods. Theft stands out as a crime since all the provincial laws introduce corporal punishments alongside the pecuniary penalty. The punishment of whipping, as well as having one or both ears cut off, is stipulated for theft of a lower value. However, corporal punishment was usually secondary and only enforced if the perpetrator cannot pay the fine. A theft is called a full theft in the provincial laws if it is

93 Wennström, *Tjuvnad och fornæmi*, 23. Nordström, *Bidrag till den svenska samhällsförfattningens historia*, 307. ÄVgL, Urbotamål §9. YVgL, Tjuvabalken 16, 58. ÖgL, Vådamålsbalken 32. KLNM, 'Tyveri' (Sverige), article by Per-Edwin Wallén.

94 MEL, Tjuvabalken 1–4. KrL, Tjuvabalken 2–5.

over a certain amount, usually half a mark; the punishment for this was either a high fine or death. The fines are often established to 40 marks, yet they seem to be unlimited in some cases. Some provisions state that the guilty party can try to pay for his life the best that he can, which left it up to the plaintiff to decide what he was willing to accept.[95]

This ranking of the crime according to the value of the stolen goods is even more distinct in the Laws of the Realm and Magnus Eriksson's Town Law. The lowest level of theft is called larceny (*snattan* or *huinska*), for which the punishment was to pay compensation. There are also middle levels with increasing corporal punishments depending on the value of the stolen goods. For theft over a certain value the criminal was whipped, then whipping and cutting off one ear would ensue, and finally whipping and cutting off both ears. The Laws of the Realm, as well as Magnus Eriksson's Town Law, also introduced an unconditional death penalty if a thief was caught red-handed with full theft, which was theft of an item valued at more than half a mark in the Laws of the Realm but one mark in the Town Law.[96]

It is clear that theft was a more shameful crime than robbery. Several provisions add that the perpetrator should thereafter "be called a thief," which has been seen as an additional punishment complementing the fine that the perpetrator had to pay.[97] It might not be considered a formal punishment; however, it is apparent that a person's reputation was severely damaged by being sentenced for theft, even in those cases where the punishment was reduced to a fine. He or she was no longer seen as a trustworthy person with whom you would want to collaborate or do business. Doubts concerning a person's honesty could also affect his ability to appear at the local court assembly. In Christopher's Law a person who had moved a border mark was no longer

95 Provincial law has different sums for these levels of theft. Full theft, however, seems to be consistently half a mark. YVgL, Tjuvabalken 3, 5, 8, 13. ÖgL, Vådamålsbalken 32 §1 & §6, 33, 39 §1. UL, Manhelgdsbalken 35, 36, 37, 38. VmL, Manhelgdsbalken 36 & §1–3. HL, Manhelgdsbalken 28. SdmL, Tjuvnadsbalken 1, 2, 3. DL, Tjuvnadsbalken 1 & §1 & §3, 6. Primary death penalty in YVgL and ÖgL, secondary in the others. UL and SdmL state that a thief may pay for his life "as well as he can." In DL the death penalty is secondary if the relatives of the perpetrator do not want to pay the fines consisting of 40 *mark*.

96 The 'fine for larceny' for a theft below half an *öre* consists of six *öre* in the Laws of the Realm. MEL, Tjuvabalken 5, 7, 9, 10 & §1. KrL, Tjuvabalken 6, 8, 10, 11. In the Town Law the perpetrators are also banished from the city afterwards. MESt, Tjuvabalken 3 & §1.

97 Scholars disagree whether this should be seen as a "legal epithet" or an actual punishment. Inger, *Svensk rättshistoria*, 59. Hemmer, *Studier rörande straffutmätningen*, 24 and footnote 1. Wennström, *Tjuvnad och fornæmi*, 300–302. KLNM, 'Straf,' article by Ragnar Hemmer.

allowed to appear as a witness or to serve on juries.[98] The importance of reputation for a person's honour should not be underestimated in medieval society. Its importance can be seen in provisions concerning insults; indeed to "lie the honour from a person" was punishable. 'Thief' is among the most common punishable defamations, while there are no examples that show that the word 'robber' would be used as an insult.[99] This illuminates the difference in how the two crimes were perceived.

Being called a thief was most certainly humiliating. However, the legally stipulated epithet must have affected a person's ability to conduct business as well as appear in court. The practical legal consequences of epithets have not been studied for medieval Sweden. But for Renaissance Florence we find that a person's reputation had consequences for his or her legal capacities.[100] This would explain certain regulations on economic transactions. In these provisions, a goldsmith who is sentenced for having tampered with the gold amount of a nugget, which a customer had left him to work on, was to be called a 'thief.'[101] The corporal punishments for theft can also be seen in this light. Cutting off a thief's ears was, of course, a way to physically punish the person; however, it also served the purpose of marking the criminal for all eternity. Since iteration led to the death penalty, this was also a way for the court to keep track of whether someone had already committed a theft.[102]

Only 'full theft' led to the death penalty for a first time offender. As already noted, full theft was theft of an item valued at more than half a mark in most of the laws; in the oldest laws, the sum was somewhat lower.[103] Magnus Eriksson's

98 KrL, Byggningabalken 27 §2.

99 ÄVgL, Rättlösabalken 5 & §1–6. YVgL, Rättlösabalken 6, 7, 8, 9. ÖgL, Byggningabalken 38. SdmL, Manhelgdsbalken 34. HL, Manhelgdsbalken 7. Bjärköarätten 21. MESt, Rådstugubalken 31 & §1–2. The punishable insult 'thief' can be found in: ÖgL, SdmL, HL, Bjärköarätten and MESt.

100 Thomas Kuehn, "Fama as Legal Status in Renaissance Florence," in *Fama: The Politics of Talk and Reputation in Medieval Europe*, ed. Thelma Fenster and Daniel Lord Smail (Ithaca: Cornell University Press, 2003), 27.

101 UL, Köpmålabalken 1 §2. VmL, Köpmålabalken 1 §2. KrL, Köpmålabalken 2 §2. The idea of mistaking some cheaper metal for gold was a topos in Latin literature. Anders Winroth, "Neither Slave nor Free: Theology and Law in Gratian's Thoughts on the Definition of Marriage and Unfree Persons," in *Medieval Church Law and the Origins of the Western Legal Tradition. A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington: Catholic University of America Press, 2006), 99.

102 Lizzie Carlsson, "De medeltida skamstraffen" in *Rig : Föreningens för svensk kulturhistoria tidskrift* (1934): 136.

103 Wennström, *Tjuvnad och fornæmi*, 448, 450–451.

Town Law was actually more lenient and allowed for theft up to one mark before it was counted as full theft and led to capital punishment. In the Town Law a lower sum could also qualify as full theft under certain circumstances. This was the case if someone stole from his own master or in the bath-house.[104] An important principle in Swedish medieval law is that a person could only be sentenced to the death penalty if he or she was caught red-handed. In most other cases, a criminal, if sentenced, could expiate the crime by paying a fine. In all provincial laws, and to some extent also in the fourteenth-century Magnus Eriksson's Law and Town Law, there is a clear reluctance to sentence a person to death based solely upon suspicion or because the accused failed to prove herself or himself innocent with an oath. One can see this as a pre-emptive step to create safety in the legal system.[105]

When the punishment for theft was the death penalty, the preferred method of execution for men was, in general, hanging. There are a few exceptions. Two of the laws indicate, in a much disputed provision, that stoning might be used for the 'husk back,' the thief who had stolen grain. These two laws stipulate that the thief shall become "food for stone and strand."[106] The research surrounding this expression is vast and leads in somewhat different directions, yet it seems most reasonable that the punishment to which they refer is stoning.[107]

Another much disputed provision is a very obscure expression in the Older Västgöta Law which declares that the thief shall be sentenced to "hacking and to hanging, to killing and to death, to peat and to tar."[108] It has been claimed that this Old Swedish alliterating expression describes an ancient painful punishment for theft. It has been interpreted as different successive punishments that the thief had to endure: first he had to suffer a gauntlet; then he was whipped; and, finally, he was hanged. The gauntlet is an alien punishment in Swedish medieval law, and this would be an exceptional case. An alternative interpretation is that the description of the punishments is for the different

104 MESt, Tjuvabalken 3.

105 The possibility to pay a fine when the thief is not caught in the act is established in: MEL, Tjuvabalken 6, 8, 9, 10. KrL, Tjuvabalken 7, 9, 11.

106 DL, Tjuvnadsbalken 2. VmL, Manhelgdsbalken 26 §11. The punishment can also be found in DL, Kyrkobalken 11 for witchcraft. The reading is uncertain and it remains unclear whether the word is *mattit* or *matir/maþer*, that is 'food' or 'man.' I follow Sjödahl and Wessén who have chosen 'food.'

107 Schlyter has two different interpretations. See Schlyter's dictionary: 'strand' and Schlyter, Västmannalagen, Glossarium: 'strand.' Wennström, *Tjuvnad och fornæmi*, 290–291. Holmbäck and Wessén, Dalalagen, Kyrkobalken, footnote 69, pages 18–19.

108 ÄVgL, Tjuvabalken 3.

levels of theft, which are mentioned above.[109] While no certain interpretation can be reached, it is likely that when the law was compiled the meaning had been limited to stipulate hanging for full theft and whipping and cutting off the ears—the 'hacking' in the phrasing—for a lesser theft. Other references in the very same law show that the punishment for full theft is hanging.[110] The punishment for theft in most of the laws is not very obscure; all laws make it clear that the penalty for theft is death by hanging. The laws show a great homogeneity, which strengthens the impression that the death penalty was well established for theft and the choice of execution for men was hanging.

Theft and Individual Criminal Responsibility

Many crimes were regarded as involving the household as a unit; the punishment was a fine, and therefore there was no need to separate the different individuals in the household from each other. The use of the death penalty activated thoughts of how responsibility should be divided between persons of different status and responsibility. The Older and Younger Västgöta Laws provide us with important information on how the concepts of guilt and responsibility were perceived in older times. In these provisions the legislators discuss what to do when several individuals of different status were accused of stealing together. The rules start out by discussing a slave and a so-called *bryte*. A *bryte* was a free or unfree person who managed the owner's farm; he was considered to be of higher status than the average thrall even when he too was a slave. If a slave and a *bryte* stole together, then only the *bryte* was to be hanged. We also find here a provision stating that if a father and son stole together and the son was a legal major, then the son shall be punished too.[111] This demonstrates that it had not always been self-evident that a grown son was criminally responsible when he accompanied a person who was superior in status, such as his father. This reflects a legal thinking where the master of the household was responsible for all people in the home, including males who had reached legal majority. There are no provisions in the other provincial laws concerning this, so it must be a remnant of an older legal trait.

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109 Wennström, *Tjuvnad och fornæmi*, 289. Holmbäck and Wessén, Äldre Västgötalagen, Tjuvabalken, footnote 12. Lizzie Carlsson argues that the provision does not refer to one combined punishment which is the most reasonable interpretation. Lizzie Carlsson, "Den äldre Västgötalagens 'til hogs,' " *Arkiv för nordisk filologi* 71:1–2 (1956): 30.

110 ÄVgL, Tjuvabalken 2 & §1.

111 ÄVgL, Tjuvabalken 2 & §1, 7. YVgl, Tjuvabalken 19, 20, 21.

Poul Gaedeken has shown that individual legal responsibility is something that gradually develops throughout the medieval laws.[112] The results of this study confirm his findings; however, it also nuances them. The development of individual legal responsibility is primarily valid for serious crimes, especially those that lead to the death penalty. Comments regarding individual criminal liability are only found in provisions that concern more serious crimes. Furthermore, the existence of provisions which emphasise that *all* guilty perpetrators should be punished is a sign that the system, and the balance between individual and collective criminal liability, vacillated during the time of the provincial laws. There remained a more collective legal responsibility for lesser offences, those which led to pecuniary penalties and which targeted the household master as responsible for the other members of his farm.

The Older Västgöta Law expressed uncertainties regarding responsibility when a subordinated person committed a crime with someone in a superior position. Another aspect of the same problem is whether a wife was regarded as guilty when her husband committed theft and when she either helped him or let it happen. Many of the laws deal with the problem of separating responsibility when stolen goods were found on a peasant's farm. Here, thoughts on subjective criminal responsibility were activated. These thoughts could be more difficult to combine with contemporary ideas on a master's responsibility for his household as well as ideas on the married couple as a legal unit. The wife was considered innocent in the Younger Västgöta Law if 'her peasant' had stolen before he came home. However, if the stolen goods were found in houses or chests to which she had the keys, then she was considered caught in the act. If this was not the case, the law stipulates that a woman has the right to prove herself innocent with the aid of her relatives if she is accused of theft along with her husband. The members of her original family apparently functioned as her protection in these cases. She had the right to swear an oath that she had not participated in the theft and did not know that he had stolen.[113]

The Östgöta Law separates the case where stolen goods had been found in the married couple's mutual bed—"then both are thieves"—from the situation when the stolen goods were found in another place. In the latter case, the wife had the right to act as a defendant to prove herself innocent with the help of her relatives.[114] By contrast, the Uppland Law considers the wife to be as guilty as the husband if stolen goods are found on the farm.[115] Some of the medieval

112 Gædeken, *Retsbrudet og reaktionen derimod*, 105.

113 YVgL, Tjuvabalken 9, 11, 33.

114 ÖgL, Vådamålsbalken 33.

115 UL, Manhelgdsbalken 47 §6.

laws state that the person who carries the master's keys is to be held responsible for the theft along with the master of the household. This is directly related to female criminal responsibility, since the wife was the person who carried the keys. This was part of her dignity as a married woman and gave her status. Symbolically, one can interpret this as the wife being in charge of the household's indoor space. If a peasant did not have a wife, a female slave could be put in the position to carry the keys. Thus these provisions meant that the wife would be charged with theft along with her husband if stolen goods were found in houses or chests to which she had keys. (This of course would apply also to any other person who was in charge of the keys.) Some provisions emphasise that it should be determined whether others in the household had benefited from the stolen things; if not, then they could be exempted from punishment.[116] The peasant was not necessarily responsible for houses that were located at a distance from the central farmhouses. The master of the household, according to the Older Västgöta Law, had the right to swear that neither he nor his servants knew how the stolen goods had ended up in his outhouses.[117]

The wife was not exempted from responsibility due to the fact that she was subordinate to her husband. The idea that the spouses were to be a legal unity in the sense that he took responsibility and that his superior position as master of the household would mean a protection for the wife cannot be supported in the legal texts. This is interesting since it indicates that the wife was clearly considered to have some independence in relation to her husband; the legislator assumed that she could refuse to help her husband with the theft or with the hiding of the goods. We find an interesting parallel in English law: Bracton argued that if stolen goods were found in a man's house or within his *potestas*, then he should be held responsible and not his wife. However, she was responsible if the stolen goods were found in a room or a cupboard to which she had the keys.[118] Swedish medieval law often emphasised the unity of the household; however, in cases of serious crimes, such as theft, the master of the household did not carry full responsibility. The laws clearly state that a wife is

116 ÄVgL, Tjuvabalken 5 §2. YVgL, Tjuvabalken 9, 11, 12, 33. UL, Manhelgdsbalken 47 §6. HL, Manhelgdsbalken 31 §2. SdmL, Tjuvnadsbalken 12 §5. VmL, Manhelgdsbalken 30 §6. MEL, Tjuvabalken 3, 12 §2. MESt, Tjuvabalken 2. KrL, Tjuvabalken 4, 13 §2. That the wife and the other members of the household must have benefited from the stolen goods are emphasised in: VmL, MEL, MESt and KrL.

117 ÄVgL, Tjuvabalken 7.

118 Kerr, "Husband and Wife in Criminal Proceedings in Medieval England," 234–237. The same tendency in legal practice, see Hanawalt, *Crime and Conflict in English Communities*, 125.

complicit in the theft if the stolen goods are found in the house, even when it is explicitly stated that the husband had personally committed the actual deed.

Women—From Legal Minors to Equals

Theft seems to be a crime that activated legal responsibility for women in a way that few other crimes did. As we shall see, it even generated general statements concerning the criminal liability of women. One can ask if this was due to the fact that women committed more thefts.[119] It cannot be excluded that the legislators were influenced by legal practice, in the sense that the criminal responsibility for women was stressed because women actually stole. However, the reasons for the emphasis on female legal responsibility for theft are primarily to be found elsewhere: in views of the crime itself, in concepts of gender, and in ideological thoughts that regarded the king as a protector of justice.

A wife was regarded as a thief caught in the act if stolen goods were found in places she was in charge of. But how was she to be punished? The Older Västgöta Law states that the matter is settled if the peasant wants to pay the fines for his wife. If he does not, then she is to be bound and taken to court, where the peasant shall be given a second chance to pay her fines. It was regarded as very humiliating to be tied up, and this was most likely done in order to pressure him to pay the fine. It was very problematic if the husband did not want to pay even in this situation. The legislators apparently had no solution to this problem, since it is not addressed. Instead, the law simply states that if the peasant decides to pay the fine, then his wife should be released, and since she is a legal minor she cannot be "hacked or hanged" except for witchcraft.[120] The fact that the woman is a legal minor meant that she was considered equal to a child under the age of 15. The two Västgöta Laws are the only two Swedish laws that expressly state that women are legal minors. The Older Västgöta Law is the only law that takes the consequences of this statement and does not hold

119 Property crimes were the most common crimes for both men and women to commit in fourteenth-century England. Hanawalt, "The Female Felon in Fourteenth-Century England," 261. Karen Jones states that even if late medieval and early modern women suspects of theft were clearly outnumbered by men, it was less so in this case than for other crimes. Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460–1560* (Woodbridge: The Boydell Press, 2006), 33.

120 ÄVgL, Tjuvabalken 5 § 2.

women legally responsible.[121] In the case of theft the legislators had no means to impose a punishment if the husband refused to pay.

The Younger Västgöta Law has also included the general expression that a woman is a legal minor and that she therefore cannot be "hacked or hanged." Just like the Older Västgöta Law, the younger version also stipulates that the peasant should be offered the opportunity to pay his wife's fines and that she should be bound and taken to court if he refuses. However, in this law the legislators apparently thought that some kind of consequence should follow if he once again refused to pay. If her husband refuses to pay, this law sentences a female thief to whipping and to having her ears cut off—the same punishment as a man sentenced for a lesser theft.[122] Therefore, we find that a woman, although regarded as a legal minor, was still sentenced to some kind of punishment. Legislators obviously thought early on that a woman should be held responsible for theft, but they hesitated to which degree. The Younger Västgöta Law chose a contradictory middle way where the legislators try to avoid punishing her directly; however, if this did not work, she would receive a more lenient corporal punishment than would a man.

The same ambiguity and hesitation can be noted in the Östgöta Law, which states that a woman cannot be hanged or even tied up for theft. The latter is a clear departure from the Västgöta Laws, which use binding the woman as a form of leverage. The Östgöta Law states that, if a woman were to steal, then her marriage guardian shall pay a three marks fine the first time and another three marks if she steals a second time. Furthermore, the marriage guardian "shall pay the fine out of her property as much as possible and, if there is not enough, then with his own." These fines are far lower than those a man would have to pay for a full theft. Moreover, women's vacillating criminal responsibility can be demonstrated by the regulation that follows. If a woman were to steal more than twice, then her guardian could choose whether he wanted to pay her fine or not. If he decided not to pay the fine a third time, then the plaintiff had three alternatives: to set her free, "give her life" as it was called; to pay one mark to the king and one to the district and keep her as a slave; or, the third alternative, to stone her to death.[123] The fact that the death penalty was even an option clearly indicates that she was regarded as personally responsible in some sense. There were clearly limits to how much a man had to answer for the crimes of a woman.

121 With the exception of witchcraft.

122 YVgL, Tjuvabalken 33.

123 ÖgL, Vådamålsbalken 35.

The laws were thus concerned and preoccupied with issues regarding women's liability for theft. The legislators hesitated over how much responsibility a man should have for a woman's theft. In the Östgöta Law a general statement follows the quoted paragraph, stipulating that the marriage guardian of a woman shall answer for her until she is engaged; following the wedding, her husband takes over all legal responsibility for her. The regulation in itself is commonplace; it has its equivalent in all laws except the Older Västgöta Law, in which her relatives might be responsible for her even after she was married. The placement of the statement is what attracts attention. It is found not among the rules on marriage but among the provisions on theft. It is located in between the general provision on theft by a woman and one concerning theft by an unmarried or possibly vagrant woman.[124] As with the case of the Older Västgöta Law, the crime of theft in itself created a need to define the legal status and responsibility of a female criminal.

Several of the Svea Laws contain the same type of phrasing regarding a female thief:

> Each time a woman steals, that theft shall be dealt with as all others, and a woman takes the same punishment as a man until it goes on her life. If the sentence goes on her life, then she shall be buried in the earth. A woman may not be broken on the wheel nor hanged.[125]

The quote is from the Uppland Law, but the Västmanna and Hälsinge Laws, as well as the early town law *Bjärköarätten*, contain similar or verbatim regulations.[126] The Dala Law and the Södermanna Law lack regulations concerning female thieves. The quote reveals that the laws have introduced full female criminal liability for theft. They managed to avoid unwanted methods of execution by choosing burial alive.

If we move forward in time to the second half of the fourteenth century, to the time of the laws of Magnus Eriksson, we can note that they are not consistent with each other. The Law of the Realm lacks provisions concerning theft by women, while Magnus Eriksson's Town Law contains the same type of phrasing as the three Svea Laws and the earlier town law. If a woman steals,

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124 ÖgL, Vådamålsbalken 36, 37.

125 UL, Manhelgdsbalken 49 § 2. I have divided the provision in sentences for increased readability.

126 VmL, Manhelgdsbalken 32. HL, Manhelgdsbalken 32 § 1. In HL it is added that a woman shall be buried *alive* which was probably taken for granted in the other laws. Bjärköarätten 11 §3. Bjärköarätten states that a woman shall be buried alive instead of being hanged.

then she shall be "in the same law as a man" and should be sentenced to the same punishment as a man. The exception again is that a woman shall be buried alive for the same type of theft for which a man shall be hanged.[127] Since Christopher's Law from the fifteenth century is a slightly revised version of the older law, it does not come as a surprise that it too lacks a specific provision concerning women who steal.

Criminal Responsibility for Women—A Conscious Endeavour?

The medieval theft regulations display varying views on the level of responsibility for women. Certain laws claim that she is not legally responsible, while the punishment indicates an ambiguous attitude. Other laws make her equally responsible and explicitly specify that. Some of the laws lack provisions. For the very same crime we find great variations. Some completely free her from responsibility; others expressly regard her as equal to a male perpetrator with the exception of the method of execution. How is one to interpret this change? Thorsten Wennström expresses this as an evolutionary development, claiming that it is obvious that the Younger Västgöta Law demonstrates a later evolutionary step than the older version. He claims that the fact a woman could be punished and that she is allowed to take an oath in this case demonstrates that she is on the way to greater independence and majority. He writes that she is no longer allowed to hide behind the back of her guardian.[128] He gives no explanation to why this development takes place.

I claim that criminal responsibility for women was connected to attempts to individualise both the concept of guilt and the punishment. The driving force behind this was primarily the royal power. In fact, if we look at the problem from another perspective, we can attempt to see if this development corresponds to changes in legal practice. In court records from the fifteenth century we find an interesting tendency: according to the court rolls from the Stockholm courthouse, women were not punished as harshly as men for theft.[129] Despite the fact that Magnus Eriksson's Town Law explicitly punishes women just as harshly as men, the Stockholm court did not. It consistently sentenced female thieves to more lenient punishments than male ones and, in particular,

127 MESt, Tjuvabalken 3 §2.

128 Wennström, *Tjuvnad och fornæmi*, 83–84. Also Niklas Ericsson emphasises chronological differences and implies a legal evolution. Ericsson, *Rätt eller fel?*, 196, 239.

129 Österberg and Lindström, *Crime and Social Control*, 110.

avoided sentencing women to death. Full female criminal liability for theft thus had not been implemented even at this much later time period.

Some scholars have argued that the legal courts were closer to the mindset of ordinary people than were the laws. For example, Niklas Ericsson claims that the law was seen as too harsh, and this was adjusted in the courts, which judged more leniently.[130] This view is problematic for several reasons. First of all, court records cannot automatically be taken as evidence of popular views. Second, this is an incorrect image of how laws were perceived in medieval society. Warren Brown aptly summarises the view of laws and norms when he states that: "Norms were present, understood, and respected; but they were also manipulated, used as bargaining chips, and sometimes ignored in favour of more expedient solutions to conflict."[131] The laws functioned as ideological and moral guidelines, but they were never obeyed or followed literally. The relationship between laws and legal practice was far more dynamic and complex than that. Furthermore, Eriksson's argument clearly does not apply to all cases of theft, since the court did not hesitate to follow the law and sentence men to death. The court records reveal that criminal liability for women was *not* something that developed by itself in accordance with legal practice. In fact, the court records indicate the opposite: criminal liability for women was consciously introduced from above and often in contradiction to legal practice. The contradictions within the legislation further stress that this was a problematic issue for the legislators as well.

We must seek the explanation for the introduction of legal liability for women elsewhere. Several royal statutes express the notion that theft and murder were considered to be a part of royal jurisdiction and responsibility.[132] Let us return to the Östgöta Law and the ambiguous regulation on theft by a woman. This provision contained three alternatives for the plaintiff if the woman's guardian refused to pay the fine. The scribe has then added this: "This law was given by king Magnus." Åke Holmbäck suggested that the king in question is Magnus Birgersson Ladulås (1275–1290).[133] No statute from the time of Magnus Birgersson that imposes this rule can be found, although this certainly

130 Ericsson, *Rätt eller fel?*, 37, 245.

131 Warren Brown, "The Use of Norms in Disputes in Early Medieval Bavaria," *Viator* 30 (1990): 38.

132 From the reign of King Birger Magnusson: DS 1182, DS 1209, DS 1396 and DS 1437. The dukes Erik and Valdemar claimed the same rights: DS 1514, etc. From the reign of King Magnus Eriksson: DS 3001.

133 ÖgL, Vådamålsbalken 35. Holmbäck and Wessén, Östgötalagen, Vådamålsbalken, footnote 87.

does not exclude the possibility that it once existed. The provision was nonetheless believed to come from the king and the royal council. The additional comment also demonstrates that the legislator or the scribe thought that it was necessary to underline who was responsible for the regulation. It is reasonable to assume that the regulation therefore was either new or controversial—or, indeed, both. It therefore needed extra support from the king. We have seen above that the various laws introduced different levels of criminal liability for women. In this regard the Östgöta Law is in between the Västgöta Laws and the Svea Laws. The introduction of female legal responsibility does, indeed, seem partly to be a chronological development; however, it also shows strong regional traits. The Skara Statute from 1335, which was directed to the people of Västergötland and Värmland, demonstrates that legal responsibility for women was part of a conscious effort. This royal statute is famous for its enforcement of the abolition of slavery, but it contains other interesting clauses as well. Item number seven in the list stipulates that a "woman shall pay for all her crimes like a man, and especially those that will go on her life."[134] The latter naturally refers to those crimes leading to the death penalty. This again emphasises that it was particularly important that women were held liable and were punished for serious crimes. The statute demonstrates that the western parts of Sweden, where the Västgöta Laws were valid, might have been particularly reluctant to introduce female criminal liability. It thus reminds us of the regional traits in the medieval legislation.

The development of female criminal liability can also be linked to the increasing use of the death penalty in this period. The introduction of the death penalty for serious crimes, and its increasing use, has been connected to the king and the central authorities. In Swedish medieval law the use of the death penalty indeed becomes more and more frequent; one can especially detect an increase from the provincial laws to the 1350 Law of the Realm. The death penalty in itself must have led to a more individualistic view of criminal responsibility. The death penalty is personal and affects the individual perpetrator in a way that a fine can never do. When the death penalty was introduced for more and more serious crimes, it made the male guardian's responsibility problematic. It seems obvious today that one cannot execute someone for the crimes committed by another person. This clearly was not self-evident in medieval Scandinavia. Blood revenge, for example, could be exerted upon a person's relatives, not necessarily on the person himself. The same tendency can also be found in the oldest Swedish medieval law: a man could indeed be sentenced to outlawry for the crimes of his female relative. Outlawry meant

134 Skarastadgan, DS 3106.

that one had no legal protection and could be exposed to revenge killings, presumably by the victim's relatives. This will be discussed further in the chapter on lethal violence, but it should be noted that this was very rare. It only exists in one provision, but it indicates that, according to an older legal tradition, it was acceptable to penalise one person for deeds committed by someone else. The Church strongly opposed the idea that a person could be punished for the crimes of another. The medieval Church increasingly stressed a personal concept of guilt, and this might have been emphasised even more for serious crimes. A crime had to be confessed and the punishment accepted in order to fully be able to expiate it. Indeed, suffering the death penalty could be seen as a way to expiate your crime and, thus, as a way to salvation.[135] The royal Skara Statute indicates that criminal responsibility for women was not fully accepted in the 1330s; it also reveals that enforcing it was part of a conscious ideological process.

Male and Female Death Penalties

The death penalty for theft was well established. Some scholars have seen this as a common Germanic heritage. The Older Västgöta Law only rarely imposes death penalties, and the fact that hanging is used in this law is indeed a sign that it was well established and quite possibly very old in origin. As we have seen, the general capital punishment for men for so-called full theft was hanging; alongside the possible, yet uncertain, alternatives mentioned above. Court records from the late medieval cities confirm this: it was accepted procedure and not at all unusual that male thieves were sentenced to hanging in Stockholm during the second half of the fifteenth century.[136] Despite the frequency with which it was used, it was not considered a merciful punishment; on the contrary, it was seen as both painful and shameful. Indeed, to be decapitated instead of hanged was regarded as a form of mercy.

We have already seen that the Swedish laws explicitly avoided hanging for women and prescribed other methods of execution. Was this a general phenomenon? Was hanging a male death penalty? It has been claimed so, but Jean-Marie Carbasse argues that it is exaggerated to claim that women could not be sentenced to hanging. A case where a woman was hanged in fifteenth-century Paris has repeatedly been used as evidence that this method of execution was not used for women prior to this date. After the hanging a bystander

135 Cohen, *The Crossroads of Justice*, 150–155.

136 Österberg and Lindström, *Crime and Social Control*, 110.

wrote that it had never been seen before. But Carbasse writes that the phenomenon was, by no means, unheard of prior to this time.[137] Of course, this does not imply that it was common to hang women. In contrast, Esther Cohen states that hanging of female criminals began only in the fifteenth century and remained the exception.[138] In Swedish medieval law, hanging is reserved for men. There is not a single provision that stipulates hanging for female perpetrators. There seems to be no evidence of the punishment being used for women in legal practice either, at least not in written sources. Indeed, the Uppland, Västmanna, and Hälsinge Laws, as well as the older and younger town laws, all emphasise that a woman cannot be hanged or broken on the wheel. A female thief was to be buried alive instead, while the Östgöta Law stipulates stoning as an alternative punishment when fines were not paid.

This also corresponds to continental European tendencies, which regarded stoning and being buried alive as death penalties suitable for women.[139] How can this be explained, and how can we understand medieval views of different methods of execution? Unfortunately, the medieval jurists and legislators were very taciturn about their reasons for various laws and rules, in Sweden as elsewhere.[140] As mentioned, hanging was considered a shameful punishment. Being buried alive did not have a shameful character. A statement can be found in the Danish town law of Tønder from 1243, which claims that women "for their female honour's sake" should not be hanged, but buried alive.[141] According to this town law, hanging was contrary to female honour, an honour that is usually connected to the female body and to sexuality. Folke Ström writes in connection with this: "The aversion to hanging women has been considered to have been dictated by considerations of decency, with what justification may be left

137 Jean-Marie Carbasse, *Histoire du droit pénal et de la justice criminelle* (Paris: Presses Universitaire de France, 2006), 287. Jean-Marie Carbasse, "La peine en droit français," in *La Peine. Recueils de la Société Jean Bodin pour l'Histoire comparative des institutions*, LVI, Part 2 (Brussels: De Boeck University, 1991), 169.

138 Esther Cohen, " 'To Die a Criminal for the Public Good.' The Execution Ritual in Late Medieval France," in *Law, Custom, and the Social Fabric in Medieval Europe: Essays in Honor of Bryce Lyon*, ed. Bernard S. Bachrach and David Nicholas (Kalamazoo: Medieval Institute Publications, 1990), 304. One exception might be medieval England. Hanging was clearly used for women here and by the way it is described it was not out of the ordinary. Hanawalt, *Crime and Conflict in English Communities*, 125, and footnote 29. Hanawalt, "The Female Felon in Fourteenth-Century England," 265.

139 Gonthier, *Le châtiment du crime au Moyen Âge*, 148, 160–164.

140 Cohen, "To Die a Criminal," 297–298.

141 "pro honore muliebri tumulabitur," Tønder stadsrätt 1243 chapter. 52, referenced in Poul Meyer's article 'Dødsstraf' in KLNM.

open to debate."[142] Although Ström does not explicitly state it, "the decency" in question must be interpreted as referring to an assumption that the body of the hanged person was put on display naked. This was unsuitable for a woman.

Shulamith Shahar argues that the scholarly discussion of different death penalties for men and women does not sufficiently take into consideration how painful they were. She claims that the point was that women should be sentenced to the most painful death penalties.[143] With its claustrophobic character and slow suffocation, being buried alive invokes terror in a modern-day reader. At the same time, hanging was not necessarily a fast and effective method of execution during the Middle Ages. It rarely led to the breaking of the neck; instead, the victim slowly suffocated.[144] In other words, it is hard to compare levels of pain in this case. It cannot be excluded that the legislators wanted to threaten women with harsher punishments, but it certainly cannot be confirmed either: not by the character of the method of execution and not by contemporary sources.

Esther Cohen also refutes the idea that "decency" explains why female criminals were buried alive. She argues that this line of thinking is more Victorian than medieval. Public nudity was neither rare nor very shocking during the Middle Ages. The female body was accepted far more for what it was at this period in history than it would be later.[145] Her own analysis of the reasons behind the death penalties is worth quoting:

> If women were by nature impure and dangerous, any woman criminal was in consequence far more dangerous than her male counterpart. In order to be effective, her punishment had to act as a ritual extraction of evil and communal purification. Once dead, she was highly likely to come back as a maleficent revenant, intent upon harming the living. Hence, any physical remains of an executed woman criminal had to be

142 Folke Ström, *On the Sacral Origin of the Germanic Death Penalties* (Stockholm: Wahlström & Widstrand, 1942), 121, especially footnote 90.

143 Shahar, *The Fourth Estate*, 20–21.

144 Another technique was however also used and this guaranteed instant suffocation. R.C. Finucane, "Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages," in *Mirrors of Mortality. Studies in the Social History of Death*, ed. Joachim Whaley (New York: Routledge, 1982), 49–50. Audun Kjus also reports that another type of gallows is described in one of Snorri's sagas. Audun Kjus, *Død som straff i middelalderen* (Oslo: Unipub, 2011), 110–112.

145 Cohen, *The Crossroads of Justice*, 97.

> thoroughly disposed of. The principle of apotropaeics, or the removal of the harmful dead, was clearly articulated in women's sentences.[146]

Still, the medieval explanation expressed in the town law of Tønder need not be completely rejected. It is interesting that the town law claims that a female thief, whose honour would be strongly put in doubt by her crime, still seems to have retained the type of honour called "female honour." This obviously confirms that there was a female honour that was separated from any kind of general or male honour during the thirteenth century in the Nordic countries. This honour must have been connected to her body and, especially, the displaying of her body. Cohen has a point in the fact that the chosen method of execution destroys the female body. A female criminal might have been terrifying to medieval society, at least on a theoretical level. The female body was impure and charged and should not be displayed, whether for her own female honour's sake or for the sake of the viewers. The male body, however, could not only be displayed but also could be used as a deterrent for other possible criminals. A hanged man was often left on the gallows as a sign and a threat. This does not contradict the idea of a female honour that was linked to her body.

It is obvious that the methods of execution underline perceived bodily differences between the sexes. A male body and a female body were seen as separate and were to be kept separate also in death. In fact, ideas of female and male bodies and how they were to be executed may serve to explain why female criminal liability was emphasised for theft. We have established that the man was the general legal subject and that this meant that all punishments referred to male perpetrators in first place. Only when this for some reason caused problems would the legislators indicate that a woman should be punished for the crime in question. If the punishment for the male standard person was considered unsuitable for a woman, specific provisions for women became necessary.

The Character of the Crime

A third explanation to why theft activated women's responsibility has to do with the character of the crime. Unlike robbery, theft was a shameful crime.

146 Cohen, *The Crossroads of Justice*, 96. Archaeologists have found evidence that the corpses of criminals sometimes were manipulated, for example the head could be placed between the legs or turned down to face the ground while the rest of the body remained on its back. Kjus, *Død som straff*, 127.

To be called a thief was a punishable insult, while there was no equivalent insult based on robbery. The choice of execution methods reflects these views. Decapitation was the general punishment used for robbery, and this method of execution was not shameful. In fact, it was considered a form of mercy for a condemned thief to be decapitated rather than hanged. Thus, in accordance with contemporary perceptions, robbery was punished less harshly than theft, and its punishment was one that was used for the upper layers of society. The social status of the robber was assumed to be higher than that of the thief. These two crimes had their own distinct character. Robbery was an open act in which the robber did not try to hide his deed. As noted, the use of violence and weapons were surely often needed when taking something of value. Use of violence or superior force was considered male, as was the use of weapons. Theft was committed secretively and deceitfully. According to the medieval worldview as it is reflected in the laws, there were two spheres of reality. One was what was open, visible, publicly announced, and generally known. The other was a sphere of the hidden, secretive, and unknown. The first one was connected to men and manly behaviour, while women were linked to the hidden and secretive sphere. We find the description of women as deceitful, full of lies, and ready to hide their actions in the famous misogynous *Malleus Maleficarum* from 1487:

> And it should be noted that there was a defect in the formation of the first woman, since she was formed from a bent rib, that is, a rib of the breast, which is bent as it were in a contrary direction to a man. And since through this defect she is an imperfect animal, she always deceives.[147]

The idea that women are better at hiding their crimes has lived on long, even in scholarly research.[148] This view of women as connected to the night and to the dark side was common in medieval Europe. It seems to be part of a widespread cultural pattern that grows stronger during the late Middle Ages and that originated in both the Church and church writings as well as more popular beliefs. The fact that female legal responsibility was established for theft but not for robbery might therefore also be connected to the idea that a woman was thought to act in secretive ways, while men acted more openly. It was thus easier for the legislators to imagine a female thief than a female robber.

147 *The Malleus Maleficarum of Heinrich Kramer and James Sprenger. Translated with Introductions, Bibliography, and Notes by Rev. Montague Summers* (New York: Arrow, 1971), 44.

148 Hanawalt, *Crime and Conflict in English Communities*, 116–117. Hanawalt, "The Female Felon in Fourteenth-Century England," 255–257.

CHAPTER 3

Assault and Lesser Violence

Introduction

Aggression and violence directed at another person's property was an expected and well-known phenomenon in local communities. This was part of an honour system, a culture in which violence was used for retribution and revenge. The law texts do not indicate what possibly could have led to the property destruction or maiming of animals; nor do they mention how this would affect the outcome in court. The destruction of another person's property was seen as part of conflict strategies and as a reaction to an insult of some sort. The many fights and instances of assault have been interpreted in this way as well. Indeed, the most common crimes in late medieval Swedish cities were assaults, brawls, and lethal violence.[1] The frequency of violence in various medieval regions has been discussed extensively by scholars. In an older scholarly tradition, the Middle Ages (in particular the latter part) were portrayed as a time of terror, when violence reigned and people lived in constant fear.[2] In turn, medieval people were at times described more or less as children, "with few emotions outside fear and anger" and little ability to control these emotions or impulses.[3]

More nuanced perspectives can be found in recent studies of medieval violence or conflict resolution. To start with, Gert Althoff reminds us that well-developed systems of non-violent conflict resolution also existed during the Middle Ages, and we should not let our fascination with violence downplay these aspects of medieval society.[4] Other scholars, such as Swedish historian Eva Österberg, downplay the frequency of unlimited violence and terror in

1 Österberg and Lindström, *Crime and Social Control*, 43–47, 78. Eva Österberg, "Brott och social kontroll i Sverige från medeltid till nutid," *Norsk Historisk tidsskrift* 70 (1991): 154. Österberg, *Folk förr. Historiska essäer* (Stockholm: Atlantis, 1995), 133.

2 Österberg and Lindström, *Crime and Social Control*, 10.

3 William Ian Miller, "Deep Inner Lives, Individualism and People of Honour," *History of Political Thought* 16:2 (Summer 1995): 190.

4 Gerd Althoff, "Satisfaction: Peculiarities of the Amicable Settlement of Conflicts in the Middle Ages," in *Ordering Medieval Society: Perspectives on Intellectual and Practical Modes of Shaping Social Relations*, ed. Bernhard Jussen (Philadelphia: University of Pennsylvania Press, 2000), 271.

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older societies.[5] Many scholars have also encouraged us to explore the thinking behind the violence. Instead of depriving medieval people of the ability to think and act rationally, we should try to find the logic within the different legal and moral systems we meet. Medieval violence cannot be reduced to just spontaneous, illogical outbreaks; it should be considered according to its own logic, rules, and honour codes.[6]

That there is a system or logic to the violence does not imply that violence occurred rarely; on the contrary. It is impossible to understand most medieval societies without taking into account the constant presence of violence and, furthermore, the acceptance of violence. Violence, or the threat of violence, was an integral part of society.[7] Claude Gauvard writes that violence is found at the core of medieval society and, moreover, that violence and the use of violence were highly valued.[8] However, as stated, the violence in question was not necessarily uncontrolled or uncontested. There were limits and rules for the use of violence; there were acceptable and unacceptable forms of violence as well as legal and illegal violence. It is important to keep in mind the difference between these norms. A person guilty of unacceptable forms of violence could easily be punished according to the norms of both the local community and the legal system. Violence that was acceptable in the views of the local community, however, could still be illegal.

The difference between acceptable and unacceptable violence, as well as legitimate and illegal violence, was constantly being negotiated. It is clear that even lesser cases of assault, such as a blow or a slap, were brought to court in late medieval Sweden. It has been argued that since so many cases of lesser assault were brought in front of the court, they must have been taken seriously. The frequency of these cases can also be explained by the way that people used legal courts. In pre-modern Sweden, participation in court activities was not only required by authorities but also was something actively sought

5 Österberg, *Folk förr*. 78, 82, 131–132, 168.

6 Claude Gauvard, *"De grace especial" Crime, état et société en France à la fin du Moyen Âge* (Paris: Publications de la Sorbonne, 1991), 11. Österberg, *Folk förr*, 133–134, 143, 168. For a different view see: A.J. Finch, "The Nature of Violence in the Middle Ages: An Alternative Perspective," *Historical Research. The Bulletin of the Institute of Historical Research* 70:173 (1997): 264, 267.

7 Carbasse, *Histoire du droit pénal et de la justice criminelle*, 357.

8 Claude Gauvard, *Violence et ordre public au Moyen Âge* (Paris: Picard, 2005), 16. Claude Gauvard, "Le roi de France et le gouvernement par la grâce à la fin du Moyen Âge: genèse et développement d'une politique judiciaire," in *Suppliques et requêtes. Le gouvernement par la grâce en Occident* (*XII^e–XV^e siècle*), ed. Hélène Millet (Rome: École Française de Rome, 2003), 373.

by the peasants. The court assembly dealt with criminal cases but also with other important matters that concerned, for example, defence or farming. The courts were also used to settle conflicts. Acts of violence or a settlement at court were two parallel ways to resolve conflicts; thus, Eva Österberg states that court dealings and fighting were two alternative ways of both expressing and fending off conflicts.[9] They did not in any way exclude each other.

In many cases, the assessment of what was acceptable was entirely dependent upon power relationships. As Guy Halsall states: "Precise political circumstances largely determined the clarity of the definition of legitimate or illegitimate violence."[10] Even if many of these definitions and negotiations took place at court, one can clearly find traces of them in the law material as well. The legislators continuously tried to delimit and define violence. We have seen that one division of acceptable versus unacceptable deeds was determined by whether they took place openly or secretly. Any activities that took place beyond the borders of what was open, visible, and well known were judged completely differently. Acts committed at night or secretively were not honourable and could arouse great fear.[11] This will be analysed in more detail in the chapter on lethal violence. Violence can refer to many different types of actions. For example, one can talk about verbal or mental abuse as a form of violence. Here, the term 'violence' refers to physical violence that has caused or intended to cause bodily harm. Both 'lesser violence' and 'assault' denote the type of violence that did not lead to death. Regardless of whether it concerned lesser or lethal violence, the assessment of violence was never simple or clear-cut. In order to understand the judgements and provisions, one must consider who the perpetrator and the victim were, which type of violence was used, and when and where it took place. For lesser violence and assault, the division between acts committed openly or secretively did not always follow the patterns we have seen before. In fact, certain violent acts could be condemned just because they took place in public.

This chapter, and the following one, will argue that violence indeed was at the core of Swedish medieval society. It was seen as a way to solve conflicts but also as a way to define gender and measure social status. In accordance with that line of thinking, violence will be related to the concept of honour throughout. Access to violence and weapons defined one's position, and both

9 Österberg, *Folk förr*, 134.

10 Halsall, "Violence and Society: An Introductory Survey," 9.

11 Claude Gauvard, *"De grace especial"*, 939. Aron Gurevich, *Feodalismens uppkomst i Västeuropa*, trans. Marie-Anne Sahlin (Stockholm: Tiden, 1979), 133. Halsall, "Violence and Society: An Introductory Survey," 15–16. Lindkvist, "The Politics of Violence," 143.

of these elements were closely linked to power. This chapter will also explore the variation with which the laws describe different injuries and wounds. These descriptions show an elaborate system for evaluating assault: the severity of the injuries was literally read on the body of the victim. Lastly, violence in different spheres, both spatial and ideological, will be discussed in an attempt to capture varying views on violence.

Violence, Gender, and Social Status

Some scholars have claimed that violence filled a function on most levels in society; everyone used violence to get and to keep honour and integrity—not just king and aristocracy but also peasants and craftsmen, women and men. Violence was a way to establish and defend one's position in the local community. Violence was "normative social practice" and to a certain extent it was accessible to all, regardless of gender and social status. Violence as a social practice and discourse was used to create and consolidate both individual and group identity.[12] This interpretation can be complemented by that of other scholars who have emphasised that during the medieval period violence increasingly became part of the social identity of the aristocracy.[13]

Not everyone had access to and used violence to the same extent. It is hard to deny that use of violence was—and is—strongly gendered. Simply put, far more men than women committed violent acts and violent crimes in the Middle Ages.[14] In fact, masculinity has been tied to the use of violence. Recent scholarship has emphasised that we need to distinguish between different masculinities in the Middle Ages. It seems evident: some men had power, while others did not. Social status affected how men looked upon themselves and how they were seen by others. Different masculine ideals prevailed in different strata of society.[15] In Nordic studies we find a certain emphasis on what could be called a 'hegemonic masculinity,' to use R.W. Connell's terminology.

12 Mark D. Meyerson, Daniel Thiery and Oren Falk, "Introduction," in *'A Great Effusion of Blood'? Interpreting Medieval Violence*, ed. Mark D. Meyerson, Daniel Thiery and Oren Falk (Toronto: University of Toronto Press, 2004), 5–6.

13 Gauvard, *Violence et ordre public*, 13. For an earlier time period: Halsall, "Violence and Society: An Introductory Survey," 3–4, 30–31.

14 Österberg and Lindström, *Crime and Social Control*, 49.

15 Karras, *From Boys to Men*, 151–152. Jeffrey Jerome Cohen and Bonnie Wheeler, eds., *Becoming Male in the Middle Ages* (New York: Routledge, 2000). Clara A. Lees, Thelma S. Fenster and Jo Ann McNamara, eds., *Medieval Masculinities: Regarding Men in the Middle Ages* (Minneapolis: University of Minnesota Press, 1994). Jacqueline Murray, ed.,

Her term refers to the fact that even if there are multiple masculinities in society, they are also placed in hierarchies. In most societies we find a dominant masculinity type to which other forms of masculinity are compared and to which they submit. In any given society or group it is the "most honored way of being a man".[16] A simpler term would perhaps be an 'all-prevailing masculine ideal.'

In his pioneering study *The Unmanly Man*, Preben Meulengracht Sørensen introduced the idea of a hegemonic aggressive masculinity during the Viking and early medieval era. The very essence of this masculinity was to never appear weak or be regarded as a coward. Everyone, regardless of sex was evaluated according to this behavioural ideal. Subordination was humiliating; therefore, the worst insult for a man was to be compared to a woman.[17] Both physical and symbolic strength were absolutely decisive for a man: "A man was a man only as long as he had the strength, courage and virility to be so."[18] In a sense, a man *was* his ability to defend himself and his dependants.

Many scholars seem to have difficulties accepting a strong misogyny during the Viking and early medieval period, which explains their problems interpreting what it meant to be a woman in this world. Preben Meulengracht Sørensen, for example, writes that it was not negative for a woman to be a woman and, therefore, to be subordinate.[19] That argument is very hard to understand after the fiercely male-oriented and misogynistic discourse that he describes. Another scholar has suggested that there was only one set of positive qualities, and those were male. By contrast, it was neutral for a woman to have the traits that were considered to be negative in a man: to be passive, a coward, and to lack initiative.[20]

Conflicted Identities and Multiple Masculinities: Men in the Medieval West (New York: Garland Press, 1999).

16 R.W. (Raewyn) Connell and James Messerschmidt, "Hegemonic Masculinity: Rethinking the Concept," *Gender & Society* 19:4 (2005): 832. Connell's concept "hegemonic masculinity" has been very influential but also criticised. In the article "Hegemonic Masculinity: Rethinking the Concept" Connell and Messerschmidt attempt to outline this criticism and describe the ways in which the concept needs to be redefined.

17 Preben Meulengracht Sørensen, *Norrønt nid: forestillingen om den umandige mand i de islandske sagaer* (Odense: Odense University Press, 1980), 25, 106–108. Preben Meulengracht Sørensen, *The Unmanly Man: Concepts of Sexual Defamation in Early Northern Society*, trans. Joan Turville-Petre (Odense: Odense University Press, 1983), 21.

18 Meulengracht Sørensen, *The Unmanly Man*, 87.

19 Meulengracht Sørensen, *Norrønt nid*, 29.

20 Else Mundal, "Den doble verknaden av kristninga for kvinnene i den norrøne kulturen," *Nytt om kvinneforskning* (Oslo) 2 (1999): 75.

It was thus expected that a woman would be a coward and would not fight. But how was a violent woman viewed in the Middle Ages? The answer to this question will vary. For example, Ross Balzaretti states that female violence puzzled the early medieval lawmakers. He stresses that the use of violence was something that defined and sustained the social categories of woman and man. The use of violence and bearing arms was part of masculinity for a certain group of free men. When a woman broke this rule and acted violently, it was a serious breach of the code of conduct, and she was seen to have dishonoured her gender. A woman who tried to be a man was seen as dangerous.[21] Other scholars provide a different view of female violence. Nira Gradowics-Pancer argues that certain forms of violence must be de-gendered. Violence was seen as a social status marker among Merovingian aristocratic women, who used it as often as men.[22] In stark contrast to Balzaretti's conclusions, she states that "in order to understand women's violent behaviour, one must cease to use the notion of gender as a central concept."[23] However, Gradowics-Pancer fails to discuss which type of violence the Merovingian women used, because they did not necessarily use violence in the same way as men. If access to weapons and battle-like violence had been the focus, she might have come to a different conclusion.

In her article entitled "Regardless of Sex: Men, Women, and Power in Early Northern Europe," Carol Clover develops Meulengracht Sørensen's idea of the aggressive male as the norm. She discusses the consequences this had upon women and other groups and argues that in the early medieval Nordic countries it was always negative to be subordinate. In this sense, there was no positive femininity. Clover claims that the sex of an individual was less important in this society; everything centred on strength and the ability to defend oneself, regardless of the person's sex. Woman was a normative category, but it was not a binding one.[24] On an ideological level there were two categories of people: those who could defend themselves, and those who could not. Those who held power and could defend themselves were generally men; however, this group did not necessarily exclude women. The group of weak and defenceless was more differentiated; in this layer, we find most women, slaves, and children,

21 Balzaretti, " 'These are Things that Men do, not Women,' " 187–188.

22 Nira Gradowicz-Pancer, "De-gendering Female Violence: Merovingian Female Honour as an 'Exchange of Violence,' " *Early Medieval Europe* 11:1 (2002): 4.

23 Gradowicz-Pancer, "De-gendering Female Violence," 18.

24 Carol Clover, "Regardless of Sex: Men, Women, and Power in Early Northern Europe," *Speculum* 68 (1993): 371–372, 379.

as well as older and physically weak men.[25] Clover claims that a change of this societal model takes place; she talks about a "Europeanization" and "medievalization" of the Nordic countries which starts with Christianisation. These changes bring with them a new classification of individuals in which gender becomes a more important category and the norms for men and women become more clearly defined.[26]

Violence, strength, and ideas concerning the protection of dependents provided the basis for different hierarchies in Swedish medieval law. In the laws studied here, violence formed social relationships, defined individual status, and determined a person's possibilities to control his or her life. The meaning of the word 'violence' in Old Swedish testifies to this. The word *vald* not only meant 'violence' or 'force' but also meant 'power' or 'dominion.' 'Violence' could be used in combination with 'man'—a *valdsmaþer*—and this term signified either a powerful man or a violent ruler. That the term equalled the two is revealing. Violence and power were intimately connected, and not simply on an ideological level; they were linked on an individual level as well. A person with power was a person who had the possibility and ability to use violence. One can also flip this around: the person who could and would use violence was the one who held power. Equally interesting is the fact that the word for violence (*vald*) also meant 'a right,' meaning a right to do something or the right to an object or to a particular status.[27] Violence, power, and legal rights were obviously very closely linked.

Furthermore, regardless of how female violence is interpreted, one can conclude that the use of violence and masculinity were intimately connected in all Nordic countries. Icelandic medieval law, for example, prohibited women from bearing arms, as well as wearing men's clothes.[28] Many Icelandic sagas demonstrate that adult masculinity meant the use of weapons. The right to

25 Clover, "Regardless of Sex," 380.

26 Clover, "Regardless of Sex," 385–386. Jon Viðar Sigurðsson has criticised several American scholars for creating a fictive "saga society" by mixing and matching completely different sources without paying attention to their age. Jon Viðar Sigurðsson, "Noen hovedtrekk i diskusjonen om det islandske middelaldersamfunnet etter 1970," *Collegium Medievale* 18 (2005). Among those criticised is the legal historian and saga scholar William Ian Miller, whose works are cited throughout this book. However, both Clover and Miller's results function as excellent models to understand societal change on a larger level. Their works might be less useful if one seeks to detail the Icelandic historical chronology.

27 Söderwall's dictionary: 'vald' and 'valdsmaþer' under 'vald.' Schlyter's dictionary: 'Vald' and 'Valdsmaþer.'

28 Breisch, *Frid och fredlöshet*, 82, 84. Women were prohibited to carry weapons also in Langobard law. Balzaretti, " 'These are Things that Men do, not Women,' " 182.

bear and use weapons separated the man from the child, the thrall, and the woman.[29] Also in Swedish medieval law, possession and use of weapons proclaimed that a man had reached majority and marked the difference between boyhood and the new adult life. Interestingly enough, this right was also linked to the ability and duty to pay taxes.[30] This assumes, then, not only that the man was free but also that he owned land, since only self-owning men paid taxes. All adult men—peasants—who had reached majority were supposed to own and carry what was known as 'folk weapons.' These mandatory weapons and armour were meant to be used to defend one's district or the realm, if they were under attack. The number of folk weapons required was either four or five, depending upon which local jurisdiction we look at. They consisted of shield, sword, spear, and iron hat or, alternatively, sword or axe, chain mail, iron hat, shield, and bow.[31]

Several of the Svea Laws indicate that weapons were part of a man's identity. These laws contain provisions regulating property issues when a married couple without children separated or if one of the spouses died. In these cases the man was always entitled to his horse and his weapons, "with which he can go to battle if so happens." The woman was entitled to her Sunday clothes that she would wear to church.[32] We also find in the Hälsinge Law a provision referring to something called 'battle inheritance.'[33] This has been interpreted as rules for inheritance of folk weapons.[34] This inheritance strictly followed the male side of the family and, unlike the general inheritance rules, excluded women.

The laws also differentiated between different types of weapons. Folk weapons were honourable weapons. In contrast, there were also so-called 'murder weapons.' The fine increased substantially if a person were to attack another using a murder weapon. A murder weapon sounds quite threatening, but the laws describe these weapons as everyday tools used to attack a person. The

29 Agneta Ney, "Vapen och verbalt vett: om genusidentitet i den norröna litteraturen," in *Manligt och omanligt i ett historiskt perspektiv*, ed. Anne Marie Berggren (Stockholm: Forskningsrådsnämnden, 1999), 51. This is not a specifically Nordic trait. See: Halsall "Violence and Society: An Introductory Survey," 3–4. Balzaretti, " 'These are Things That Men do, not Women,' " 182.

30 UL, Manhelgdsbalken 11 §2.

31 KLNM, 'Folkvapen,' article by Gerhard Hafström. HL, Rättegångsbalken 14 §2. Also see: SdmL additamenten 2. Holmbäck and Wessén, Dalalagen, Manhelgdsbalken, footnote 61.

32 UL, Ärvdabalken 10. VmL, Ärvdabalken 10. SdmL, Giftermålsbalken 6. HL, Ärvdabalken 10.

33 HL, Ärvdabalken 15.

34 Another interpretation is that blood vengeance could be inherited. Holmbäck and Wessén, Hälsingelagen, Ärvdabalken, footnote 111.

laws mention carving knives, table knives, or an arrow as murder weapons.[35] The fine for attacking a person with this type of weapon was higher and the fine could go directly to the king as a violation of the peace.[36] These weapons were considered less honourable because they were shorter, less visible, and could be used suddenly, without giving the other person a proper chance to mount a defence. They were more devious than the visible and public swords or spears and, therefore, created fear and anxiety. The term 'murder' was, as we shall see in the next chapter, an indication of how the attack had happened. A murder weapon allowed for an assault that was done deceitfully, and this is why the use of these weapons warranted increased fines.

Not all men were allowed to carry weapons, and certain types of weapons also seem to have been limited to specific social groups. Thralls were prohibited from carrying weapons. A provision in the Östgöta Law states that a thrall is not 'folk free.' This expression has been interpreted as prohibiting the thrall from carrying folk weapons.[37] As mentioned, several scholars have claimed that the use of violence increasingly became connected to male aristocrats, who saw violence as part of their privileges. Attempts were made to link and restrict the use of violence to the aristocracy and the king also in the Nordic countries.[38] The aristocracy became more and more defined as a group, and its functions in medieval society were war and defence. Certain Swedish laws forbad other groups to carry weapons reserved for the aristocracy. According to the Younger Västgöta Law, if a miller or an ordinary peasant—"those who are not warriors"—carried a certain type of shorter sword, they could be fined.[39]

Magnus Eriksson's Law prohibits peasants from carrying daggers and hunting knives. The fine was limited to three marks; however, if the peasant did not manage to pay this fine, then the district judge was supposed to take a knife and stab it through his hand.[40] The Law of the Realm connects courage and manliness to the aristocracy. In this law, a peasant who wanted to become an aristocrat (*frälse*) was to present his horse and weapons at a so-called weapons inspection. However, this was not enough; his personal abilities to be a real

35 Holmbäck and Wessén Dalalagen, Manhelgdsbalken, footnote 61. SdmL, Manhelgdsbalken 26 §3.

36 ÖgL, Dråpsbalken 15 §1, Vådamålsbalken 11 §1. HL Rättegångsbalken 14 §1. See also: Lydekini excerpter 146, where the fine is divided in three parts.

37 ÖgL, Dråpsbalken 17 §1. For this interpretation see: Holmbäck and Wessén, Östgötalagen, Dråpsbalken footnote 52.

38 Lindkvist, "The Politics of Violence," 142–146.

39 Translated with *värja*. YVgL, Förnämesbalken 50.

40 MEL, Sår av våda 9. KrL, Sår av våda 7.

aristocrat were also tested. He had to prove his manliness and his reputation (*frejd*).[41] Any peasant in the provincial laws was characterised by his ability to defend himself and by his right and duty to carry weapons. However, in the shift to the Laws of the Realm we can see attempts to link manliness, access to violence, and certain weapons to the male aristocrat.

Wounds and Injuries

The ambiguous word 'violence' is most often used in Swedish medieval law to define *how* an act had taken place. The importance in these cases is not the actual violence but how a deed was committed. This was the case in property crime; the same is true for the crime referred to as rape or abduction. The Swedish word that modern translators refer to as a 'deed of violence' is most often used in relation to property crime, not assault. One example of this is the previously discussed rules against demanding lodging, rules that were directed at the aristocracy. This crime is described as committing 'violent deeds.'[42] These examples demonstrate the close connection between violence and power. These were crimes committed by a stronger party and directed at a weaker, more vulnerable party; and they were described as doing something with violence.

A different legal term was used to describe the crime that we may refer to as assault: 'cases concerning wounds.' This is also the name of the sections dealing with different types of assault in the Laws of the Realm and the Town Law. The word, because in Old Swedish it is but one word, actually means two things: 'cases that concern wounds' and just 'wounds.'[43] Physically injuring a person was seen in the provincial law codes not only as a crime directed at a person's body; a hit or a blow was also a symbolic infringement upon a person's bodily integrity and his right to peace.

The provincial laws contain very detailed rules regarding wounds and injuries; these descriptive rules are the basis for sentencing in assault cases. In order to understand the sentencing, we first need to understand the legal terminology of wounds and injuries. Despite the fact that the legislation on wounds is very heterogeneous, several attempts have been made to divide the cases

41 MEL, Konungsbalken 11 §2. KrL, Konungsbalken 11 §2.

42 YVgL, Rättlösabalken 13. UL, Konungabalken 6 §2 and SdmL, Konungabalken 6 §2. UL, Köpmålabalken 9 §3 and SdmL, Köpmålabalken 10 & 11. The word is also used in a more general and unspecified meaning in SdmL Rättegångsbalken 2.

43 Schlyter's dictionary: 'saramal.'

into groups. For example, they have been divided into full wounds, maiming, and lesser bodily injuries.[44] Injuries that did not leave any physical traces have been included in the last category. As Ragnar Hemmer points out, these cases emphasise the insult rather than the actual physical damage.[45] The difference between the violence that led to serious injuries, the first two categories, and violence that can be seen as symbolic is important. It will be argued that this is also the difference between violence that involved the use of weapons and other forms of violence.

'Full Wounds' and Hierarchies of Injuries

The regulations regarding the 'cases of wounds' are detailed and, in many cases, very difficult to interpret. We are faced with a large number of designations for specific wounds. Several of these terms only occur once in the entire Old Swedish corpus of texts. The definitions of wounds and different types of hits and blows were most likely self-evident for the legislators, which meant that the definitions did not have to be explained when the law codes were written down. The difficulty in interpreting the legal terminology has the unfortunate consequence that some regulations cannot be compared. If one cannot determine how a crime was defined, it is impossible to compare sentencing and punishments between laws.

The crime descriptions of assaults are characterised by a strong concrete corporeality.[46] The specification of different wounds is very meticulous and shows an elaborate system that assigns different names to different injuries. This reveals a view that all injuries could be inspected and measured. Ragnar Hemmer draws our attention to a very important aspect of Swedish medieval law: the thought of clearly distinct units.[47] The laws demonstrate that something we might see as one act could be separated into different crimes that were fined or punished separately or, rather, cumulatively. In cases of assault, this pattern of thinking was taken quite far. For example, one law states: "No one has the right to sue for more than three wounds or blows in one single fight."[48] Each injury was one particular unit that generated one punishment or

44 KLNM, 'Legemskrænkelse' (Sverige) article by Per-Edwin Wallén. Hemmer, *Studier rörande straffutmätningen*, 91.

45 Hemmer, *Studier rörande straffutmätningen*, 136.

46 This is actually even more apparent in the Guta Law. See: Gutalagen chapter 19 & §1–35.

47 Hemmer, *Studier rörande straffutmätningen*, 209.

48 SdmL, Manhelgdsbalken 8.

fine. The laws put great emphasis upon establishing the character and seriousness of each injury. The sentencing could also be affected by which body part had been injured: a hit to the head could entail a different punishment than a hit to the stomach. The legislators thus emphasised *both* the consequence and the intention of an assault. The legislators attempted to define whether the perpetrator had the intention to hurt or to kill, as well as how seriously the person had intended to hurt the other.

Despite the heterogeneous nature of this legislation, there is a clear hierarchy in the classification of different wounds. The most serious injury quite consistently is called a 'full wound.' Almost all of the Swedish medieval laws use this term.[49] According to Per-Edwin Wallén, the full wound is characterised in the Göta Laws by the fact that it demanded care from a doctor and needed ointment and bandages. The Östgöta Law clearly notes that a full wound is an injury inflicted by a weapon.[50]

Another provision in the Östgöta Law reveals a hierarchy of wounds according to their severity. The most serious injury was the wound or the full wound. A *skena* was less serious, while the injury called *bloþuiti* was even less serious.[51] This last type of wound can be translated literally with 'bloodshed.' Approximately the same hierarchy can be found in the other Swedish laws.[52] However, there are differing versions of this terminology, as well as law codes that are very unclear in their definitions. The Uppland Law refers to the act of 'beating someone to blood,' which can be interpreted as either *skena* or 'bloodshed.' An additional term, 'blood wound,' is also used. This law also emphasises the importance of whether the injury was inflicted to the head or the body, with harsher punishments for wounding the head.[53] The Västmanna and Hälsinge Laws also distinguish between 'beating someone to blood' and a full wound; the main difference seems to be that the latter was more serious.[54] In turn, the Dala Law stresses the fact that the wound is bleeding and that blood

49 The term can be found in the Västgöta Laws, Östgöta, Uppland, Södermanna, Västmanna, Hälsinge Laws, the old town law Bjärköarätten, Magnus Eriksson's Law and Christopher's Law. Schlyter's dictionary: 'Fullsæri.'

50 KLNM, 'Legemskrænkelse' (Sverige) artikel av Per-Edwin Wallén. ÖgL, Vådamålsbalken 6.

51 ÖgL, Vådamålsbalken 8.

52 ÄVgL, Balken om såramål 1, Vådasår 4. UL, Manhelgdsbalken 29. VmL, Manhelgdsbalken 21, 24 VmL mentions only 'full wounds' and *skena*. SdmL, Manhelgdsbalken 3. MEL, Sår med vilja 2, 5, 9, 17 & §1.

53 UL, Manhelgdsbalken 22, 23, 24 & §1–3.

54 VmL, Manhelgdsbalken 18. HL, Manhelgdsbalken 8.

is flowing. This is contrasted with the act of 'beating someone blue.' However, the sentencing seems to be the same for both injuries.[55]

In many cases the definition of a wound is based on the way in which it was inflicted. The Östgöta Law lists the different types of tools that can be used to inflict the wound, called *skena*. It lists the handle or pommel of a sword, a drinking horn, a staff, or a rod. If the skin bursts open, then that was considered a "full *skena*."[56] The provision thus pays attention both to the weapon that was used as well as the consequence for the victim. Some scholars have focused solely on the consequence when translating the term *skena*, describing it as an 'open wound.' Indeed, the law specifies that the skin and flesh break, which would lead to an 'open wound.'[57] Other scholars have emphasised the method of inflicting the injury, stating that a *skena* was a wound inflicted with a non-lethal weapon, for example a rod.[58] Indeed, all the tools that could be used to inflict a *skena* are non-piercing weapons.[59]

There is no need to separate these two aspects; both influenced the descriptions. The consequences and the method were closely linked for those who compiled the laws. For example, most often a person was assumed to have hacked or cut another in order to cause a full wound. Cutting someone with a sharp or piercing weapon, thus, inflicted a full wound.[60] This is most plainly expressed in Magnus Eriksson's Law, which states that a full wound was one in which the victim had been cut or pierced with a sword, dagger, or javelin.[61] In other words, the law presumes a battle. A *skena*, in contrast, was something achieved by hitting someone with a tool that was not a weapon. It could be a rod or a staff;[62] something that one had readily available but was not primarily intended for fighting.

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55 DL, Manhelgdsbalken 14, 20.

56 ÖgL, Vådamålsbalken 19. Holmbäck and Wessén, Östgötalagen, Vådamålsbalken 19. Holmbäck and Wessén, Östgötalagen, Vådamålsbalken, footnote 52. Schlyter's dictionary: 'hialt' and 'horn.'

57 Holmbäck and Wessén, Magnus Erikssons landslag, Edsöresbalken, footnote 5.

58 Schlyter's dictionary: 'skena.'

59 Holmbäck and Wessén, Östgötalagen, Vådamålsbalken, footnote 53.

60 UL, Manhelgdsbalken 25 §1. SdmL, Manhelgdsbalken 8. HL, Manhelgdsbalken 14 §1–2. As noted, several different aspects are needed to explain the definitions of a certain wound. A 'full wound' could actually be caused by an animal, which demonstrates that it was not necessarily inflicted by a weapon but could be a measure of the scope of the injury. UL, Manhelgdsbalken 21.

61 MEL, Sår med vilja 5.

62 MEL, Sår med vilja 9.

One can similarly conclude that being hit or having inflicted a so-called 'bloodshed' did not presume either a weapon or a tool. A number of regulations show that there was a clear boundary between cutting/hacking and hitting. This can be demonstrated by the many provisions which juxtapose the terms; a person was either hit or cut.[63] The legislators apparently took the method into account, but the wounds themselves were believed to reveal how it had happened. The wounds themselves would thus demonstrate the intentions behind the deed. However, as in so many other cases, both the consequences and the intentions affected the sentencing that was to follow.

The detailed descriptions of bodily wounds also show a desire to measure the injuries by inspecting the body. The laws show a marked interest for the concrete and physical: wounds were to be inspected by witnesses or doctors, and injuries were often literally measured.[64] Legislators emphasised what is visible. Another feature, mentioned above, is the view that the wounds were clearly separated entities that were each individually compensated by a fine. The fines for different injuries were then accumulated up to a maximum level; this level was usually defined as a full wound and entailed a fine of 20 or 40 marks.[65]

This could be taken quite far. If the body were pierced, for example, this could be regarded as not one but two wounds, since it caused two openings. And, according to this view, a fine is paid both for "where it [the weapon] went in and where it came out."[66] Other ways of measuring and counting wounds include bone splinters. If bone fragments had been taken from the wound, a doctor had to attest to how many there were. These were seen as clear entities,

63 DL, Manhelgdsbalken 8. SdmL, Manhelgdsbalken 8. MEL, Edsöresbalken 1, 5, 7, 8, 17, 20, Såramål med vilja 9, 16. See also: Holmbäck and Wessén, Magnus Erikssons landslag, Edsöresbalken footnote 5. The terms used in the sections on wounds and on battles reveal the same distinction in ÄVgL, Balken om såramål 4 & §1–6 and Slagsmålsbalken 1, 2. However compare paragraph 5 in Slagsmålsbalken which seems like a quite strange exception. The Västmanna Law mentions that someone either was beaten or wounded. VmL, Manhelgdsbalken 21. This is found as well in: MEL, Sår med vilja 15 §1.

64 ÄVgL, Balken om såramål 1. ÖgL, Vådamålsbalken 6. DL, Manhelgdsbalken 14, 20. UL, Manhelgdsbalken 24 §2, 28, 29 §1. VmL, Manhelgdsbalken 21. SdmL, Manhelgdsbalken 3, 8. HL, Manhelgdsbalken 14 §1. Bjärköarätten 14 §5. MEL, Sår med vilja 10, 11.

65 Hemmer, *Studier rörande straffutmätningen*, 211. In court records from the fifteenth century the same tendency is seen. Injuries are regarded as separate wounds and units to be paid for separately. Hemmer, S*tudier rörande straffutmätningen*, 135, footnote 4.

66 ÄVgL, Om vådasår 1.

and each fragment was separately compensated with a fine.[67] Six bone splinters could be removed from a wound of a lesser degree (*skena*) in the Östgöta Law. A seventh splinter would increase the fines substantially and would raise the offence up to the level of a full wound.[68] Other examples show that fines were paid for each bone fragment up to a maximum number of three or six, but no additional fines were due above this number.[69] Obviously an upper limit existed in the provincial law codes for fines due for injuries. Therefore, even if separate wounds were seen as entities, they usually could not be accumulated above the limit of a full wound. However, the two Laws of the Realm removed this limit, so fines for complex assaults that led to many different injuries could thus be much higher.[70]

Maiming and "Cut-offs"

The same type of thinking can be seen in the regulations on maiming, which is literally called 'cut-offs' in the laws. We find long lists with different fines for cutting off a finger, a toe, a hand, a foot, an ear, or even an eye.[71] The reader is met by a surprising precision and level of detail.[72] The different body parts, also different types of fingers and toes, are ranked. The value or, rather, the price for cutting them off is based upon both practical and symbolic elements. The fines are higher when a person was permanently impaired and his day-to-day life is

67 For example see: Östgötalagen, Vådamålsbalken, 6 §5. Hemmer, *Studier rörande straffutmätningen*, 94–96.

68 ÖgL, Vådamålsbalken, 19.

69 Hemmer, *Studier rörande straffutmätningen*, 210.

70 Hemmer, *Studier rörande straffutmätningen*, 211.

71 ÄVgL, Balken om såramål 4. ÖgL, Vådamålsbalken 18 & §1–2. Cp: ÖgL, Vådamålsbalken 7 where all cases when body parts had been chopped off intently shall be paid with a fine of 40 marks. VmL, Manhelgdsbalken 23 & §1–5. DL, Manhelgdsbalken 17 & §1–5. UL, Manhelgdsbalken 23 §1, 24 §1. SdmL, Manhelgdsbalken 6 & §1–2. HL, Manhelgdsbalken 15 §1. HL stipulates a fine of 40 marks as well as "a life for a limb" if the convicted could not pay the fine, unless it happened during battle. Bjärköarätten 14 & §1–5. MEL, Sår med vilja 2 & §1, 3, 4, 7, 8. MESt, Sår med vilja 3 & §1, 4 & §1–2, 5, 6 & §1. KrL, Sår med vilja 3 & §1, 4, 8, 9.

72 The precision could be even greater in the other older Germanic laws as demonstrated by Lisi Oliver. Some laws distinguished and had separate assessments for injuries to any of the two eyelids, the eyebrow and the three wrinkles on the forehead as well as assessing separate values for the toes. Lisi Oliver, *The Body Legal in Barbarian Law* (Toronto: University of Toronto Press, 2011), 99–101, 159–162.

affected. The thumb, for example, was ranked higher than all the other fingers, since the thumb is necessary in performing physical work in an agricultural economy. Indeed, the Östgöta Law states that a thumb "is half of a hand"; other laws fined the thumb as all the other fingers together.[73]

We can see both practical and symbolic aspects in the fines for cutting off an ear, which were often as high as for putting out an eye.[74] In some cases it was established that if the victim still could hear somewhat with the ear, then the fine was to be lowered. However, in other cases the hearing itself seems not to be the main issue. This must reasonably mean that the ears had a symbolic meaning, for hearing is not necessarily seriously impaired by removal of the outer segments of the ear. As we saw in the last chapter, cutting off the ears was a form of corporal punishment used to shame a criminal. Having the ears cut off marked that a person had been found guilty of theft and assured that the person would be considered dishonest for the rest of his or her life. For this reason, it must have been of utmost importance to keep both ears intact.

Several laws also show that aesthetical aspects were considered important as well. If someone were cut in the face and it had resulted in a permanent scar or deformity, the sentencing was influenced by the fact that the disfigurement could be seen across the court assembly and could not be concealed with a hat or a hood. The older town law mentions scars that can be seen from across the street,[75] which reveals the urban setting in which the law was produced. The fact that the scar was visible from a distance and could not be hidden made the crime punishable and determined the sentence. The punishment was imposed for destroying a person's physical appearance.

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73 ÖgL, Vådamålsbalken 18. UL, Manhelgdsbalken 23 §1, 24 §1. The thumb is regarded as "half of a hand" also in: MEL, Sår med vilja 3. MESt, Sår med vilja 4. KrL, Sår med vilja 4. The thumb is valued as all the other fingers together in: DL, Manhelgdsbalken 17 and SdmL, Manhelgdsbalken 6. Additional compensation for disability in: VmL, Manhelgdsbalken 23. ÄVgL, Balken om såramål 4 §1.

74 SdmL, Manhelgdsbalken 6 §1–2. VmL, Manhelgdsbalken 23 §2 & §4. ÖgL, Vådamålsbalken 18 §1. UL, Manhelgdsbalken 24 §1. The practical aspect dominates in Bjärköarätten 14 which stipulates that the hearing needs to be impaired in order for a fine to be paid. DL, Manhelgdsbalken 17 §3 & §5 stipulates a higher fine "for the wound" when an eye had been cut out. ÄVgL, Balken om såramål 4 §3 & §4. The interpretation of the last paragraph is very uncertain. See: Holmbäck and Wessén, Äldre Västgötalagen, Balken om såramål 4 and footnote 14.

75 Bjärköarätten 14 §2. HL, Manhelgdsbalken 9 §1. SdmL, Manhelgdsbalken 5. ÖgL, Vådamålsbalken 15 §4. MESt, Sår med vilja 9 §1. DL, Manhelgdsbalken 17 §3 & §5. VmL, Manhelgdsbalken 23 §2 & §4.

The 'highest wound,' or 'worst type of injury,' was to castrate a man. Several provincial laws describe this as follows: "Someone puts another on the ground and castrates him as an animal."[76] In the two Laws of the Realm and the Town Law this crime has been placed in the section on *edsöre*, which denotes how serious it was seen. Apart from that, the Laws of the Realm kept the phrasing found in the provincial laws. As noted in the first chapter, crimes against the *edsöre* considered the landowner to be the plaintiff regardless of who was the victim of the actual injury. This rule exempts castration. The fact that the injured party, or his heir, had the right to act as plaintiff regardless of who owned the land shows that this crime was considered a very grave personal infraction. Furthermore, the plaintiff had the right to either let the perpetrator pay a fine and damages, or take a limb for a limb, or even a life for this limb.[77] This certainly shows that this crime was considered more serious than others. Castrating a man usually entailed very high fines, especially in the Östgöta Law, where the fine is the enormous sum of 160 marks. In two other laws the punishment is to lose both hands for this crime.[78]

Castration was punished harshly not only for the pain it involved and the loss of the penis but also for the humiliation it caused. As Greti Dinkova-Bruun writes about the most famous castration of the medieval period, Abelard's: "It was not the physical pain which made him suffer but the shame."[79] In cases of castration, the perpetrator often had to pay separate fines for the injury, for causing impairment, and for so-called 'wished-for-children,' the children a man could have fathered. The fines due for these potential children are often significantly higher than the fines and damages paid for the injury itself. This certainly demonstrates a strong emphasis upon a man's ability to continue

76 UL, Manhelgdsbalken 30. HL, Manhelgdsbalken 15. SdmL, Manhelgdsbalken 10. DL, Manhelgdsbalken 7. In ÄVgL, Balken om såramål 4 §6 the legal requisite consists solely of a man being castrated. Also ÖgL, Vådamålsbalken 5 expresses the crime differently: a man gets wounded with the highest wound; he gets castrated.

77 MEL, Edsöresbalken 39. KrL, Edsöresbalken 39. The younger Town Law differs and lists penis among the maiming of other body parts. That it was serious is still obvious since tongue and penis shall be counted as the equivalent of two other body parts and the fine is subsequently doubled. MESt, Edsöresbalken 16 & §1–2. An interesting detail is the connection made here between the tongue and the penis. See: Clover, "Regardless of Sex," 384.

78 ÖgL, Vådamålsbalken 5. See: Holmbäck and Wessén, Östgötalagen, Vådamålsbalken, footnote 19. UL, Manhelgdsbalken 30. HL, Manhelgdsbalken 15.

79 Greti Dinkova-Bruun, "Cruelty and the Medieval Intellectual: The Case of Peter Abelard" in *Crudelitas. The Politics of Cruelty in the Ancient and Medieval World : Proceedings of the International Conference, Turku* (*Finland*), *May 1991*, ed. Toivo Viljamaa, Asko Timonen and Christian Krötzl (Krems: Medium Aevum Quotidianum, 1992), 116.

the family line. Vern Bullough cites three values that defined medieval masculinity: the ability to produce heirs, to defend the family unit, and to support them.[80] As we have seen, the legislation on lesser violence certainly confirms the first two of these.

The provincial laws assume that injuries were inflicted in battles and with the use of weapons. Karin Hassan Jansson calls this "male combat violence," which is an accurate description.[81] The Laws of the Realm explain that these injuries happen when men, in anger, meet in combat and one cuts another to full wounds.[82] There was a clear difference between violence that took place in battle and other types of situations. For example, leading another man to a block or a stump and chopping off a body part counted as a crime against the public peace and the king (*edsöre*). However, it was expressly *not* a crime against the *edsöre* if the maiming took place during combat.[83] There was a big difference between injuries inflicted in a manly battle and those inflicted while treating the victim as an animal.[84] This tendency can be seen in the crime descriptions of castration. The man is laid down on the ground and castrated like an animal. This is not honourable behaviour. This situation also marks the difference between a battle between equals and an assault that would occur in an unequal power relationship. One can assume, for example, that it might take more than one perpetrator to lay down a man on the ground and castrate him. The fines and damages could increase substantially if someone were to use a difference in strength and power to injure another individual. The high fines most likely reflect a condemnation of excessive and exaggerated violence.[85] Violence might have been accepted, especially male combat violence, but violence in other situations, when it demonstrated a difference in strength or even cruelty, was not necessarily condoned.

Finally, regulations on maiming can be found both in the "ordinary" sections and in the sections on crimes against the *edsöre*. This highlights the fact that the *edsöre* legislation and the rest of the criminal law are parallel forms

80 Vern Bullough, "On Being a Male in the Middle Ages," in *Medieval Masculinities: Regarding Men in the Middle Ages*, ed. Clara A. Lees, Thelma S. Fenster and Jo Ann McNamara (Minneapolis: University of Minnesota Press, 1994), 34.

81 Jansson, "Våldsgärning, illgärning, ogärning," 158.

82 MEL, Sår med vilja 2. KrL, Sår med vilja 3.

83 YVgL, Additamenta 7:17. SdmL, Konungabalken 8. HL, Konungabalken 5. DL, Edsöresbalken 5. VmL, Konungabalken 5. ÖgL, Edsöresbalken 6. UL, Konungabalken 8. MEL, Edsöresbalken 21. KrL, Edsöresbalken 17. Magnus Eriksson's Town Law does not make this distinction. MESt, Edsöresbalken 16 & §1–2.

84 Jansson, "Våldsgärning, illgärning, ogärning," 157, 159.

85 Gauvard, *Violence et ordre public*, 13.

of legislation. The former targeted the aristocracy and set out rules for feuds as part of a conscious royal legislation, while the rest of the criminal law can be regarded as systematised customary law. It is also clear that the two forms of legal rules are very similar. It is not two different value systems that meet us in the medieval laws; instead, the *edsöre* legislation had its basis in ideals and values that were already established in society at large.[86]

Hits and Blows without Physical Injuries

The laws primarily established punishments for more serious types of injuries. As is the case today, it was difficult to assess whether someone had been assaulted if there were no injuries or witnesses to prove that the crime had taken place. The Older Västgöta Law mentions something confusingly called the 'black blow.' This blow is described as leaving no mark on the body, and it therefore was not compensated.[87] The expression has a direct counterpart in Norwegian medieval legislation, where the word 'black' is interpreted as suing someone dishonestly.[88] The word 'black' refers to the dishonesty of the plaintiff. Swedish medieval law displays many contradictory tendencies. This becomes obvious by comparing the above-mentioned regulation on the 'black blow' with a similar rule found in another law, the Östgöta Law. This law mentions a very different type of 'black blow': "if someone is hit with a rod or a staff; if the flesh inside breaks, but the skin is kept intact: this is called the black blow."[89] This 'black blow' was distinguished from other injuries by the skin being intact, while a *skena* entailed that both flesh and skin broke. The 'black blow' apparently received its name from the bruise that appeared on the skin. This visible injury was to be compensated by a fine. The noticeable difference in legal terminology has been explained by age: it is assumed that the regulation in the Older Västgöta Law is the original one and that it changed its meaning over time.[90] However, just as credible is an explanation that focuses upon regional legal or linguistic differences: the term 'black blow'

86 Also see: Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 23.

87 ÄVgL, Slagsmålsbalken 5.

88 Holmbäck and Wessén, Västgötalagarna, Slagsmålsbalken, footnote 25. Schlyter's dictionary: "svarta slagh."

89 ÖgL, Vådamålsbalken 23.

90 According to Schlyter the word or the term was first introduced in Västergötland and then transferred to Östergötland and at some point the meaning of the word had changed. Schlyter's dictionary: "svarta slagh."

had different meanings in the two provinces. Regardless, the Older Västgöta Law's affinity to Norway is clear.

Other cases of assaults that did not leave traces required witnesses in order to lead to a prosecution. The laws specify that a small fine should be paid if someone were to hit another person in front of the congregation, at the court assembly, in the bath house, at the 'beer gathering,' or at the marketplace.[91] The point of departure is clearly that the deed took place publicly and in front of an audience. Therefore, it was the fact that the action was open and had been seen which made it punishable. These lesser cases of assault were considered more like insults than actual physical assaults; it was the violation of a person's integrity that made the action punishable. The regulations also have clear spatial elements; that these assaults were punished at all had to do with the choice of place. The regulations presume that there are some places where peace should prevail, which is why a single blow is punished. The low fine of three marks indicates that it was a lesser crime, but also that it was not acceptable to fight at certain occasions. Indirectly, these regulations, which try to limit violence in certain places, indicate that fights were accepted and expected in most other cases. Unless the fights led to serious injuries, they were not prosecuted. One might point out that it should not have been necessary to mention the court assembly, since peace was supposed to reign during court sessions, according to the section on *edsöre*. Again, this demonstrates that there are two layers in the laws and, furthermore, that the rules on fighting and feuding targeting the aristocracy corresponded to customary law and values in the local communities.

Peace was supposed to prevail in certain places and at certain times. However, it was not only spaces that were protected; in fact, any individual was also protected. This is called *manhelgd*. This term, which is very hard to translate, refers to the 'inviolability or sanctity of man'. It should be noted, however, that this term is not of Christian origin. This legal term is quite elusive. It has been characterised as the free man's right to bodily integrity and protection for his property. In this regard, the concept includes thralls, as part of the property, but excludes women.[92] The term has been regarded as a solely masculine phenomenon. This is not completely accurate. The Dala Law expressly states that the specific fine for breaking the *manhelgd* should be paid also for women.[93] It is possible that this is a regional trait found in this particular province, but

91 DL, Manhelgdsbalken 18. SdmL, Manhelgdsbalken 9. HL, Manhelgdsbalken 13. UL, Manhelgdsbalken 28.

92 KLNM, 'Manhelgd,' article by Karl Wührer.

93 DL, Manhelgdsbalken 1 §1–8.

it is indeed tempting to see it as a remnant of an older legal concept.[94] The Hälsinge Law stipulates that the peasant, his wife, and their children are all protected by the peace defined by the section on *manhelgd*.[95] The Östgöta Law most clearly defines the term. In this law, during the ceremony when a thrall is freed, he is given his *manhelgd* at the same time, and it is directly linked to protecting the freed thrall from being beaten and injured. It is also connected to the very moment when he carries full legal responsibility for his own actions. Through the *manhelgd* the freed thrall received the same legal status as a peasant: protected by the law, yet also having criminal responsibility.[96]

The *manhelgd* is linked to views on peace. The Older Västgöta Law states that a person breaks the peace when infringing on a person's *manhelgd*. The Hälsinge Law also connects peace with an individual's right to protection.[97] Interestingly enough, the Younger Västgöta Law has removed the term *manhelgd* in a regulation that, in other aspects, is identical with the older version of the law.[98] It is apparent in the Older Västgöta Law that violating a 'man's sanctity' was considered an insult and a violation of his honour. It is stipulated that if a man has been hit and his peace has been broken, then he shall provide witnesses who can testify that his honour has been diminished and his *manhelgd* broken.[99] The choice of the word 'hit' is important; there is a consistent tendency to separate a blow from cutting or stabbing with a weapon. More important, a person's peace and *manhelgd* could apparently be broken even if there were no physical traces on the body.[100] In this way, a blow or a hit was made into a crime, even when it did not leave any physical traces or blemishes. It should be noted that a person's peace could be broken in other ways. Two of the Svea Laws consider inflicting a full wound or perpetrating a homicide to break the peace of a person.[101] Also, the Dala Law seems to connect *manhelgd* and homicide. To break a person's peace is the same thing as to kill the person, especially if the victim is related to the killer.[102]

Manhelgd is an obscure and unspecific legal concept in the provincial laws. From the scattered evidence one can conclude that *manhelgd* was connected

94 It is likely that certain parts of the Dala Law are very old. It is also obvious, however, that the law has certain regional and quite unique characteristics.

95 HL, Ärvdabalken 2 §1.

96 ÖgL, Ärvdabalken 17.

97 ÄVgL, Slagsmålsbalken 1. HL, Ärvdabalken 2 §1.

98 YVgL, Fredsbalken 1.

99 ÄVgL, Slagsmålsbalken 1.

100 VmL, Manhelgdsbalken 21.

101 UL, Kyrkobalken 17 & 22 §1. SdmL, Kyrkobalken 18, Giftermålsbalken 2 §2.

102 DL, Manhelgdsbalken 1 §1–8 & 3 §2.

to an idea of peace in the local community. This peace was associated with each free man, each peasant, and as such included his dependents. The *manhelgd* was a personal peace that encompassed the household and the farm; it represented the peasant's right to integrity and to not be attacked. The legal term is most likely old, and what we see in the provincial laws are only remnants of this concept. In the provincial laws, this peace was used analogously to the peace of the home, as defined in the sections of *edsöre*. When the *edsöre* legislation was introduced, the term became obsolete. The term is completely absent from the town laws. In addition, the Laws of the Realm have completely eliminated the concept. This indicates an ideological shift that will be discussed below.

Sentencing and Victims of Assaults

Some key features of the sentencing remain to be explored. We shift our focus from the physical consequences to the importance of who the perpetrator and the victim are. As noted, sentencing in Swedish medieval law has been described as based upon consequences rather than on the intention of the perpetrator. This view must be adjusted, and this book has emphasised that intent was far more important than previous scholars have claimed. Intent and consequences were both important factors. Sentencing of the offender was almost always dependent on a mixture between how serious the consequences were and the intent of the perpetrator. It varied widely whether intent or consequences were emphasised; this vacillation can be found not only between the different law codes but also within one law.

The punishments for assault are generally different levels of compensation or fines. The thorough and detailed levels of fines are typical for Germanic laws and can be found in several early medieval laws.[103] Jean-Marie Carbasse argues that, by meticulously attempting to predict any type of possible injury, the legislators tried to avoid discussion and conflict in court.[104] The fines for assault and inflicting injury vary enormously; these discrepancies are difficult to explain. In the oldest law, the Older Västgöta Law, a full wound entailed a fine of 27 marks. Two-thirds of this went to the authorities—the district, and

103 Katherine Fischer Drew, "Legal Material as a Source for Early Medieval Social History," in *Law and Society in Early Medieval Europe. Studies in Legal History* (London: Variorum reprints, 1988), 35.

104 Carbasse, *Histoire du droit pénal et de la justice criminelle*, 98.

king—while the plaintiff received the remaining nine marks.[105] A full wound led to a fine of 40 marks in the Östgöta Law.[106] Interestingly enough, these sums correspond in both laws to the basic fine for a homicide (a so-called wergild). This should mean that a full wound was considered potentially lethal. This becomes apparent in the Older Västgöta Law, which expressly states that it may still be uncertain whether the prosecution would be for a full wound or a homicide.[107] The serious nature of a full wound is underlined in the many regulations in both the Göta and Svea Laws that determine how long a perpetrator would be held liable for an injury of this type. A perpetrator could be held responsible for a head injury an entire year, for example, before it was decided that the crime would not be prosecuted as a homicide.[108]

The fine for a full wound in the Västmanna Law is 20 marks. However, in all the other Svea Laws the fine is substantially lower, only three marks (the Uppland Law stipulates six marks for a full wound on the head).[109] A somewhat harsher attitude in sentencing can be detected in the Uppland Law. The law of *talion* would be applied if the perpetrator could not or refused to pay the fines. In this case, the perpetrator would have to pay a limb for a limb, or a life for a life.[110] The introduction of the law of *talion* has been interpreted as a harsher form of criminal law. It has been suggested that talionic justice was imposed by the Church and the authorities; it did not stem from the local communities. The harsher principle of retaliation came from the outside and from the authorities, while the local communities preferred a legal thinking based on reconciliation.[111] It might be true that these particular expressions and punishments, for example giving a limb for a limb or having your hands cut off for castration, were introduced by the authorities, but it is wrong to claim that retaliation was alien to the Scandinavian societies. Outlawry and revenge killings are certainly based on ideas of retaliation. In fact, reconciliation and retaliation were often two sides of the same coin: both were needed for the system to work.

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105 ÄVgL, Balken om såramål 1.

106 ÖgL, Vådamålsbalken 6.

107 ÄVgL, Balken om såramål 1.

108 YVgL, Fredsbalken 13. VmL, Manhelgdsbalken 22. SdmL, Manhelgdsbalken 4. DL, Manhelgdsbalken 11. UL, Manhelgdsbalken 25. See: Holmbäck and Wessén, Västmannalagen, Manhelgdsbalken, footnote 108.

109 KLNM, 'Legemskrænkelse' (Sverige) article by Per-Edwin Wallén.

110 UL, Manhelgdsbalken 31 §1.

111 Henrik Munktell, *Brott och straff i svensk rättsutveckling* (Stockholm: Geber, 1943), 12.

It is obvious that the full wound was seen as more serious in the Göta Laws, where it led to a fine as high as a man's wergild. The Svea Laws in general take it more lightly, considering the full wound a lesser injury, not comparable to a homicide. The Göta Laws seem to have regarded the full wound as an attempted homicide. Finally, the Laws of the Realm went a middle way, where a full wound entails a high fine but only half of the wergild, 20 marks.[112] Unfortunately, the rest of the sentencing for injuries is so varied that generalisations are impossible. To attempt it would result in simply reproducing the lists that can already be found in the laws.[113]

The identity of the perpetrator also played a role in how the assault was seen. All of the regulations assume that the injuries were inflicted during a combat with weapons between free men. Other rules applied for other categories of perpetrators. According to the Västgöta Laws, a thrall who hit a free man crossed the line of acceptable behaviour. They state that if the assault victim does not wish to hurt or assault the thrall back, then he can demand damages from the thrall's owner. That the victim had the right to use violence on the thrall was thus self-evident. What needed to be specified was that the plaintiff could ask for a monetary compensation by the thrall's owner if he chose not to assault the thrall.[114] The Östgöta Law reveals that if a thrall injures a free man, then he forfeits his life.[115] It could not always have been in the interests of the owner to pay the fines, since the sum due for wounding a free man could be higher than a thrall's value. Clara Nevéus has noted several cases where the fine due for a thrall's crime was lowered to a sum that was the equivalent of the thrall's value.[116] Thraldom is rarely mentioned in the younger laws; therefore, it is hard to describe the development of legal responsibility for thralls. The thralls were possessions; however, as is obvious from the provincial laws, they were also considered to hold some dignity as human beings. For example, the homicide of a thrall fell into the category of other homicides, not that of property crimes. The Uppland Law states that a thrall should be counted as a free man with regard to his criminal liability.[117] This surely must have been the case also for assault and injuries. The scattered evidence nonetheless makes it

112 MEL, Sår med vilja 5. KrL, Sår med vilja 6.

113 For this see: Hemmer, *Studier rörande straffutmätningen*, 90–158, 209–212.

114 Clara Nevéus, *Trälarna i landskapslagarnas samhälle. Danmark och Sverige* (Uppsala: Uppsala University, 1974), 77.

115 Nevéus, *Trälarna i landskapslagarnas samhälle*, 99.

116 Nevéus, *Trälarna i landskapslagarnas samhälle*, 146.

117 Nevéus, *Trälarna i landskapslagarnas samhälle*, 121.

evident that violence was reserved for free men; violence was something that marked social status between men.

Children were also punished if they hit or cut someone; however, their sentence was much more lenient.[118] The Older Västgöta Law states that if a child injures another child, this is considered by definition an accident or misadventure. The deeds of children were generally counted as having taken place accidentally or by some misfortune. The original wording is more ambiguous, and the term *vaþa* is used to indicate an accident, although it more often indicates a complete lack of intent. This demonstrates a clear connection between intent and the ability to reason. Then, as today, most adults were considered better able to understand the consequences of their actions.

It is difficult to draw general conclusions regarding a woman's criminal responsibility for injuries and assault because it is so rarely mentioned. The Östgöta Law demonstrates that a woman's responsibility was clearly lower than that of a man. A low fine was to be paid, and this fine did not vary according to the seriousness of the injury, which was the very basis for the sentencing of a free man. The Östgöta Law also states that it is not necessary to pay an 'honour fine' if a woman hits a man.[119] As the name indicates, an 'honour fine' was compensation for having dishonoured the person. The honour fine was meant to prevent the violent response that would follow when the victim tried to re-establish his honour. This implies that female actions were not considered able to generate conflicts or disturb the order in the same way as men's actions. A woman hitting a man did not require a violent response.[120] However, the Västmanna Law reveals a slightly different view and stipulates that a woman should be "sentenced as a man" if she injures another woman.[121] This reinforces the perception that a male norm characterises the law; a woman's legal responsibility is evaluated and specified in comparison to that of a man. Thus female legal responsibility was secondary and was added to the law at a later stage.

The Older Västgöta Law establishes that a woman who inflicted an injury by misadventure should pay the same fine as a man who had committed the

118 HL, Manhelgdsbalken 8. UL, Manhelgdsbalken 22. VmL, Manhelgdsbalken 18. SdmL, Manhelgdsbalken 2. ÄVgL, Om vådasår 2.

119 ÖgL, Vådamålsbalken 15 & §1, 22.

120 Compare with Clover's analysis of Gísla saga when a woman injuring a man creates a paradoxical situation where the only option for the man is to walk away since he damages his honour even more by attacking her. Clover, "Regardless of Sex," 363–365.

121 VmL, Manhelgdsbalken 21 §3.

same crime.[122] The law does not contain any provisions on women fighting with intent to hurt another person. It is clear that female legal responsibility for lesser assault was not of interest to the legislators. This might be explained by another phenomenon mentioned above: the injuries and wounds described in the laws are assumed to have happened during armed combat. Generally, women are only portrayed as victims in the more public context of armed combat, and often not even this.

Female legal responsibility in the two Laws of the Realm has been equated to that of a man. Magnus Eriksson's Law states that a woman who hurts a man shall answer for the same fine as a man.[123] The placement and form of the provisions show that female liability in cases of assault was not of great concern in the Laws of the Realm. These provisions are placed far below the general rules on assault and are kept very simple: they do not at all reflect the many specific cases that the general or, indeed, male regulations contain. In these laws, a proper injury occurs when men meet in armed combat.[124] Other cases of fighting and brawls were not necessarily of interest to the legislators.

A general principle is that the penalty is also dependent upon who was the victim. In the Older Västgöta Law we find traces of a legal difference between the inhabitants of Västergötland and people from the rest of the Swedish realm. The provision states that injuries done to 'foreigners'—people from the rest of the realm—should be compensated in the same manner as for an inhabitant of Västergötland.[125] This reveals that this was not taken for granted when the law was compiled; otherwise, there would be no need to regulate it. The other laws completely lack this type of provision.[126] Furthermore, according to the Older Västgöta Law, if a person from another country is injured, he receives less compensation. Different monetary penalties are specified here depending upon whether the person came from England, Germany, or the other Nordic countries.[127] This geographical categorisation of victims held no importance in the other laws, and it was not brought over into the younger laws. It is completely absent in the Laws of the Realm and in Magnus Eriksson's Town Law.

122 ÄVgL, Om vådasår 2.

123 MEL, Sår med vilja 14 & §1. KrL, Sår med vilja 15 & §1.

124 MEL, Sår med vilja 2.

125 ÄVgL, Balken om såramål 3.

126 The section that dealt with assault in the Younger Västgöta Law has not been preserved though evidence show that it once existed. Holmbäck and Wessén, Yngre Västgötalagen, Förklaringar till balken om vådasår, 241.

127 ÄVgL, Balken om såramål 5. YVgL, Fredsbalken 2.

These laws accept the principle that a person should be sentenced according to local law, where the crime was committed. This likely demonstrates that an earlier legal thinking clearly distinguished between people from the province and those who came from the outside.[128]

So how about other categories of victims? Assault of a thrall was punished more leniently; it is clear that the Göta Laws considered the thrall to be a piece of property. If impairment occurs, then the loss of value should be measured and the owner compensated for this.[129] One of the laws also regulates that an 'honour fine' should be paid to the owner, the peasant, if someone had maimed his thrall and deliberately cut off a hand or foot.[130] Earlier we saw that aggression could be directed towards another person's property and animals and that these were targeted in order to get back at the owner. Well, as evidenced by this regulation, apparently thralls could be used in much the same way.[131] That assault of thralls was punished so much more leniently demonstrates that, in some sense, it was acceptable to hit them.

In several cases, the penalty for assaulting a woman was double the fine imposed for hitting a man.[132] In other words, it was not as acceptable to hit a woman as it was to hit a man. The sentencing shows that a woman was not an acceptable target in armed combats. There was, however, an awareness of the fact that women could be the target of men's aggressions and attacks against other men. This must be the context for a regulation in the Younger Västgöta Law, which stipulates the death penalty for a man who goes to another man's home and with threats, cuts, and blows forces the other to surrender his wife so that the aggressor can assault her.[133] The act is described as dishonouring and humiliating for the husband. The perpetrator has shown that the peasant was not able to defend his wife in his own home. The imposed death penalty must

128 This is a very important feature of the Guta Law.

129 ÄVgL, Om vådasår 3 & §1–2. YVgL, Balken om vådasår 10 & 11. ÖgL, Vådamålsbalken 16 & §1. Compare: ÄVgL, Giftermålsbalken 6 §3. YVgL, Giftermålsbalken 11. Nevéus, *Trälarna i landskapslagarnas samhälle*, 144–145.

130 ÖgL, Vådamålsbalken 16 §2.

131 Nevéus, *Trälarna i landskapslagarnas samhälle*, 145. Karras, *Slavery and Society in Medieval Scandinavia*, 103.

132 UL, Manhelgdsbalken 29 §3. SdmL, Manhelgdsbalken 12 §3. DL, Manhelgdsbalken 18. However not in Bjärköarätten 14 §16. In the Older Västgöta Law it is stated that in case of a misadventure a woman's wound shall be paid as that of man's. This indicates that this was not the case if it was done intently; however, no regulation of this can be found. ÄVgL, Om vådasår 2. Also UL makes an exception for injuries that were inflicted due to a misadventure.

133 YVgL, Dråparebalken 41.

be interpreted as strong condemnation of this act. It simply was not acceptable behaviour to attack another man's woman. A woman also had a specific protection in the town laws: if a man cut off her hair or her breast, he was punished with heavy fines.[134] This was a grave violation; in fact, the town laws compare the maiming of a woman's breasts with cutting off a man's penis or tongue.

The various provincial laws vacillate; some consider it a worse crime to hit a woman, others not. The Östgöta Law introduced the general principle that everyone should be equal before the law, whether they were inhabitants of the district, foreigners, women, men, or children.[135] This principle was transferred to the Laws of the Realm. They state explicitly that beating a woman is the same thing as beating a man.[136] Here we see evidence of a general tendency in the Laws of the Realm, testimony to the attempts to equalise different individuals before the law. It should be noted, however, that overall the provisions demonstrate an obvious tendency to describe women as victims rather than as perpetrators of violence.

Violence in the Household

It is a well-known fact that the household master had the right to beat his servants. This was not questioned during the Middle Ages. Several laws either directly state or implicitly reveal that the husband also had the right to beat his wife in order to chastise her. The Östgöta Law, for example, states that unless the wife was severely injured, the husband had the right to "discipline her."[137] The peasant and the housewife had a right to beat servants or thralls, as well as children.[138] Both men and women were expected to do this. The Uppland Law sheds light upon the thrall's situation and how household violence was viewed. The law states that if a thrall is injured, he should be compensated as a free man, unless the injury occurs as the result of anything that his owner and his

134 Bjärköarätten 14 §18. MESt, Sår med vilja 20 & §1, 21.

135 The only exception is when a woman has been beaten so badly that she gave birth to a stillborn baby; this was punished more severely. ÖgL, Vådamålsbalken 14.

136 MEL, Sår med vilja 14. MESt, Sår med vilja 20. KrL, Sår med vilja 15.

137 ÖgL, Vådamålsbalken 10. UL, Manhelgdsbalken 13. VmL, Manhelgdsbalken 12. SdmL, Manhelgdsbalken 28. HL, Manhelgdsbalken 22. SdmL, Manhelgdsbalken 28. HL, Manhelgdsbalken 22.

138 Bjärköarätten 17. ÖgL, Vådamålsbalken 16. MESt, Edsöresbalken 20, Såramål med vilja 17. KrL, Sår med vilja 19 §1. Nevéus, *Trälarna i landskapslagarnas samhälle*, 144.

wife might do to him; it was not punishable if they hurt him or hit him.[139] The master of the household also had the right to beat his shepherd to a certain limit; this further proves that it was acceptable to beat a subordinate. In fact, this law even gives the peasant the right to flog his shepherd, presumably as chastisement. However, a fine would ensue if impairment occurred or if the injury "turned blue or bloody."[140] Furthermore, a brother who was the master of the household had a right to beat both his sisters and brothers.[141]

Lizzie Carlsson downplays this aspect of Swedish medieval society. She claims that spousal abuse was limited and no more common than in the mid-twentieth century (when she wrote her books). Very few cases where a husband is convicted of domestic violence can be found in the court records, a fact which she claims demonstrates that spousal abuse was limited.[142] The lack of domestic abuse in court records, however, cannot be taken as proof that this type of violence was limited. First of all, there was no reason to take these cases to court, since it was not illegal to beat your wife if the violence did not lead to serious injuries. Second, the husband represented his wife in court, which must have made it significantly more difficult for her to sue him. However, there was a clear limit on the amount of violence that could be used. Household violence was aimed at disciplining and was not meant to encourage abuse or assault.[143]

According to the laws, using violence to discipline a subordinate was entirely acceptable. However, the violence that could be used was restricted and, furthermore, was viewed as a different category of violence. The choice of wording in these provisions demonstrates that this violence was regarded as separate from the violence usually described in the law texts.[144] The word *raþa* is only used to describe violence when a subordinate was being disciplined.[145] The Östgöta Law stipulates that a woman's marriage guardian has the right to sue her husband if he had inflicted full wounds, open wounds (*skena*), or caused her to be impaired.[146] In the fifteenth-century Christopher's Law, it was also

139 UL, Manhelgdsbalken 6 §5.

140 YVgL, Fredsbalken 15.

141 YVgL, Fredsbalken 14.

142 Carlsson, *Jag giver dig min dotter*, 28–29.

143 Österberg and Lindström, *Crime and Social Control*, 51–52. Dag Lindström shares the same view. Österberg and Lindström, *Crime and Social Control*, 106.

144 Jansson, "Våldsgärning, illgärning, ogärning," 149, footnotes 28, 29.

145 ÖgL, Vådamålsbalken 10. UL, Manhelgdsbalken 13. VmL, Manhelgdsbalken 12. SdmL, Manhelgdsbalken 28. HL, Manhelgdsbalken 22. MEL, Edsöresbalken 33, 34. MESt, Edsöresbalken 19.

146 ÖgL, Vådamålsbalken 10. See also: Lydekini excerpter 146 where the peasant should pay a fine to his wife if he beat her to 'full wounds' or broke her legs.

the woman's relative who took the role of her guardian and plaintiff if the husband were to beat his wife so badly that she was "blue and bloody, paralysed or impaired." Christopher's Law also specifies that if the beating was done out of hatred, evilness, drunkenness, or because the husband loved another woman, the crime would be penalised with a double fine for the injuries. However, the husband had the right to chastise her if she were to commit a crime or do something wrong.[147] These examples make it clear that a woman's main protection from spousal abuse was her own kin. Her relationship to her original family must thus have affected whether or not the case was brought to court at all. What is equally clear is that several regulations determine limits for the amount of violence that could be used for disciplining. To cross this line was considered negative, as can be seen in the title to the provision in Christopher's Law: "About those men who beat and treat their wives badly."[148]

There were stricter rules for using violence in certain public places; some laws imposed fines for those who fought at drinking gatherings or other places where people congregate. The same type of thinking applies to spousal violence, which was not as acceptable if it took place outside the household and the home. A few regulations show that a wife was entitled to compensation if the husband had beaten her in front of people at the alehouse or in other public places. This fine was expressly for her alone; she could take the money out of the joint household estate whether they were separated by "inclination or death."[149] While disciplining a subordinate by using violence was totally accepted, the husband should show his wife respect in public by not beating her.

It was obviously humiliating for a wife to be beaten. To be the person who did not have access to violence was never positive; thus, the female societal position was neither admired nor respected. However, subordination was graded, and, insofar as she was the housewife, the woman was to be respected. She was above her servants or her thralls yet below her husband in ranking. We find the female thrall at the very bottom of the medieval society's hierarchy; a beaten female thrall was the very symbol for humiliation and powerlessness. In a quite disturbing provision in the Older Västgöta Law, a whipped female thrall expressly represents a person who had no rights at all.[150] It is no coincidence that the legislator chose a female thrall and not a male one to represent a person with no rights and no possibility to affect her own destiny. Gender

147 KrL, Sår med vilja 19.

148 KrL, Sår med vilja 19 (the title).

149 ÄVgL, Slagsmålsbalken 4. YVgL, Fredsbalken 6, 7, 8.

150 ÄVgL, Lekarerätten. Cp: YVgL, Utgärdabalken 29.

and social position intersected and placed the female thrall at the very bottom of the hierarchy.

To conclude, in certain instances, assault on a woman was punished twice as severely as assault on a man. This can be explained by parallel thought patterns. First of all, it was cowardly to hit a woman; it was dishonest and ignominious to attack a person who was considered physically weaker. Second, it was not acceptable to hit another man's woman; this was humiliating not only for her but also for her husband and master. Just as assaulting a thrall could actually signify an attack on his owner, so could women become the victims of one man's aggression toward another man. The examples provided in this chapter confirm the idea that violence was part of the concept of masculinity in medieval Sweden. In turn, femininity was constructed around powerlessness and defencelessness; access to violence was crucial for constructions of gender in the medieval laws.

Toward a New Ideology

Access to violence and ideas of power were intimately connected; this also includes the notion of protection. Both power and protection are critical in understanding the elusive term of *manhelgd*. The concept of *manhelgd* has a very important place in the legal, ideological, and social structure of the provincial laws. In many of the laws the term is used to denote an entire section. These sections contain primarily criminal law and deal with a variety of crimes: assault, homicide, murder, and theft. One of the laws separates theft and places the crime in a specific section; another distinguishes homicide as a crime to be dealt with separately. We are obviously on the way toward legislation that sees these crimes as separate criminal actions. However, the provincial laws still indicate the perception that every free man, every peasant, has the right to defend himself and his property. He has the right to be honoured and treated with respect. These rights were captured by the term *manhelgd*.

The concept has been completely removed in the Laws of the Realm, and it is not even used as a title for any of the sections. The Laws of the Realm replaced the peace and inviolability of the peasant with the peace of the home in the section on *edsöre*. As noted earlier, this was part of the royal legislation. Legally, the peace of the inhabitants of Sweden now was based on the power of the king, not on the individual peasant. This reflects a new ideology and a redefined idea of masculinity. This can also be seen as a conscious attempt by the royal powers to detach the woman from her husband and immediate family. The older legal tradition, as expressed by the Younger Västgöta Law, held that it

was the husband who was supposed to be the protector of his woman. Both the *manhelgd* and any thoughts that the husband had responsibility for protecting his wife have disappeared from the Laws of the Realm. The responsibility for a woman's safety has been taken away from her husband and kin and placed into the hands of the royal power.

More evidence of this trend is found in the *edsöre* legislation, which introduced the concept of a woman's peace. Since attacking another person's woman could be seen as an attack on the honour of her male relative or guardian, the attack would inevitably lead to a response. Not responding to an insult like this would destroy a man's reputation; he would be considered unmanly and effeminate. One way to prevent vengeance and feud, then, would be to detach responsibility for a woman's safety and protection from the individual men around her and place it instead into the hands of the royal power.

As we shall see throughout this book, women were seen more and more as individuals with personal responsibility for their actions in Swedish medieval law. Women's status as victims of violence was also redefined: they were no longer judged by their physical and social inability to defend themselves. A parallel redefinition of masculinity became necessary when women became detached from the protection of their male relatives. This is what we see on an ideological level in the changes that took place between the provincial laws and the Laws of the Realm. Seen in this ideological context, the disappearance of the legal term *manhelgd* makes perfect sense, as does the fact that it has been replaced by the royal peace of the home.

CHAPTER 4

Lethal Violence: Homicide, Murder, Arson and Witchcraft

Introduction

Lesser violence—for example, blows and hits—might have been the most common crime in late medieval Sweden; however, lethal violence was not unusual. Violent deaths were far more common than today, at least in the cities.[1] This chapter will analyse those violent deeds that led to, or aimed to lead to, another person's death. Medieval lethal violence is often separated into two different crimes: homicide and murder. The legal regulations on homicide have been interpreted within the context of feud and revenge, as shall be discussed below.[2] The medieval crime category of murder has been interpreted quite differently and had other connotations. The most important defining factor was the method: if a killer had acted secretly and tried to conceal the homicide, this would qualify as a murder.[3] There are clear parallels between homicide and murder on one hand and robbery and theft on the other. Just as with robbery and theft, murder was seen as worse than homicide because of the way it was perpetrated. Murder was a dishonourable deed, just like theft.[4] However, as we shall see, the boundaries between homicide and murder were not always clear. This will be made obvious in the discussion on killings in the family and infanticide/abortion. It may be surprising to some readers that witchcraft has been included in this chapter, which focuses upon lethal violence. This is because

1 Out of all convicted crimes in Arboga during 1452–1543, homicides amounted to 2%. This is to be compared to assaults that amounted to 68% of all crimes. For Stockholm the figure is slightly higher: 3.5% of all crimes were homicides during the period 1475–87. Österberg and Lindström, *Crime and Social Control,* 47, 78–79. Ylikangas, "What happened to violence?," 15–16. Fifty people were executed for violent crimes, most often homicide, in Stockholm during the period 1474–92. Göran Dahlbäck, *I medeltidens Stockholm* (Stockholm: Stockholms medeltidsmuseum, 1988), 183.

2 Holmbäck and Wessén, Östgötalagen och Upplandslagen, Inledning, xxii–xxiii. Sjöholm, *Sveriges medeltidslagar* 22, 174–177. Hemmer, *Studier rörande straffutmätningen*, 2–7.

3 Schlyter's dictionary: 'morþ.' Hemmer, *Studier rörande straffutmätningen*, 19. In several medieval diploma murder is defined as a homicide committed in secret. For example in DS 1182 it is stated "occultis homicidiis, Mordh dictis."

4 Hemmer, *Studier rörande straffutmätningen*, 18–19.

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certain types of witchcraft in Swedish medieval law had strong connections to murder; in fact, some of the regulations on witchcraft are defined as poisoning. Arson has also been included when the fire was set with the purpose of causing someone's death. In this regard, arson is clearly an example of deadly violence.

This chapter will argue that the legislation on homicide evolved from a male system based on revenge and compensation to a system that sentenced the killer to capital punishment. In this process we also see a shift from a system that based sentencing (the wergild) on an evaluation of the victims' ability to defend themselves to a new ideology that valued all individuals equally if they were killed. The chapter will demonstrate that the introduction of female criminal liability was uneven and hesitant for homicide: while the younger laws express a will to sentence a woman "like a man," they still tend to be more lenient. This does not apply to the legislation on murder, where women's criminal liability is well established and death penalties applied. One conclusion is that women were expected to commit murder, which included lethal witchcraft ('destruction,' as it is called) and infanticide. In contrast, homicide is described as a result of manly battles: killings that took place "when men meet in anger." However, the gendering of witchcraft and infanticide weakened over time; the Laws of the Realm stipulate that both men and women can commit these crimes and should be punished. Finally, I claim that these processes were ideological and have no counterpart in changes in legal practice or in contemporary mentalities.

Revenge, Wergild, and Outlawry

Legislation on homicide in the medieval laws consists of a diverse collection of provisions; this is especially true in the provincial law codes. They are also quite difficult to understand at times; the provisions in the Older Västgöta Law in particular are highly ritualised and obscure.[5] However, there are also several traits that the laws have in common. First of all, they all describe homicide as an open act. This did not only involve the fact that homicide took place in public; it was equally important that the perpetrator did not try to hide the deed. Second, another general trait is that fines and compensation are the general and expected punishments for homicide in the provincial law codes. This goes for those cases which had no aggravating circumstances, and while the mitigating circumstances in the laws are quite few, the aggravating circumstances are many and varied, as we shall see below. Any deaths that happened as a

5 Holmbäck and Wessén, Äldre Västgötalagen, Förklaringar till balken om mandråp, 30–31.

result of an accident were judged more leniently. Apart from that, the mitigating circumstances for homicides can be limited to instances when a killing was preceded by a crime. A previous case of theft, adultery, or another homicide could lead to a killing being judged "legitimate" or excusable and therefore not punishable.

Fines and compensation for homicide were known as wergild in Germanic law. This meant that a price was set on each person, a sum that would be paid if that person was killed. It was her or his value in money. For simplicity's sake, the term 'wergild' is used in this book. The Old Swedish term is *mansbot*, and it should be noted that the *mansbot* is never a pure compensation, only a part of it is (usually one-third; see below). The wergild has been interpreted within the framework of blood revenge or vendetta in legal historical research. At times it has been assumed that the development went from a situation where a homicide required a response in the form of a revenge killing carried out by the slain person's male relatives. This stage then developed into a new phase in which compensation in money, a wergild, was accepted instead.[6] Jean-Marie Carbasse categorises the first phase, when the blood vengeance was unregulated and unlimited, as "a theoretical phase."[7] The state of uncontrollable revenge is part of an evolutionary timeline laid out by legal historians in the nineteenth century. This timeline was intended to demonstrate an evolution from revenge to an acceptance of fines and, finally, a phase in which state-controlled punishments became the standard.[8] There is no empirical evidence proving that the first phase ever existed. William Ian Miller writes accordingly: "Revenge always coexisted with a compensation option."[9] Revenge and compensation—or fines—shall be seen as two parallel solutions. This does not mean that it was considered honourable in all social groups to accept compensation for a slain relative. Vengeance could be regarded as a duty.[10]

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6 Tamm, *Retshistorie*, 77. Fenger, *Fejde og mandebod*, 61. Anners, *Europas rättshistoria*, 11.

7 Carbasse, *Histoire du droit pénal et de la justice criminelle*, 68.

8 William Ian Miller, "In Defense of Revenge," in *Medieval Crime and Social Control*, ed. Barbara Hanawalt and David Wallace (Minneapolis: University of Minnesota Press, 1999), 71. William Ian Miller, *Eye for an Eye* (New York: Cambridge University Press, 2006), 25. Jean-Marie Moeglin, "Le 'droit de vengeance' chez les historiens du droit au Moyen Âge (XIX^{e}–XX^{e} siècles)," in *La Vengeance 400–1200*, ed. Dominique Barthélemy, François Bougard and Régine Le Jan (Rome: École Française de Rome, 2006).

9 Miller, *Eye for an Eye*, 25.

10 William Ian Miller, *Bloodtaking and Peacemaking. Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990), 234. Miller, "In Defense of Revenge," 74. Fenger, *Fejde og mandebod*, 352–353. Helle, *Gulatinget og gulatingslova*, 87. Poul Gædeken states accurately that a person's social status must have affected the decision to accept

In the Västgöta Laws (and in certain cases in the Östgöta Law), the relatives of the dead had the right to seek revenge after the perpetrator had been found guilty and sentenced to outlawry at the local court assembly.[11] As mentioned, there are two types of outlawry in Swedish medieval law: provincial outlawry, which is only mentioned in the Göta Laws and was not used in the Svea Laws;[12] and another kind of outlawry, found in the royal *edsöre* legislation, which was valid for the entire realm, not just the province. The outlawed person was stripped of his status as a member of the community and was not allowed to remain in the community. It was forbidden to socialise with or protect an outlawed person. The outlawed person was "outside the law"; he was not protected by the law and could be killed by anyone. The Swedish term for this, *fredlös*, literally means that the person was "without peace." In the legal sense this meant that a person had no protection from others. Being outlawed was a punishment in itself; to be banned from the local community must have been very difficult in a time when ties within smaller communities were the very foundation of society.[13] However, outlawry was intimately connected to revenge. Having someone outlawed at court served the purpose of legitimising a future revenge killing.

Both types of outlawry have been connected to the expansion of royal power. Outlawry is not believed to have been an "original" punishment, since it is based upon the presence of a central authority. The connection to the royal power is obvious for the countrywide outlawry mentioned in the *edsöre* legislation. In these cases, the outlawed person had the right to return in "peace" if he paid a so-called peace fine to the king. This could only take place after the outlaw had reconciled with the plaintiff, which most likely required additional compensation. Ditlev Tamm emphasises that the efficiency of outlawry as a punishment, whether on a countrywide or a local level, was dependent upon the royal justice system.[14] Indeed, if one family continued to protect its outlawed relative, the punishment would have no effect. Outlawry therefore also required the collaboration of the local community; the punishment was pointless if the rest of the villagers or townsmen refused to banish the person. Outlawry can thus also be seen as a collective punishment.

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a fine or to take revenge. Gædeken, *Retsbrudet og reaktionen derimod*, 181. Tamm, *Retshistorie*, 77.

11 ÄvgL, Om Mandråp 1 §3. YVgL, Dråparebalken 4. ÖgL, Dråpsbalken 3 & §4.

12 KLNM 'Straf' and 'Fredløshed' (both: Sverige) articles by Ragnar Hemmer.

13 Inger, *Svensk rättshistoria*, 57–58.

14 Tamm, *Retshistorie*, 78.

While the Västgöta Laws stipulate outlawry as a punishment for homicide, the Svea Laws let the plaintiff—or "the heir," as he is often called—choose between revenge and a fine. This is formulated in the Uppland Law as:

> Now, a man kills another. If he comes to the court assembly and admits to the killing, then the plaintiff has the right to do what he prefers: take revenge or take a fine. If the heir wants to take the fine, then he shall have 40 marks for his part. The king: 13 marks and 8 örtugar. And also to the district.[15]

Scholars have actually claimed that this is closer to an original system in which it was not necessary to legitimise a revenge killing for homicide in court.[16] However, the provision cited above demonstrates that revenge was preceded by a verdict at court. Only after the person had admitted to the killing could the plaintiff take revenge. But it is true that the Svea Laws do not seem to have practiced outlawry. One consequence of this is that only the plaintiffs (or heirs) had the right to commit the revenge killing. By contrast, if a person was outlawed, then anyone had the right to kill the convicted.

The three elements of revenge, compensation, and outlawry should be seen as parts of the same system and not as stages in a legal evolution. One possible outcome of this system was that the parties reached a settlement and were reconciled. Revenge and outlawry were tools used to pressure the other party into paying the fines and any settlement after a homicide depended upon negotiations at the local court assembly. Settlement and payment of fines do, indeed, appear to be the expected result of the negotiations in the laws. The majority of the many diverse provisions on homicide stipulate different levels of fines. The system with wergild was not based on social status; instead, it seemed to assume that the parties were of equal status and power.[17] It is not difficult to see that the system would collapse when the parties were of unequal strength, since the authorities had few resources to deal with cases such as this.

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15 UL, Manhelgdsbalken 9 §2. Same phrasing in HL, Manhelgdsbalken 38. VmL, Manhelgdsbalken 9 §2. SdmL, Manhelgdsbalken 23 §3.

16 KLNM, 'Fredløshed' (Sverige), article by Ragnar Hemmer.

17 Miller notes accordingly that Icelandic medieval law is based on an egalitarian system that did not correspond to reality. That the same wergild was paid for all free men and women did not reflect legal practice where it followed the social status of the victim. Miller *Bloodtaking and Peacemaking*, 26–34.

A Male System?

The system in the provincial laws is based upon the plaintiff being able to take action, either by avenging the killing or by accepting a fine. This system has been interpreted as a male system that excluded women.[18] William Ian Miller directly states that "Just as women were not appropriate expiators in the feud, they were not appropriate avengers."[19] Indeed, not only women were excluded; small children and old men also were not appropriate targets for vengeance.[20] The medieval Danish Jyske Law stipulates that one cannot choose women as targets for revenge, because they cannot take vengeance themselves.[21] The Swedish law codes do not explicitly exclude women, but we find the same principle in the oldest law code. The Older Västgöta Law states that women should "always walk in peace to meetings and to mass; never can men's combats be so important that a woman cannot walk in peace." To kill a woman is here considered "the deed of a *niding*."[22] A translation of this legal term would be 'a heinous act.' We find in the same law the notion that the role of a woman is to link together different generations of men. A woman had the right to name the killer of her husband if his sole survivors were his wife and a small child, or, as the law puts it: "if the wife has a child on her knee."[23] The emphasis upon the child shows that her right to be a plaintiff was, in fact, based upon her position as a representative for her child and, of course, the lack of male relatives who could assume the position. One would assume that she represented her son, but the law clearly states 'child' and not 'son,' so the woman simply represents the next generation.

The Older Västgöta Law is based on a reconciliatory system rather than a retributive system.[24] The settlements were reached between men and, more specifically, between men of equal status. Thus, the law states: "a thrall cannot be called the slayer of a free man." Instead, if a thrall killed a free man, it was

18 Fenger, *Fejde og mandebod*, 350. Miller, *Bloodtaking and Peacemaking*, 207–209.

19 Miller, *Bloodtaking and Peacemaking*, 354, footnote 35.

20 Miller, *Bloodtaking and Peacemaking*, 207.

21 Gædeken, *Retsbrudet og reaktionen derimod*, 45, 185.

22 ÄVgL, Urbotamål §6. YVgL, Urbotamål 2 § 5 has omitted the statement that a woman shall always walk in peace.

23 ÄVgL, Om mandråp 1 §1. YVgL, Dråparebalken 2. Also here we find a difference between the two versions. In YVgL the closest paternal relative shall name the killer together with the child or alone if the child cannot do so.

24 Hemmer, *Studier rörande straffutmätningen*, 368. Christian Häthén refers to a "compensatory sanction system" that was replaced by a new retributive and deterrent system. Häthén, *Stat och straff*, 11, 45.

the owner who should pay for the crime or flee as an outlaw if he refuses.[25] Similarly, a woman cannot be sued for homicide. If a woman kills a man, it is her closest relative who shall pay the fine or be outlawed.[26] Thralls, women, and children were excluded from the system based on revenge, fines, and outlawry; they were not a part of this male system. We also find the same tendency in the Östgöta Law, which states that a homicide committed by a woman does not have to be followed by reconciliatory compensation.[27] This reconciliatory compensation is called *oranbot* in Old Swedish. The word *oran* means 'feud' or 'vendetta.'[28] The compensation was obviously a way to reach a settlement in order to avoid feuding.

A woman's legal responsibility for homicide is non-existent in the Older Västgöta Law; it is her male relative who should take the punishment for her. The system with complete male guardianship is breaking down in the medieval laws. The younger version of the Västgöta Law shows that at this next legal stage it is problematic to let a woman's relatives take the punishment for her. The provision on homicide by a woman has largely been taken verbatim from the older law, but the legislators found it necessary to explain *why* a man should take the punishment for a woman. It explains that a woman's brother accepts a "friend gift" from the future husband, and doing so obligates him to take the punishment for his sister or his mother, if it leads to that.[29]

The Östgöta Law seemingly excludes women from vengeance and feud by stating that no reconciliatory compensation need be paid if a woman kills a man. However, the exclusively male system has apparent glitches in this law. This too demonstrates that the system is breaking down, and this change is closely connected to the development of female criminal responsibility. The Östgöta Law has an elaborate system regarding guardianship of women. In many ways this law manages to balance the complex situations that occurred when women were put under male guardianship yet tended to act as individuals. This law several times mentions and repeats that women should be under guardianship. This is quite unique. The other laws tend to mention it only once, usually in the section on marriage.[30] A female criminal nonetheless

25 ÄVgL, Om mandråp 4.

26 ÄvgL, Om mandråp 5 §2.

27 ÖgL, Dråpsbalken 9 §2. 'Reconcilatory fine' is Wessén's translation.

28 Schlyter's dictionary: 'oran.' Holmbäck and Wessén, Östgötalagen, Dråpsbalken, footnote 2.

29 YVgL, Dråparebalken 11.

30 HL, Ärvdabalken 2 §1. UL, Ärvdabalken 2 §1. VmL, Ärvdabalken 2 §1. MEL, Giftermålsbalken 6 §1. KrL, Giftermålsbalken 9. ÖgL, Giftermålsbalken 7, Kyrkobalken 16, 27, Dråpsbalken 9 & §1, Vådamålsbalken 15 & §2, 22, 35, 36, Rättegångsbalken 12 §1–2.

created problems for the legislators, and this led to contradictory regulations. The Östgöta Law contains a paradoxical provision regarding homicide by a female perpetrator, revealing that women's legal responsibility was controversial because she was put under male guardianship.

According to the Östgöta Law, a female killer cannot be brought to court and cannot be sentenced to death. The plaintiff should sue her guardian, who should pay the fines, and the laws states that the money should be taken from her property. If her assets were not sufficient, then the guardian should use his own money. The law also states that a woman cannot be outlawed for homicide. Thus far, the provision makes sense. However, after this we learn that if the heirs instead want to take revenge on the female killer, then they are, in fact, entitled to do so.[31] It is hard to find consistency among these regulations. No reconciliation fine was due for violent acts committed by women, and they could not be brought to court and prosecuted. However, they could be targets for a vengeance killing and were not excluded from the male system after all.

The provisions for homicide in the Svea Laws are very similar. In these laws the plaintiff could choose whether he wanted to accept a fine or take revenge. Three of the Svea Laws contain regulations regarding female killers. As a general rule they stipulate that a woman who kills a man shall pay a single fine: a basic wergild.[32] A woman was thus considered to be as responsible for a homicide as a man if the punishment was the payment of fines. However, the heirs seemingly did not have a right to avenge the killing. This possibility is simply not addressed; the silence may be interpreted as though revenge on a woman was not seen as an option.

The expressions in the provincial laws show that in the cases where women had legal responsibility at all, female criminal liability was secondary to that of a man. The provisions on female killers are often placed long after the general rules on homicide and usually after a large number of specific and detailed cases seemingly dealing with male perpetrators.[33] The placement could indeed indicate that the regulations have been added or edited into the manuscripts at a later stage. The Svea Laws also demonstrate that a woman was first and

31 ÖgL, Dråpsbalken 9 §1–2.

32 SdmL, Manhelgdsbalken 26 §12. VmL, Manhelgdsbalken 10 §2. UL, Manhelgdsbalken 11 §6. General rules on homicides committed by women are lacking in the Hälsinge and Dala Laws. The older town law, Bjärköarätten, imposes fines for homicide, yet does not mention how to deal with female killers. Bjärköarätten 12 §2–3, 14 §9–10.

33 In UL there are 12 paragraphs and subparagraphs between the general provision on homicide and the one dealing with a female killer. UL Manhelgdsbalken 9 §2 and 11 §6. In VmL there are nine paragraphs between the two.

foremost seen as a victim of homicide—not as a perpetrator. The contradictions in legislation discussed above demonstrate that female legal responsibility was not considered unproblematic, and it was not introduced into the laws without resistance. Again, this shows that female legal responsibility was primarily introduced by the authorities and was not part of customary law.

From Revenge and Fines to Capital Punishment

It was almost always possible to pay compensation and a fine for a homicide in the provincial laws.[34] The numerous provisions with different levels of fines demonstrate that the expected outcome of a court trial was the payment of a fine. This system was replaced by a system requiring capital punishment for homicide. The Östgöta Law is partially on the way to a change that appears fully in Magnus Eriksson's Law of the Realm. The Östgöta Law actually imposes revenge killing, outlawry, fines, and the death penalty for homicide.[35] If the killer was caught red-handed, then the death penalty could be prescribed; outlawry was used if the killer was not caught, but the killer had to be sued in court.[36] The Östgöta Law states that a killer caught red-handed could be decapitated. This is the method of execution that came to be imposed in both Laws of the Realm and Magnus Eriksson's Town Law. Magnus Eriksson's Law cites capital punishment as the primary penalty for homicide.

Magnus Eriksson's Law states that a person shall give life for life and "shall not have peace anywhere" if he kills another person and is caught red-handed or on the same day the homicide was committed. The death sentence requires that it be proven that he killed with intent and had not been exposed to danger. If the killer is not arrested and takes refuge in a convent or church, the plaintiff has the right to tie him to the crime in his absence. He would then be sentenced to outlawry instead.[37] Christopher's Law contains the same regulation.[38] The two Laws of the Realm also contain almost verbatim provisions

34 The Dala Law is unique since it only stipulates fines for killing a person; neither the option of revenge nor death penalty is mentioned. DL, Manhelgdsbalken 1 & §1–8, 3 & §1–6, 4, 6, 10, 25.

35 ÖgL, Dråpsbalken 2 §1, 3.

36 Hemmer, *Studier rörande straffutmätningen*, 35–36. Holmbäck and Wessén, Östgötalagen, Förklaringar till dråpsbalken, 66. This is not evident in the Old Swedish text, but the interpretation is reasonable.

37 MEL, Dråp med vilja 2, 6, 7, 8, 12, 13. The alternative to pay a fine: Dråp med vilja 5, 14, 15.

38 KrL, Dråp med vilja 2, 12.

regarding female killers: a woman should be taken to court and sentenced "as any other killer." Once again, the phrasing of the provision illustrates that her criminal responsibility was compared to a male norm; "any other killer" was, of course, a man. The phrasing also shows that her legal responsibility needed to be explicitly mentioned because it was not self-evident.[39]

The statement that "a woman should be sentenced as any other killer" does not reflect the content of the provisions. In fact, the plaintiff can choose whether he wants to accept fines or have a female killer decapitated. This clearly departs from the provisions governing punishment of a male killer, who was to give life for life and never have peace. Adding to this, Magnus Eriksson's Law further allows the plaintiff to accept a lesser fine if the woman could not pay the fines. If the plaintiff did not want to accept a lesser fine, the woman was outlawed. However, the rules on outlawry were not applied in a gender-neutral way: it was not illegal to either socialise with an outlawed woman or give her food. Furthermore, it was not permissible to outlaw a woman if she could pay the fines. It should be noted, however, that it was illegal to protect the outlawed woman from people who wanted to attack her.[40] This provision clearly demonstrates that outlawry was intimately linked to revenge and was not just a punishment in itself.

Magnus Eriksson's Town Law also specifies decapitation as the primary punishment for homicide. The law mandates that a killer shall give life for life and cannot escape it through paying a fine. He shall lose his head even if he is captured only at a later point and tied to the crime.[41] The provision on female killers in the Town Law has been taken from the Law of the Realm. The Town Law is thus also more lenient towards female killers and gives the plaintiff the choice to accept fines instead of having her decapitated.[42] The Town Law, however, does not contain any rules on how to deal with the case if the woman could not pay the fines.

Decapitation has been described as a gender-neutral punishment in the sense that it could be used regardless of the offender's sex. In addition, the punishment was not considered dishonouring for the criminal. Both Laws of the Realm as well as Magnus Eriksson's Town Law express a determination to let a woman take her punishment as a man: she shall be sentenced as any other killer. However, the opposite tendency is just as clear: an obvious reluctance to

39 MEL, Dråp med vilja 31, 32. KrL, Dråp med vilja 28, 29.

40 MEL, Dråp med vilja 31, 32. KrL, Dråp med vilja 28, 29. Cp: MEL, Dråp med vilja 18 and KrL, Dråp med vilja 17.

41 MESt, Dråp med vilja 1, 2 §1.

42 MESt, Dråp med vilja 6.

have her executed for the crime she had committed. The restrictions surrounding the death penalty are more numerous for a woman, and the possibilities to accept fines have been extended. The regulations can be interpreted as encouraging the plaintiff to accept a fine.

Allowing the death penalty to replace a system based on revenge and compensation/fines was an important legal development. The gap between legislation and legal practice has been emphasised throughout this book. It is very hard to determine whether legal practice went through a profound change as well. During the sixteenth century in the Finnish parts of Sweden, the most common atonement for committing a homicide was the payment of fines. The stipulated death penalty was rarely enforced in practice.[43] At the same time, decapitation was commonly used for convicted killers in late medieval Stockholm.[44] This might signify a difference between countryside and urban communities. Nonetheless, the point is not to prove that the justice system had changed in practice; in fact, the argument is quite the contrary. To restrict the individual right to revenge and self-help and to hand over these rights to the central authorities was an ideological change, in line with other developments that took place at the same time. We see the royal power aiming to obtain a monopoly on punitive violence. The death penalty, just as outlawry, could still be used to enforce a settlement and the payment of fines. But it would be imposed by the king and therefore manifested the king's power over life and death in those situations when it was deemed necessary and beneficiary.

Categorising Victims

Gender affected the sentencing for homicide; however, who the victim was and how the homicide had happened were far more important for sentencing than

43 Out of 169 cases of homicide only three or possibly four led to the death penalty during the period 1540–1620. All the others were sentenced to pay a fine. Ylikangas, "What Happened to Violence?," 33.

44 One hundred and forty people were executed in Stockholm during the period 1474–92. Ninety of these were thieves and fifty had been found guilty of violent crimes, most often homicide. Göran Dahlbäck, *I medeltidens Stockholm*, 183. Also see: Österberg and Lindström, *Crime and Social Control*, 93. The situation seems to have been different in the city of Jönköping, where no cases of homicide led to death sentences during the fourteenth century; instead the killers were sentenced to pay a fine. Lars-Arne Norborg, *Jönköpings stads historia*, Band 1 (Jönköping: Kulturnämnden, 1963), 377.

the identity of the killer.[45] Different fines were stipulated depending upon the victim and how the deed had taken place. The fines for homicide are quite systematic and consistent in the provincial laws; however, there is an important difference between the Västgöta Laws and the other provincial laws. Two systems lie behind the sums for compensations and fines: one based on the number three, and one based on decades. Most laws contain fines based on both systems. The Västgöta Laws only have fines based upon the number three; the sum for a homicide is twenty-seven marks, which was then easily divided into three parts. This was often expressed as three times nine marks. All other laws have the sum of 40 marks as the basic fine for homicide, the basic wergild. The 40-mark fine is believed to have been introduced under the influence of the king and taken over from the Danish legal tradition.[46] The Svea Laws generally refer to someone's homicide being paid for by a simple, double, or triple wergild. The 40-mark fine was then doubled or tripled according to the circumstances.

As noted in the previous chapter, strong regional tendencies can still be detected in the Older Västgöta Law. This meant that an inhabitant of Västergötland was defined and valued differently than a person from outside the province. This type of separation based upon geographical criteria was being removed when the law was compiled. Nonetheless, it was still necessary to point out that the wergild for a person from another province should be the same as that of a person from Västergötland. The Older Västgöta Law then states that killing a person from outside the province shall be compensated with 13 marks and eight *örtugar*; and furthermore, that no 'kin based fine' was due.[47] This is very interesting because it shows that the provision had been adapted to the Svea Laws. The sum that the plaintiff would receive, 13 marks and eight *örtugar*, corresponds to one-third of 40 marks. The king and the district, however, receive 9 marks each, which instead corresponds to one-third of the fine imposed for homicide of an inhabitant of Västergötland, which was 27 marks. The rule is a compromise, establishing the right for the plaintiff, who came from outside the province, to receive the same sum as he would have in his own jurisdiction, yet the king and the district still had to settle for less.

45 This section will not deal with thralls. The Older Västgöta Law, the Östgöta and Västmanna Laws, show that killing a thrall was considered a property crime and was measured according to his monetary value. The Uppland Law has equated the killing of a thrall with that of a free man. Nevéus, *Trälarna i landskapslagarnas samhälle*, 75, 96, 121–124.

46 Hemmer, *Studier rörande straffutmätningen*, 71, 73.

47 ÄVgL, Om mandråp 5 & §1.

In the Older Västgöta Law the wergild also varies for a person who came from outside the Swedish kingdom. The wergild for a Danish or Norwegian man was equivalent to that of a Swedish man, while the killing of an English man or a 'Southern' man led to lower fines. 'Southern' man has been interpreted as referring to a German.[48] The Older Västgöta Law is still in mid-phase, where a territorial definition is not entirely the basis for the law's jurisdiction. Instead, the point of departure is the geographical origin of the criminal or the victim.

The other laws also base sentencing on the identity of the victim, and one of the most consistent divisions is based upon gender. To kill a man was not the same as to kill a woman. As we have seen, according to the Older Västgöta Law, women were supposed to walk in peace even when men were in battle. That women should have peace was already well established in Swedish law and evidently had its basis not in the king's peace but in ideas of acceptable and unacceptable forms of violence. We noted that at times a woman's injuries were paid for with a double fine. This can be seen in cases of homicide and is a consistent tendency in the provincial laws. That a woman's death was paid for by a double wergild, compared to the fine of a single wergild for a man's death, is very well established in Swedish provincial law.[49] At the same time, a single wergild was paid if a woman were to kill a man. As the Södermanna Law states it: "If a woman is killed, she lays in double fines. If a woman kills a man, he lays in a single fine."[50] The background to this legal thinking was an estimation of an individual's possibility to self-defence and access to violence and weapons. Above all, the wergild system considered the strength relationship between perpetrator and victim, which depended on both their identities and the context. This is demonstrated most clearly in the Dala Law, which stipulates that if a woman is killed by a man she shall be paid for by a double fine, but if she is killed by another woman, then her wergild is not doubled.[51]

What is more, the gender division is so consistent that it is applied to cases in which the actual ability to mount a defence and the victim's access to

48 ÄVgL, Om mandråp 5 §3 & §6. For a discussion on the complex rules in ÄVgL see: Holmbäck and Wessén, Äldre Västgötalagen, Om mandråp, footnote 57 and additionally: ÄVgL, Om mandråp 5 §1, but compare: 5 §6–7.

49 DL, Manhelgdsbalken 3 & §4. SdmL, Manhelgdsbalken, 26 §12. VmL, Manhelgdsbalken 10 §2. UL, Manhelgdsbalken 11 §6. Bjärköarätten 14 §16. The Hälsinge Law lacks a provision regarding homicide of a woman. However another provision states that the wergild for a "mindless" woman shall not be more than that for a "mindless" man. The latter indicates that this was standard in other cases. HL, Manhelgdsbalken 2 §1.

50 SdmL, Manhelgdsbalken 26 §12.

51 DL, Manhelgdsbalken 1 & §1–8, 3 & §4.

violence carry no real importance. The interesting phenomenon of 'wished-for-children' was mentioned in cases of castration: children that a person could have had but for some reason could no longer produce. This fine was also paid when a betrothed woman or bride was killed or abducted. In all of these cases, a 'wished-for-daughter' was paid with a double fine compared to a son. The fines correspond to the wergilds for the respective gender.[52] Definitions of a person's ability to self-defence and access to violence have created a structure which assigns the female gender to a group that always is paid for with a double wergild. It is interesting to compare this to the case of an actual living child being killed. A female child is paid for with a double fine compared to a male child in the Dala Law. However, the gender of the child does not influence the sentencing in the rest of the laws. Instead, it is the age of the child that affected the sentencing, which can be connected to the idea that a younger child was less able to mount a defence.[53] The 'wished-for-children' were seen as heirs and thus as the adults they would have become. Even in this very abstract sense, the gender division is maintained.[54] The provisions are very interesting, for it often is assumed that the child truly "wished for" in the Middle Ages was male and not female, since boys and men were valued higher than girls and women.[55] According to this logic, it should have been the son who was paid for with a double wergild, not the daughter.

Victims of homicide are divided by gender in the provincial laws; however, as noted, the point of departure is actually whether a person was considered able to armed self-defence. The Södermanna Law explains that if a man is killed when he is with his sister or daughter, then he should be paid for by a double wergild, since they could not defend him with weapons.[56] That the ability to

52 SdmL, Manhelgdsbalken 10, Giftermålsbalken 3 §1. DL, Manhelgdsbalken 7, also: Giftermålsbalken 2. VmL, Manhelgdsbalken 25 §3. ÖgL, Vådamålsbalken 5 equates daughters and sons as victims in accordance with the general tendency in this law.

53 The provision in the Dala Law concerns 'cradle babies' and stipulates a 40-mark fine for a boy and 80 marks for a girl. DL, Manhelgdsbalken 3 §6. UL, Manhelgdsbalken 12. SdmL, Manhelgdsbalken 26 §6, 27 §1 separates children from adults by the age of 12 and has a triple wergild for children under the age of seven. HL, Manhelgdsbalken 21 also states the age 12. VmL, Manhelgdsbalken 11 has different fines for different ages; the wergild for a child up to the age of three is 100 marks, a child up to the age of seven 80 marks. However a child between seven and 15 had a basic wergild.

54 Ragnar Hemmer claims that these fines were introduced due to influence from canon law. Hemmer, *Studier rörande straffutmätningen*, 230–231.

55 Emily R. Coleman, "L'infanticide dans le Haut Moyen Âge," *Annales ESC* 2 (1974): 325. Hanawalt, *The Ties That Bound*, 102.

56 SdmL, Manhelgdsbalken 26 §1.

use violence is central can be seen in the provisions that place certain men in the category of defenceless people. Some categories of men are paid for with a double wergild: a so-called "crutch man," for example, a man so weakened by age that he no longer is able to come to the local court assembly.[57] The clearest expression of this is found in the Uppland Law, which states: "if one is so young, and another so old that he cannot carry full folk weapons and is relieved from taxes and duties, if he is killed, it [the homicide] is paid for with a double fine: eighty [marks]."[58]

This is part of a wider structure. Different situations are defined along the same line of thought where certain actions were seen as acceptable and honourable and others, in contrast, as vile and shameful. In the Västgöta Laws, to kill someone who is sleeping, swimming, or 'doing his deed' (defecating) is referred to as a 'heinous act.'[59] Simply put, it was considered very negative to attack a person who did not have the ability to defend himself by using weapons. A similar way of thinking can be seen in the Svea Laws. They establish that a homicide should be paid with a double fine if a person ambushes another person. However, the killing is paid with a single fine if the ambushed person manages to kill the person waiting for him.[60]

There was clearly an acceptable way to use violence—and this was a straightforward man-to-man type of violence. To attack someone by insidiously waiting for him or to attack someone in front of his female relatives was not acceptable behaviour. In addition, it was not honourable to attack women, children, or elderly persons. We can see a warrior masculinity behind these provisions, which also assumed that a man would respond to violence with violence. The basis for this masculine identity was the ability to defend oneself. We find this line of thinking most clearly in the Older Västgöta Law, which stipulates fines for insults that express contempt for cowardice and weakness. The law stipulates that it was a punishable insult if a man said to another: "I saw you run, one for one, with the spear on your back."[61] The insult is based upon the fact that the man did not stay and fight his sole adversary; he fled instead, without even taking out his weapon. It is hardly a coincidence that this insult is connected to calling someone a freed thrall. The use of violence was reserved for free men for whom violence was not only a possibility but also

57 DL, Manhelgdsbalken 3 §5. In the Västmanna Law the fine has been raised to 100 marks. VmL, Manhelgdsbalken 11.

58 UL, Manhelgdsbalken 11 §2.

59 ÄVgL, Urbotamål §3, §6. YVgL, Urbotamål 2 §2–4.

60 UL, Manhelgdsbalken 11. SdmL, Manhelgdsbalken 26. VmL, Manhelgdsbalken 10.

61 ÄVgL, Rättlösabalken 5 §1.

could be a duty. Jonas Liliequist concludes that courage and warrior behaviour were central in Nordic pre-modern masculinity; he separates this from a southern European masculinity, which was based far more upon sexuality and sexual prowess.[62]

It has been stated that this aggressive masculinity was actually the norm for all individuals in society. This could explain an interesting early medieval Germanic provision, which bases sentencing completely upon a person's ability and will to defend herself/himself. The Lex Baiuvariorum, most likely compiled in the 740s, states that if a woman is killed, then her killing should be paid for with a double wergild since she cannot defend herself with weapons. However, if she were to have the courage in her heart to fight like a man, then killing her need not be compensated with a double fine.[63] Compare this to the regulation in the Dala Law, which states that a woman killed by another woman should be paid with a simple wergild and not a double. The ability or willingness to mount a defence in relation to the adversary was the criteria for the wergild.

A fundamental change can be seen in the transition to the Law of the Realm in 1350. This change again took place first in one of the provincial laws. The Östgöta Law is unique among the provincial laws in stating that killing a woman shall be regarded the same as killing a man.[64] This principle was then introduced in the entire kingdom with the Law of the Realm. Magnus Eriksson's Law does not incorporate the statement that the homicide of a woman shall be treated the same as the killing of a man. Instead, it removes all references to double wergild being paid for women. One can note that this is not due to the fact that the law never stipulates double wergilds; it clearly does.[65] The Law of the Realm has removed all gender-based differences for victims of deadly violence, and the law treats women and men as victims equally. Faced with death, a man and a woman shall be equally valued or have equal protection, since the double wergild for slain women can be seen as a protection for women. These important changes notwithstanding, it is obvious that the point of departure for a homicide in the Law of the Realm is still an armed combat between men.[66]

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62 Jonas Liliequist, "Från niding till sprätt: en studie i det svenska omanlighetsbegreppets historia från vikingatid till sent 1700-tal," in *Manligt och omanligt i ett historiskt perspektiv*, ed. Anne Marie Berggren (Stockholm: Forskningsrådsnämnden, 1999), 79.

63 Fenger, *Fejde og mandebod*, 242.

64 ÖgL, Dråpsbalken 9.

65 MEL, Dråpamål med vilja 41.

66 MEL, Dråpamål med vilja 1.

The removal of gender-based differences for sentencing is not a coincidence. In fact, the Law of the Realm removed all categories of adult victims. It eliminated any references and specific sentencing for killing an elderly person or a person who is considered too young. However, it still included provisions that take the context into consideration. This is especially true for those times when a person should have had peace and protection. The Law still regards killing a person who is swimming or sleeping as a heinous deed,[67] but it equates the victims in other aspects. The definition of a homicide was no longer based upon an assumed relationship of unequal power between victim and perpetrator.

Carol Clover argues that the older Nordic society did not divide people based upon gender; people were separated based upon power and strength. Thereby, two groups were created: those with power and the ability to defend themselves, and all others. Women, thralls, the elderly, and children belonged to the latter group, as did men who could not live up to the demands of the masculine ideal. Clover's model helps describe the changes that took place in Swedish medieval law. This is not to say that the gender of an individual was unimportant; even in the earliest law codes it constituted one criterion which determined how one ended up in one of the groups. However, the main criterion seems to have been access to violence and weapons. This was a question of both personal ability and the will to use weapons; it was also a matter of whether or not it was socially accepted to do so. This meant that male thralls also ended up in the group of those who were considered powerless. They might have had the ability and will; however, they did not have the right to use weapons, for that was a prerogative of the free peasant. It is also clear that gender becomes a more important factor for social categorisation in the younger laws. In fact, it seems to be the only factor that remains.

We can also see in Swedish medieval law the attempt to remove the right to use violence from the peasant and restrict it to male aristocrats. The aristocratic man was now mainly the one who was expected to be manly and be willing to fight. The Law of the Realm contains an interesting parallel to the provision regarding whether a man is so old or so young that he cannot carry folk weapons. It is no longer a question of peasants who cannot use weapons due to age. The provision instead deals with the situation of an aristocratic man who, due to an advanced age, is no longer able to serve the king with a horse, that is to say, as a warrior.[68] The Law of the Realm represents a new ideology with new categories and new stratifications.

67 MEL, Dråpamål med vilja 16.

68 MEL, Konungsbalken 12. KrL, Konungsbalken 13.

Homicides within the Family

The laws also valued and defined killings that took place within certain spheres differently. Legislators were quite concerned by homicides within the family, and it was clearly more serious to kill a person in one's own family. The Younger Västgöta Law calls a homicide within the family—of a father, mother, son, daughter, sister, or brother—a heinous deed and a crime that could not be expiated within the realm. The law states that the person who did such a thing had to "carry the name of a villain outside the country and pay for her or his sin there."[69] The homicide had to be redeemed by a pilgrimage.[70] The Dala Law also considered violence within the family to be more serious than other types of violent acts. Here, the fines for homicides are ranked according to how closely related the perpetrator and victim were: the closer they were related, the higher the fine. The same thing was valid for spouses: if either spouse killed the other, the wergild was doubled.[71] These ideas can be connected to the respect for close family members, which the Church emphasised. This is confirmed in the Younger Västgöta Law, which stipulates a pilgrimage to expiate the killing of a close family member.[72] This also shows that certain places and spheres should be characterised by safety and peace. The home was such a place; it not only should be protected from outside attackers but also should be free from serious forms of violence within. The many provisions concerning deadly violence within the family show awareness of the fact that the home in reality was far from a safe zone.

We have observed that a husband was allowed to beat his wife in order to discipline her. This did not necessarily make it less serious if he happened to kill her while doing so. The general provisions concerning a husband killing his wife are actually an extension of those concerning his physical discipline of his wife. The laws thus assume that the homicide could take place when the physical discipline went too far.[73] Most important for the sentencing was

69 YVgL, Urbotamål 2.

70 Holmbäck and Wessén, Yngre Västgötalagen, Urbotamål, footnote 20.

71 DL, Manhelgdsbalken 1 & §1–8. Also the other Svea Laws regard homicide within the family as more serious. UL, Manhelgdsbalken 13 §4. SdmL, Manhelgdsbalken 13 §4.

72 Ragnar Hemmer argues that the provision has been introduced after Pope Alexander III's bull to the Swedish church in 1171. Hemmer, *Studier rörande straffutmätningen*, 43.

73 This type of provision can be found in all laws except the Västgöta Laws, the Dala Law and the older town law. ÖgL, Edsöresbalken 17, 18, 19, 20. SdmL, Manhelgdsbalken 28. VmL, Manhelgdsbalken 12 & §1. HL, Manhelgdsbalken 22. UL, Manhelgdsbalken 13 & §1. MEL, Edsöresbalken 33 & §1–2. MESt, Edsöresbalken 19 & §1–2. KrL, Ärvdabalken 11 & §1–2. SdmL, Manhelgdsbalken 28.

whether or not the killing had happened against his will. If it was established that it had happened against his will, the killing should be paid for according to the general provisions on homicide in that specific law. The punishment was much harsher if it was established that he had killed her intentionally. If the peasant was found guilty of intentionally killing his wife, he was sentenced to death by breaking on the wheel. A short statement follows and stipulates that the same law shall be applied if a wife kills her husband. As with other cases, female legal responsibility seems to have been added afterwards and is secondary to male responsibility. The phrasing indicates that only a male perpetrator could be imagined at first, and the point of departure is clearly that a husband is a perpetrator and the wife is a victim, not the other way around.

Just as in the case of theft, the methods of execution were different for men and women who intentionally had killed their spouse. In the Södermanna, Västmanna, and Uppland Laws, a male perpetrator was to be executed by breaking on the wheel, while a female perpetrator was to be executed by stoning. The Hälsinge Law only states that the husband or the wife should give life for life, without specifying which punishment to use. Finally, the laws specify at the end of the provision that the crime should be sentenced "accordingly" if either party killed the other out of misadventure or accident. The provisions thus demonstrate several levels of intent. The first is misadventure or a total lack of intent. The second is killing someone without intending to, but the setting is one where it could happen, such as disciplining your wife by beating her; this was apparently regarded as a regular homicide. The last level of intent is a conscious, intentionally executed, and possibly planned action.

Three of the Svea Laws contain an interesting continuation of these regulations on marital homicides. The Uppland Law mysteriously states: "Now, no one has killed the other, but one is still killed."[74] This provision targets the case when one of the spouses hired a third party to do the actual killing. This is called 'to advise someone to kill.' As expected, in these cases both the actual killer and the one who "advised it" shall be punished. The provision in the Södermanna Law is quite gender neutral; both husband and wife could use a third party to kill their respective spouse. In the other laws, we get indirect information that it was considered more likely for the woman to use a third party to kill her husband. The actual slayer, who is assumed to be a man, shall be sentenced to breaking on the wheel while the wife shall be sentenced to stoning, if she advised someone to kill. This provision also reveals how the laws procedurally dealt with more complicated cases which had several perpetrators. In this case they describe a situation in which the man who did the actual

74 UL, Manhelgdsbalken 13 §2.

killing confesses, but the woman claims she is innocent. Swedish medieval law is reluctant to sentence someone to death based on convictions as opposed to confessions or being caught red-handed. However, in this case, where one of the perpetrators has confessed and the other was convicted by a 12-man jury, both are sentenced to death. Any consideration of how to deal with a husband who does not confess to having hired someone to kill his wife was apparently not necessary.[75] It was obviously considered more likely that a woman acted via another person. Furthermore, it is assumed that the third party, the active party, was a man and not another woman.

The provision regarding spousal homicide is formulated differently in the Östgöta Law. This law does not connect the general rules on spousal homicide with domestic abuse. Instead, the provision has been phrased without circumstances and more directly. It stipulates that if a husband murders his wife or a wife her husband, then he shall be sentenced to breaking on the wheel and she to death by stoning.[76] In this provision we find one of very few allusions to torture in Swedish medieval law. If the allegations were based upon suspicions, then the case should be investigated with witnesses and with 'force.'[77] To start with, the choice of the word 'murder' in this provision, rather than 'homicide,' is important. The provision on spousal murder does not expressly require that the perpetrator tried to hide the killing or that it took place in secret. However, this is clearly implied by the addition allowing the use of force, which would not have been needed if the case concerned an open and publicly confessed homicide.

Moving forward to the mid-fourteenth century, Magnus Eriksson's Law of the Realm and the Town Law both contain provisions regarding when a man disciplines his wife too harshly and thereby beats her to death. The provision has been placed in the sections on *edsöre* in the Law of the Realm and Town Law. They both stipulate: "Now a peasant disciplines his wife too harshly so she dies of it against his will, then he shall be prosecuted as told further down [in the law] about homicide, but he shall not be broken on the wheel."[78] One might argue that a better placement for this provision would have been the

75 SdmL, Manhelgdsbalken 28. VmL, Manhelgdsbalken 12 §2. UL, Manhelgdsbalken 13 §2.

76 ÖgL, Edsöresbalken 17.

77 Holmbäck and Wessén, Östgötalagen, Edsöresbalken, footnote 29. Björn Åstrand states that torture of people that had not been proven guilty was prohibited but admits that these provisions open for legal torture. Also Magnus Eriksson's Law indicates that it was allowed to bind and inflict pain on a suspect. Björn Åstrand, *Tortyr och pinligt förhör. Våld och tvång i äldre svensk rätt* (Umeå: Institutionen för historiska studier, 2000), 68–87.

78 MEL, Edsöresbalken 33 & §1. MESt. Edsöresbalken 19 & §1.

section on homicide, but the choice likely indicates that this was seen as part of the peace of the home. For spousal killings with the higher level of intent, these laws also chose the word 'murder' rather than 'homicide.' This indicates that murder could also be seen as an act that took place wilfully and targeted a close relative.

The provision has been moved again in Christopher's Law; however, not to the section on homicide but to the section on inheritance. Apart from this, it has been taken verbatim from the older Law of the Realm.[79] The focus here is apparently not upon the killing itself but on the fact that a husband cannot inherit from his wife if he had killed her, even if his intention had been to discipline her. All three laws have made the provisions seemingly gender equal by simply adding that "so, too, if a wife kills her husband."[80] The laws equalise legal responsibility. However, as in the provincial laws, female legal responsibility is secondary and, furthermore, difficult to fully understand in the context of how the provisions have been phrased. This means that, if the provision is taken literally, a woman could beat her husband in order to discipline him. This was surely not the case, and again it seems likely that female legal responsibility was just added on to a provision and edited into the laws.

Infanticide and Abortion

Scholarship has suggested different views regarding how children were seen in pre-modern times. It has been claimed that people during this period lacked the concept of childhood as being a separate stage in life. This view has been questioned, as has the idea that parents did not attach themselves to their children because of the high mortality rate for infants.[81] Still, people in the past had a different view of children. Indeed, another view of newborns can be detected if we go further back in time. The discarding of unwanted children is a well-known phenomenon in the Scandinavian pre-Christian era. No remnants of this, such as prohibitions on deserting children, can be found in the mainland laws of Sweden. However, a provision in the Guta Law states that all children

79 KrL, Ärvdabalken 11 & §1.

80 MEL, Edsöresbalken 33 & §1. MESt. Edsöresbalken 19 & §1. KrL, Ärvdabalken 11 & §1.

81 Philippe Ariès's, *Barndomens historia* (Stockholm: Gidlund, 1982). Criticism of Ariès' views can for example be found in: Shulamith Shahar, *Childhood in the Middle Ages* (London: Routledge, 1990), 1–7. Hanawalt, *The Ties That Bound*, 171, 183, 187. For a Nordic context: Janken Myrdal and Göran Bäärnhielm, *Kvinnor, barn och fester i medeltida mirakelberättelser* (Skara: Skaraborgs länsmuseum, 1994), 88–89.

born shall be brought up and not discarded.[82] The lack of prohibitions against abandoning children has been interpreted as an acceptance that all children should live.[83] It is doubtful whether child abandonment was widespread or accepted in the medieval era.[84] This was clearly against the principles of the Church, and these principles should have been well established when the laws were compiled.

Just like today, there were also different views of when a foetus was regarded as a person, or a child. This was important to establish in the laws, since the birth of a child affected the order of inheritance. Archaeologist Lotta Mejsholm claims that the first breast-feeding was a crucial moment in this regard; this was the time when a newborn was considered part of the family. She has connected this to the legal term for the main heir, which is literally the "breast heir." It is possible that this term has survived from pre-Christian times when the master of the household had the right to decide whether the child should be raised or abandoned. The first breast-feeding was the significant ritual that marked the fact that the child would stay as a member of the family.[85] The Swedish provincial laws are preoccupied with determining when a child was born alive, since this signified that the child had the right to inherit. One law states that witnesses shall claim that "the child was born alive, it drank milk of its mother's breast, it had both nails and hair."[86] Another description also focuses on the fact that the newborn had nails and hair but also that it breathed in and out.[87] These descriptions might reveal quite disturbing underlying ideas

82 Holmbäck and Wessén, Gutalagen chapter 2 and footnote 1.

83 Holmbäck and Wessén, Östgötalagen, Kyrkobalken, footnote 20. KLNM, 'Barnutbering,' article by Karin Wedrup.

84 The medieval population consisted of more men than women; some scholars have claimed that this disproportionality must be explained by infanticides of girls. However, John M. Riddle argues that the difference can be explained by an unequal level of care and food that was provided for girls. John M. Riddle, *Contraception and Abortion from the Ancient World to the Renaissance* (Cambridge, Mass: Harvard University Press, 1992), 11–13. Barbara Hanawalt claims that there is no evidence of a widespread custom of infanticide in medieval England. Hanawalt, *The Ties That Bound*, 95, 101–103.

85 Lotta Mejsholm, *Gränsland. Konstruktion av tidig barndom och begravningsritual vid tiden för kristnandeprocessen i Skandinavien* (Uppsala: Uppsala University, 2009), 111–116. I wish to thank archaeologist and nurse Lotta Mejsholm for constructive discussions regarding abortion and infanticide in medieval Sweden.

86 The assumed condition is that the child has died and the mother then inherits her child. The paternal relatives protest and claim that the child was stillborn. VmL, Ärvdabalken 12 §4. The same statement in: UL, Ärvdabalken 11 §1.

87 DL, Kyrkobalken 6.

that an infant with deformities or disabilities was not necessarily regarded as part of the family and, therefore, not entitled to inherit.

Nonetheless, it is obvious that infanticide and abortion were pertinent problems for the legislators. Infanticide is a crime that was attributed primarily to women in the Older and the Younger Västgöta Laws. The Older Västgöta Law lists infanticide together with homicides of other family members: "If a mother murders her child, if a son kills his father, or father his son, or brother his brother." The law then presents more examples of homicide within the family. All these homicides, except infanticide, assume a male perpetrator. Although these homicides are not listed in the Church section, they were apparently seen as crimes against Church law. No secular punishment is stipulated; instead, the law says that perpetrators were to go to the pope in Rome, bringing a letter from the bishop, and see what mercy or grace they would get there.[88] A very similar provision is found in the Younger Västgöta Law.[89] Furthermore, the punishable insults listed in the Older Västgöta Law make it evident that women were connected to infanticide: one of the punishable insults was to claim that a woman had murdered her child; another was to state that she had aborted a foetus.[90]

The difference between infanticide and abortion in the Older Västgöta Law must have been obvious to the legislators, since the two actions are described using completely different terminology.[91] However, in the other law texts it is sometimes difficult to separate abortion from infanticide. Two of the other laws, the Dala Law and the Västmanna Law, refer to a crime called "belly murder."[92] The views have differed on the meaning of the term 'belly murder.' Carl Johan Schlyter interprets this as abortion, while Åke Holmbäck and Elias Wessén refute this interpretation, at least regarding the Dala Law.[93] It is not hard to see why they questioned the interpretation. The Dala Law states that if a woman is accused of "belly murder" and she answers: "It is true that I gave birth to a child, but it was dead and not alive," then the case should be investigated by a jury.[94] This indicates that the child had died after a more or less completed pregnancy or that it had been declared dead during

88 ÄVgL, Giftermålsbalken 8 §1–2.

89 YVgL, Giftermålsbalken 15.

90 ÄVgL, Rättlösabalken 5 §5.

91 ÄVgL, Rättlösabalken 5 §5.

92 DL, Kyrkobalken 12. VmL, Kyrkobalken 25.

93 Schlyter, Glossarium to the law of Västmanland, "Bælgmord." Hemmer, *Studier rörande straffutmätningen*, 310. Holmbäck and Wessén, Dalalagen, Kyrkobalken, footnote 70.

94 DL, Kyrkobalken 12.

delivery. The Västmanna Law states that if a woman is accused of "belly murder," it shall be investigated whether she had been pregnant or not. According to this law, a recent pregnancy could be detected by examining her breasts or by other women testifying to her having been pregnant.[95] In this law it is not clear what the crime "belly murder" denotes. The examination of the woman's breasts most likely was meant to determine whether or not she was lactating. And indeed, there are examples from late medieval Stockholm of women sent out to "milk" unmarried women in order to find out if anyone had given birth illegitimately.[96] The Västmanna Law seems to apply to a very late stage of the pregnancy; otherwise, it is difficult to see how changes of the breasts could ever be considered a certain testimony, even if these changes do occur earlier in pregnancy. However, it is hard to determine whether it would be possible to induce such a late-stage abortion.[97]

The punishment for the crime called "belly murder" is a quite low fine (six marks in the Västmanna Law and 12 in the Dala Law). This crime was clearly not considered a very serious crime compared to homicide. The lenient sentencing for "belly murder" is even more striking when one considers that the basic wergild was usually doubled, or even tripled, for killing a child. Lenient punishments for infanticide can be found also in another section in the Västmanna Law. This provision states that if a man or a woman committed a "pagan murder," meaning killing an unbaptised child, then a nine-mark fine should be paid.[98] The same law thus contains rules both on killing an unbaptised child as well as the crime that is called "belly murder." The fines are not the same for the two crimes, which further indicates that they were considered two separate crimes. This does make it more likely that "belly murder," in fact, refers to abortion—and, from the crime description, a quite late-term

95 VmL, Kyrkobalken 25.

96 Dahlbäck, *I medeltidens Stockholm*, 99–100. This can also be found in fourteenth-century France and in one lawbook from the beginning of the sixteenth century the "milktest" was consider full proof. Wolfgang Müller, *The Criminalization of Abortion in the West: Its Origins in Medieval Law* (Ithaca: Cornell University Press, 2012), 154–155.

97 Sara M. Butler notes that we have almost no evidence of the practice of abortion in medieval society. However, what we refer to as abortion would not have been seen as such until four months after conception. These four months were still within the grey zone when the foetus had not become human with a soul. Sara M. Butler, "Abortion Medieval Style? Assaults on Pregnant Women in Later Medieval England," *Women's Studies* 40:6 (2011): 780–784. Wolfgang Muller writes that judicial sources however show that they believed in the ability to produce an abortion. Müller, *The Criminalization of Abortion in the West,* 162.

98 VmL, Manhelgdsbalken 10 §3.

abortion.[99] Another thing separates the two provisions: while "belly murder" assumes a female perpetrator, i.e., the mother, a "pagan murder" could be performed by either a man or a woman.

The Östgöta Law contains two interesting provisions on infanticide. The law seems to distinguish between killing an unbaptised child and a baptised child. The first provision refers to a mother who has murdered her unbaptised child. A possible male perpetrator, such as the father of the child, is not mentioned. Conversely, the father is actually assigned a part of the fines if he were the one who sued the woman.[100] Since the father of the child and the woman's guardian are described as two separate individuals, this seems to describe a case where the woman is unmarried and the child, thus, illegitimate.[101] The most common reason for infanticide was likely that a child had been born out of wedlock, leading the mother to risk being stigmatised.[102] The fine for this murder equals a basic wergild, and thus the crime is punished substantially more harshly than in the Västmanna Law. However, the punishment is still fairly lenient compared to the murder of a baptised child. The second provision on infanticide in the Östgöta Law stipulates that a man shall be broken on the wheel and a woman shall be stoned to death if they have murdered their own child after it had received baptism.[103] Unlike the previous provision, both the father and the mother are described as possible perpetrators.

This tendency has been carried over to the Laws of the Realm and Magnus Eriksson's Town Law, which consider both mother and father as potential perpetrators of infanticide. A provision in Magnus Eriksson's Law states: "if a man or a woman knowingly kills his/her child, be it pagan or christened, or murders it—or a child [kills] its father or mother. If anyone does this, then a man should be broken on the wheel and a woman should be stoned."[104] The same wording can be found in Magnus Eriksson's Town Law and in Christopher's Law, except that the punishment for women has been changed to burning at the stake in both.[105]

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99 Hemmer, *Studier rörande straffutmätningen*, 313.

100 ÖgL, Kyrkobalken 26.

101 This is Ragnar Hemmer's interpretation. Hemmer, *Studier rörande straffutmätningen*, 312–313.

102 Y.-B., Brissaud, "L'infanticide à la fin du Moyen Âge, ses motivations psychologiques et sa répression," *Revue historique de droit français et étranger* 50 (1972): 233–234.

103 ÖgL, Edsöresbalken 21.

104 MEL, Högmålsbalken 2.

105 MESt, Högmålsbalken 2. KrL, Högmålsbalken 2.

As might have been noticed above, when the victim was an infant, the terminology for the deed becomes unclear; the terms 'murder' and 'homicide' at times seem interchangeable. Indeed, the very phrasing in the Law of the Realm, "kills or murders," clearly indicates that the difference between a homicide and a murder was not always of importance when it came to the sentencing. Legislators often used the same harsh capital penalties for homicides in the family as for murder. Interestingly enough, the examples above demonstrate that the strong legal connection between female perpetrators and infanticide actually became weaker over time. This does not reflect legal practice. Dag Lindström states that no men were sentenced for infanticide in the late medieval court records from Stockholm, despite the fact that Magnus Eriksson's Town Law allowed for this.[106] The Town Law had thus established a gender-neutral legal provision that did not reflect legal practice.

The gender-neutral legislation on infanticide did not survive into early modern times, when laws reintroduced the idea that this was an exclusively female crime.[107] During the seventeenth century the crime was defined as a mother having killed her illegitimate child.[108] The introduction of a gender-neutral provision should thus be interpreted as part of an ideological change that had little to do with legal practice.

Murder

The terms 'murder' and 'to murder'—or rather the Old Swedish terms *morþ* and *myrþa*—have been interpreted as originally referring to the act of hiding a body. These words are etymologically linked to 'mire' and are assumed to be connected to the practice of hiding the body in a mire or a bog. Thus, the background to the word is a homicide which the perpetrator tried to hide by disposing of the body. Schlyter claims that this later developed into a term that designates all homicides whose perpetrator is unknown.[109] Another scholar adds that a murder is a type of homicide that happened either secretively or

106 However, Dag Lindström notes that the court tried to find out who the father was and whether he had been an accomplice. Österberg and Lindström, *Crime and Social Control*, 99.

107 Eva Bergenlöv, *Skuld och oskuld. Barnamord och barnkvävning i rättslig diskurs och praxis omkring 1680–1800* (Lund: Historiska Institutionen, 2004), 17.

108 Bergenlöv, *Skuld och oskuld*, 246.

109 Schlyter's dictionary, 'myrþa' and 'morþ.' Schlyter therefore claims that calling an infanticide, usually perpetrated by the parents, a murder, which we saw above, is an error by those who compiled the laws.

deceitfully.[110] Several of the laws demonstrate that murder could simply mean that the perpetrator was unknown. Several of the laws use the concept 'murder debt,' which signified a fine paid by the entire district when a body had been found, yet no killer could be presented.[111]

A provision in the Dala Law comes closest to the original meaning of the word 'murder.' It states that a higher sum should be paid if a person is killed and his body is carried to a mire or marsh or is thrown into the water. Another regulation mentions that the perpetrator had to pay a sum for each night the corpse remained at the crime scene. This is called a 'hiding fine.'[112] This strongly emphasises that murder was a killing that had not been publicly announced and, furthermore, a killing for which no one voluntarily assumed responsibility. It should be noted that the Dala Law differs from all the other laws since it stipulates a fine, not the death penalty, for murder.

The Östgöta Law also mentions the act of hiding the corpse as part of the legal requisite for murder. It states that a man will be broken on the wheel and a woman stoned to death if "a man murders a man or a woman a man, or a man a woman, or a woman a woman" and carries the corpse to a hiding spot and lays it down secretly. Just as with murder within the family, the crime should be investigated with witnesses, and the suspects could be "forced or lured" if they did not confess.[113] This is the second allusion to the use of torture in the medieval laws, and it should be noted that it stems from the same law.

The Uppland, Västmanna, Södermanna, and Hälsinge Laws contain almost identical provisions that include both murder and robbery. We met these provisions earlier in the discussion of robbery: a murderer shall be sentenced to breaking on the wheel and a robber to decapitation if men "lie in the forest or on ships and murders or robs."[114] The provision on robbery recurs in Magnus Eriksson's Law, but it has been placed in the section of crimes against the *edsöre*.[115] The provision in Christopher's Law of the Realm reads: "A man shall be sentenced to the sword if he lies in the forest or on a ship and robs someone, whether [the robbery is] big or small, a robber shall be sentenced to the sword. If someone is killed on land or in water in these cases, then the person who did

110 Söderwall's dictionary: 'morþ.'

111 Schlyter's dictionary: 'morþgiæld.' See for example: ÖgL, Dråpsbalken 3 §1. UL, Manhelgdsbalken 8.

112 DL, Manhelgdsbalken 3 §2–3.

113 ÖgL, Edsöresbalken 25.

114 UL, Manhelgdsbalken 31. SdmL, Manhelgdsbalken 13. VmL, Manhelgdsbalken 25. HL, Manhelgdsbalken 16.

115 MEL, Edsöresbalken 45.

this shall be broken on the wheel."[116] In accordance with the previous analysis of robbery, these paragraphs aim to deal with a different type of murder: one performed by individuals depicted as a sort of professional robbers and killers and possibly outlaws. The murders should be seen as a consequence of attempted robbery. However, apart from these, the aforementioned provincial laws lack legislation concerning murder. This might indicate that the provisions on murder were meant to be generally applicable by analogy.

Both town laws, as well as the two Laws of the Realm, stipulate capital punishment for murder. The older town law, *Bjärköarätten*, does not specify what is meant by murder; it only states that a man will be broken on the wheel if he murders another. If a woman murders someone, she shall be buried alive.[117] This very concise and short way of expression is typical for the older town law. The three other laws emphasise the secretive aspect of murder, stating that a man shall be broken on the wheel if he murders someone and carries the body to a hiding place and lays it secretly down. For the same act, a woman shall be sentenced to stoning in Magnus Eriksson's Law, while Magnus Eriksson's Town Law and Christopher's Law stipulate that a woman shall be burned at the stake.[118]

Capital punishment was a well-established penalty for murder. While it is fairly consistent that a man should be broken on the wheel for committing murder, there are several different penalties for female murderers: being buried alive, burning at the stake, and stoning. All of these belong to the death penalties that are counted as typical penalties for female criminals. It is obvious that the laws do not hesitate to sentence a woman to death in the provisions on murder. There are no exceptions or possibilities for a female murderer to pay a fine, regardless of whether she had killed her own child or someone else.

Arson: "Burning a Village and a Peasant"

In all provincial laws, arson is connected to property crimes; several have provisions that begin with fires that started out of negligence, or misadventure, as it is legally defined. The provisions then describe different types of fires, eventually turning to those dealing with arson. The provisions demonstrate that an extensive collaboration between the inhabitants of the district existed, and

116 KrL, Edsöresbalken 42 & §1.

117 Bjärköarätten 36.

118 MEL, Högmålsbalken 1. MESt, Högmålsbalken 1. KrL, Högmålsbalken 1.

they had a protective system if an accident happened. A peasant could obtain economic help to build a new farm, barn, or whatever had burned down as the result of an extensive fire.[119]

As seen before, descriptions of a person starting a fire acknowledge different degrees of responsibility. A fire breaking out at the threshing or at the slash and burn seems to have been a quite common event, considering how frequently this is described in the laws. We saw earlier that consciously burning down another person's fences was seen as part of the conflict strategies in the villages. It was thus described as disturbing the order, but nothing out of the ordinary. In contrast, the conscious attempt to burn someone to death was a shameful crime and was connected to madness. Several provisions in the Svea Laws regulate the procedure when people "lost their minds." These regulations show that burning down a hamlet was something expected of an insane person.[120] Calling a person an arsonist, or the more poetic *kasevarg*, was also a punishable insult. *Kasevarg* stems from the word for firewood combined with the word for a criminal, aggressor, or an outlaw.[121] This might also have functioned as an additional punishment or future legal categorisation of the criminal. Just as a person could be referred to as a 'thief,' a convicted arsonist could thereafter be referred to as *kasevarg*.[122]

The provision on arson is placed very oddly in the Younger Västgöta Law. For some unknown reason it has been edited into a paragraph that deals with elections of district judges. The actual rule states that no one can burn another person's house to the ground without being called a *kasevarg*. This person then forfeits his land and his chattels.[123] However, the actual meaning of the punishment has been interpreted in two different ways: either the convicted should literally lose his land, as in landed property, as well as his chattels; or he should be outlawed and lose his chattels. The latter implied that he lost

119 DL, Byggningabalken 45 §5. VmL, Byggningabalken 25, ÖgL, Byggningabalken 44 §1. Holmbäck and Wessén, Dalalagen och Västmannalagen, Inledning, xxi–xxiii.

120 DL, Manhelgdsbalken 21. SdmL, Manhelgdsbalken 18 §1. UL, Manhelgdsbalken 2 §1. VmL, Manhelgdsbalken 2 §1. HL, Manhelgdsbalken 2 §1. MEL, Dråp av våda 17. MESt, Dråp av våda 14. KrL, Dråp av våda 15 §1.

121 Holmbäck and Wessén, Östgötalagen, Edsöresbalken, footnote 50. Schlyter wants to connect the word Old Swedish word *kasna* to the Latin word for house, *casa*. Schlyter's dictionary: 'kasna vargher.'

122 ÖgL, Edsöresbalken 31. SdmL, Manhelgdsbalken 34 (only in manuscript B). Bjärköarätten 21. MESt, Rådstugubalken 31 §1.

123 YVgL, Rättlösabalken 3.

his chattels literally but lost his land, a word which also meant 'province,' in a symbolic sense.[124]

The Östgöta Law stipulates that someone who sets another person's house on fire and wants to burn someone to death forfeits all he owns within the province. If someone is suspected of such a deed and cannot prove his innocence, he shall be forced to pay a fine, yet not lose his life or everything he owns. The provision also stipulates that whoever gets caught red-handed setting a person's house on fire can be pushed into the fire.[125] This has been interpreted as the plaintiff having the right to immediately kill the perpetrator by pushing the arsonist into the fire.[126] It is likely that it could also be interpreted symbolically; that the perpetrator should be sentenced to be burned at the stake. The judicial system in Sweden at the time was not very well established, and institutions that could hold a criminal in custody as well as perform executions did not necessarily exist. In fact, several of the laws confirm at times that it was the plaintiff who was supposed to execute the punishment.

The Dala Law stipulates that the one who "intentionally burns" shall be called a *kasevarg* and "pays for his neck" with a 40-mark fine.[127] It is not completely certain to which punishment "pays for his neck" refers. The expression can be used for decapitation, but also for the death penalty in general. The Västmanna, Hälsinge, and Uppland Laws, as well as Magnus Eriksson's Law and Christopher's Law, all have similar provisions regarding arson. The title of the provision is "Here is [what is] told about the *kasevarg*," and it reads as follows:

> Now: a man carries a fire, wants to burn both village and peasant, burns one house or more or the entire farm or the hamlet, is taken with a blowing mouth and burning fire. Then he might be bound and taken to court [...] and he who burnt for the peasant shall burn at the stake.[128]

The punishment for the one who wanted to burn both "hamlet and peasant" is to pay a fine consisting of everything he owns divided into the usual three

124 Holmbäck and Wessén, Yngre Västgötalagen, Rättlösabalken 3. The same interpretation in: Schlyter's dictionary: 'land.' Hemmer, *Studier rörande straffutmätningen*, 27, 47.

125 ÖgL, Edsöresbalken 31 & §2.

126 Hemmer, *Studier rörande straffutmätningen*, 47, footnote 3.

127 DL, Byggningabalken 45 §4.

128 VmL, Byggningabalken 25 §1.

parts, as well as being burned at the stake.[129] Magnus Eriksson's Town Law has the same type of regulation but in a shortened form.[130] The interpretation of "all that he owns" is not unproblematic, and it is unclear whether this would include also landed property. This interpretation seems likely and is supported by the fact that the provision has been moved to the section called *Högmålsbalken* in the Laws of the Realm. This section was reserved for the most serious crimes that led to punishments consisting of loss of life as well as all property. It is very rare that landed property was shifted as part of the punishment, and arson is thus punished remarkably harshly.

The death penalty for arson is quite consistent. We noted that in the Dala Law we cannot know for sure which method of execution should be used if the arsonist did not pay the fine. Similarly, the older town law *Bjärköarätten* stipulates the same punishment for arson as for murder, and the law states that the arsonist shall be broken on the wheel or prove his innocence with an oath of 12 men.[131] None of the provincial laws mention a possible female perpetrator, nor do the two Laws of the Realm. However, both of their arson provisions have an addition regulating the case if the perpetrator was not caught red-handed. This addition clarifies that if a man or woman is accused of the crime, then he should be sentenced to a fine if convicted. If he cannot pay his fine, then killing him shall be deemed legal for all until he did right for himself. Of course, this meant that killing him would not be punished. The addition then adds that this applies regardless of whether the criminal is a man or a woman.[132] The masculine pronoun is used in all the sentences, despite the fact that the provision includes a female legal subject.

It seems obvious that the death penalty for arson is a so-called mirroring punishment; the punishment was supposed to reflect the nature of the crime.[133] The absence of a possible female perpetrator and of specific provisions regarding women is interesting and can be interpreted in different ways. One interpretation is that the legislators, in most cases, assumed that women did not commit arson. The existence of specific provisions aimed at female perpetrators has been interpreted in different ways in this book. They could function as attempts to emphasise female legal responsibility for a particular crime. These

129 HL, Byalagsbalken 20. UL, Byalagsbalken 25 & §1. MEL, Högmålsbalken 10. KrL, Högmålsbalken 11.

130 MESt, Högmålsbalken 9, 10.

131 Bjärköarätten 36.

132 MEL, Högmålsbalken 11. KrL, Högmålsbalken 12. The Town Law assumes a male perpetrator in the continuation as well. MESt, Högmålsbalken 10.

133 Munktell, *Brott och straff i svensk rättsutveckling*, 21–22.

provisions were also needed when the chosen method of execution for men made it necessary to specify a different death penalty for women. There was apparently no need to stress that women also should be punished for arson. However, equally important is that the chosen death penalty clearly was applicable to women. Burning at the stake was a punishment used for women as well as men. The male norm did not create problems here—even if the arsonist was a woman. Finally, as in many other cases, we can note that the Laws of the Realm have introduced a more gender-neutral criminal law since they, at least partly, emphasise the possibility of a female criminal.

Witchcraft and Poisoning

Witchcraft is one of the crimes most strongly connected to women in historical research. Extensive research has been done on the early modern witch-crazes in Europe and the Nordic countries. Many scholars have stressed the difference between how witchcraft was perceived during the Middle Ages and how it was seen during the early modern period. They claim that the cases of witchcraft that can be found during the medieval period are characterised by a different way of thinking than the one that was dominant in later times. The full stereotype of European witchcraft—diabolically organised and bent on subverting the order of Christian world—developed quite late in the medieval period.[134] Medieval witchcraft was divided into non-harmful magic, which was not punishable, and harmful magic, which was punishable according to the consequences. During the latter part of the medieval period, this view was at least partly replaced with a view that saw witchcraft in itself as a sign of abjuring the true faith and siding with the devil.[135] These witches committed crimes far worse than simple *maleficium*.[136]

The primary aspect of medieval witchcraft thus was its consequences; this was what made it legal or illegal. More precisely, the law codes focus upon lethal magic. Swedish historian Bengt Ankarloo writes that the earliest Nordic medieval law codes, just as the oldest continental laws, focused solely upon witchcraft that killed people. This is called 'destruction,' which at least partly

134 Michael D. Bailey, *Battling Demons: Witchcraft, Heresy, and Reform in the Late Middle Ages* (University Park: Pennsylvania State University Press, 2003), 2.

135 Bente Gullveig Alver, *Heksetro og trolddom. Et studie i norsk heksevaesen* (Oslo: Universitetsforlaget, 1971), 13, 20–21. Hans Eyvind Næss, *Med bål og brann. Trolldomsprosessene i Norge* (Oslo: Universitetsforlaget, 1984), 13–14, 106.

136 Bailey, *Battling Demons,* 30.

corresponds to the term *maleficium* in Roman and canon law.[137] It is not always easy to accurately distinguish witchcraft or magic in the medieval laws. The expression used in the Swedish laws is at times witchcraft, but most often they use the expression "to destroy someone" or "to carry destruction on someone."

It is not obvious how the crime 'destruction' relates to witchcraft or to poisoning. Ankarloo states that the preparation of herbal and poisonous concoctions has traditionally been associated with witches.[138] Furthermore, poisoning and harmful magic were at times considered so closely related that it was impossible to maintain any clear distinctions between the two.[139] Ankarloo claims that the term 'destruction' was used for any type of damages or injuries that could not be connected to external physical violence. Thus, he sees witchcraft and poisoning as two versions of 'destruction.'[140] This interpretation is less probable. A more likely interpretation is that the term 'destruction' was only used to describe witchcraft that led to injuries. However, one thing is clear: the two terms 'witchcraft' and 'poisoning' could not clearly be separated from each other. In fact, a confusion of the terms is characteristic of European medieval law in general.[141]

It will be argued in this section that the crime 'destruction' should primarily be regarded as part of the murder regulations in Swedish medieval law. The act was considered a devious and secretive way of killing another person and, as such, could be defined as murder. In fact, the crime is evidently linked to murder in several of the laws. For example, the older town law, *Bjärköarätten*, defined the crime as poisoning. The expression in this law is to give someone poison.[142] The clearest expression of 'destruction' being a form of murder is found in the Uppland and Västmanna Laws; these stipulate that when a man on his deathbed accuses his wife of having 'destroyed him,' this shall be dealt

137 Bengt Ankarloo, "Häxorna mitt i byn. De svenska trolldomsprocessernas sociala dynamik," in *Tänka, tycka, tro, Svensk historia underifrån*, ed. Gunnar Broberg, Ulla Wikander and Klas Åmark (Stockholm: Ordfront, 1993), 57.

138 Bengt Ankarloo, *Trolldomsprocesserna i Sverige* (Stockholm: Institutet för rättshistorisk forskning, 1984), 35.

139 Ankarloo, *Trolldomsprocesserna i Sverige*, 29, 35 footnote 18.

140 Ankarloo, *Trolldomsprocesserna i Sverige*, 35.

141 Franck Collard, *Le crime de poison au Moyen Âge* (Paris: Presses Universitaires de France, 2003), 26–27, 33–34. The connection between poisoning and witchcraft in legislation can be seen up until 1699 when the Law of 1734 was being prepared. Bo H. Lindberg, *Praemia et poenæ. Etik och straffrätt i Sverige i tidig ny tid*, Band 1, volume 2 (Uppsala: Uppsala University, 1992), 470.

142 Bjärköarätten 36, §1.

with "as with other murders."[143] In these laws the placement of the 'destruction' regulations also shows that the two crimes—lethal witchcraft and murder—were intimately connected. Indeed, a provision that discusses murder seems to directly refer back to the preceding rule on witchcraft.[144]

However, it would be wrong to claim that poisoning is the only form of witchcraft represented in the laws. Indeed, three of the provincial laws contain more obscure and enticing descriptions of witchcraft. The Dala Law states that a woman who is found "with horns and hair, with living and the dead; that may well be called witchcraft." The Småland Law has a similar provision: here it is stated that someone who is found within yard and fences, with horns and hair, shall have her case handled by a jury (as opposed to taking an oath). If convicted, she shall be sentenced to pay a fine to the Church as well as a low fine to the peasant who had been the target of the witchcraft.[145] Lastly, the Older Västgöta Law has a provision on punishable insults that would translate as: "This is an insult to a woman: 'I saw you ride on a barn gate with your hair let down in the shelter of a troll, when it was even between night and day.' If someone says that she can destroy a woman or a cow; that is a word of insult."[146] The choice of victims might seem odd to a modern reader, but in Old Swedish these two words, '*kono*' *ællær* '*ko*,' alliterate. Stephen Mitchell emphasises the connection between reputation and witchcraft as seen in the many provisions regarding punishable insults referring to witchcraft. The reputation of the defendant was very important in trials.[147] Ankarloo writes that it is tempting to interpret the provision within the framework of night-riding magical creatures.[148] As shown by these examples, poisoning was clearly not the only act of magic acknowledged. However, only in one of the laws is magic punishable if it

143 VmL, Rättegångsbalken 21. UL, Rättegångsbalken 11.

144 VmL, Manhelgdsbalken 16 & §1. UL, Manhelgdsbalken 19 & §3.

145 DL, Kyrkobalken 11. SmL, Kyrkobalken 13 §7. In the Småland Law the fine is paid for the act of secretively smuggling magic tools on to another person's land. Schlyter's dictionary: 'abyrþ' and 'troldoms abyrþ.'

146 I follow Elias Wessén's interpretation. ÄVgL, Rättlösabalken 5, §5. Holmbäck and Wessén, Äldre Västgötalagen, Rättlösabalken, footnotes 36–38.

147 Stephen A. Mitchell, *Witchcraft and Magic in the Nordic Middle Ages* (Philadelphia: University of Pennsylvania Press, 2011), 150–152.

148 Ankarloo, *Trolldomsprocesserna i Sverige*, 34. Ankarloo interprets the term *vidskepelse*, 'superstition,' as non-dangerous type of magic. Provisions regarding this can be found in YVgL and in UL. Also here the connection to female perpetrators remains very strong. Ankarloo, *Trolldomsprocesserna i Sverige*, 33, 37–43.

did not lead to damages, and also in this case the intent to do harm is, indeed, implicit.[149]

Integrating Men as Perpetrators of Witchcraft

Bengt Ankarloo writes generally about witches, using female terms and concepts, without specifying whether the laws actually mention women or men. When he writes that the regulations on witchcraft have been transferred from provincial laws to the Law of the Realm without significant changes, he forgets one aspect: the gender of the presumed perpetrator.[150] As we shall see, the legal subject of these provisions changes from solely referring to women to presuming that both women and men could commit the crime.

Let us return to the oldest provincial laws to see how the crime was gendered. Both of the Västgöta Laws assume that only a woman could commit this crime, at least in the provisions that directly deal with witchcraft or, rather, 'destruction.' Both provisions describe the crime as: "A woman destroys a man."[151] Both of these laws also have additional provisions specifying the case in which a woman had 'destroyed' her stepchildren in order to ensure that her own children would receive the inheritance.[152] It is not clear why the laws have two different provisions which differ only in the specification of motive and victim, but the phenomenon is not unusual in Swedish medieval law. Both paragraphs can be found in the section on inheritance. That is not very surprising, since all the laws very strongly emphasise that one could not kill in order to receive an inheritance. The Younger Västgöta Law has a third regulation on 'destroying' people. It occurs right after the mentioned provision on punishable insults and regulates what would ensue if a woman actually destroyed a "cow or a home, woman or a peasant" (in Swedish, these nouns also create an alliterating formula). This provision too shows that only women were seen as possible perpetrators.[153] Finally, as noted, the punishable insults in these two laws also reveal that women, and not men, were connected to 'destruction' and witchcraft. They exclude a male perpetrator completely.[154]

149 The notion that impotence could be caused by *maleficium* can be found in several medieval law codes. This cannot be found in Swedish medieval law. Catherine Rider, *Magic and Impotence in the Middle Ages* (Oxford: Oxford University Press, 2006), 9.

150 Ankarloo, *Trolldomsprocesserna i Sverige*, 33, 35–36.

151 ÄVgL, Slagsmålsbalken 8. YVgL, Fredsbalken 12.

152 ÄVgL, Ärvdabalken 15. YVgL, Ärvdabalken 19.

153 YVgL, Rättlösabalken 10.

154 ÄVgL, Rättlösabalken 5 §5.

The Östgöta Law also strongly linked women to witchcraft. The general provision on witchcraft mentions only women.[155] Two other provisions that mention witchcraft confirm this: one regulates so-called peace periods during the year, which states that a 'destroyer' (*fördæþu*) is neither protected by spring peace or harvest peace; the second provision mentions that it is a punishable insult to call a woman a witch or, more accurately, a 'destroyer.'[156] Considering how common witchcraft was as a punishable epithet, it clearly was one of the more shameful crimes a person could commit.

The female coding of the crime is not completely consistent in this law. The Östgöta Law contains a long casuistic paragraph that narrates a story about a married couple; the husband suddenly dies, and his widow is killed with 'destructions.' The provision is meant to emphasise the rule that no one can kill to inherit from another person.[157] Indirectly it reveals that men also could use 'destruction' to kill a person, in this case in order to keep an inheritance. However, the law does not contain a regulation stipulating a punishment for a male 'destroyer.'

The Södermanna, Västmanna, Dala, and Uppland Laws mention only a woman as a possible perpetrator of the crime witchcraft.[158] Only the Dala Law actually uses 'witchcraft' as a term; the other laws use 'destruction' and 'destroying a person.' The Södermanna Law states: "If a woman wants to kill with destructions."[159] The Uppland and Västmanna Laws talk about a woman 'carrying destructions' on another person.[160] This is an interesting expression, which reveals that the 'destructions' were seen as something physical, something that one could carry to another person. Yet another provision in the Västmanna Law mentions only women as possible perpetrators of 'destruction.' In this provision a man sues his wife and accuses her publicly right before he dies and says: "You have destroyed me!" His heir then has the right to go forward with the lawsuit and, as mentioned above, the case shall be handled as other murder cases.[161] The provision in the Dala Law is different in form and content, which will be discussed further below. However, we can conclude that also in this law the presumed perpetrator of witchcraft is a woman.[162]

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155 ÖgL, Vådamålsbalken 31 §2.

156 ÖgL, Byggningabalken 22, 38. Schlyter's dictionary: 'fordæþa.'

157 ÖgL, Ärvdabalken 7. MEL, Ärvdabalken 9. MESt, Ärvdabalken 8.

158 HL, Manhelgdsbalken 27. The compiler or scribe of the Hälsinge Law has managed to remove the actual paragraph on 'destruction,' however.

159 SdmL, Manhelgdsbalken 32.

160 UL, Manhelgdsbalken 19. VmL, Manhelgdsbalken 16.

161 VmL, Rättegångsbalken 21.

162 DL, Kyrkobalken 11. See below.

The Hälsinge Law contradicts this general tendency, since it contains provisions which imply that both men and women could be connected to witchcraft. In the section on punishable insults we find both a male version (sorcerer) and a female version (witch) of epithets linking the person to witchcraft. In fact, one can actually query whether *both* insults actually are directed at men. The entire provision reads:

> If someone says a shameful word at the local court or at church, calls him thief or murderer, sorcerer or witch. [Either he should] hold onto his word [and prove it] or pay three marks. If someone criticises another for a settlement or calls another's wife a whore, he shall pay an honour fine; for amia [concubine] the fine is a third less.[163]

The thoroughly male perspective (indeed, even the insults launched at women are expressed as launched at a man's wife) could indicate that the word 'witch' is actually an insult with female connotations directed at a man. There are other examples of the same, where part of the insult is that the word is gendered female. One example is calling a man a "female puppy/dog," an insult that most modern readers would recognise in the word 'bitch.'[164]

The connection between women and witchcraft weakens in the two Laws of the Realm and the two town laws. The older town law, *Bjärköarätten*, has one provision that is gender neutral; the assumed perpetrators are defined as "man or woman."[165] The issue is somewhat more complex in the two Laws of the Realm, as well as the younger town law, since these laws contain several different provisions on 'destruction.' The first provision is a general stipulation on how to deal with the case of one person killing another person with 'destruction.' The other paragraph states that a man or a woman who "carries destructions on another" shall be sentenced to pay a fine.[166] Both Magnus Eriksson's Town Law and Christopher's Law have completely integrated male perpetrators into all their provisions on witchcraft and 'destruction'—and subsequently stipulate punishments for a male and a female criminal respectively.[167]

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163 HL, Manhelgdsbalken 7. Parts of the provision are very hard to interpret and I follow Wessén's interpretation. See Holmbäck and Wessén, Hälsingelagen, Manhelgdsbalken, footnote 72. Söderwall's dictionary: 'brighþa.'

164 See: ÄVgL, Rättlösabalken 5.

165 Bjärköarätten 36 §1.

166 The first provision is immediately followed by another one stating if a 'man or a woman' has killed their stepchild with destruction, then the same rule shall apply. MEL, Högmålsbalken 5, 6, 12. MESt, Högmålsbalken 4, 5, 11 & §1. KrL, Högmålsbalken 6, 7, 15 & §1.

167 MESt, Högmålsbalken 4, 5, 11 & §1–2. KrL, Högmålsbalken 6, 7, 15 & §1.

Despite the fact that both town laws had integrated men as a possible perpetrators of witchcraft/'destruction,' they still reveal that women were more strongly connected to witchcraft than were men. We find 'witch' and 'destroyer' among punishable insults directed at women, while we find, for example, 'arsonist' and 'murderer' for men.[168] Furthermore, in Magnus Eriksson's Law, some changes between the different provisions on witchcraft are both interesting and revealing. The first provision in the older Law of the Realm carries the title "If a man or a woman is found with witchcraft." This then establishes that the guilty party shall lose his or her life if a man 'destroys' another man or woman, or a woman 'destroys' another woman or man with witchcraft or other 'destructions' so that he or she dies. This is followed by the stipulated punishments for a woman and a man.[169] The law clearly wants to include both men and women as perpetrator as well as victim. The other provision first introduces both a male and a female perpetrator: "If a woman or a man carries 'destructions' on a man." After this, however, the provision continues to use a female legal subject and only stipulates a punishment for a female perpetrator.[170] The two provisions actually stipulate different death penalties, which will be further discussed below. It is obvious that the legislators intended to equate men and women as perpetrators, yet managed to forget the male perpetrator along the way and ended up gendering the crime female. These examples demonstrate that it was still generally held that a woman was more likely than a man to 'destroy' a person or use witchcraft.

There is thus an interesting difference between the provincial laws on one side and the Laws of the Realms and the town laws on the other. We find a very strong tendency to ascribe witchcraft only to female perpetrators in the provincial laws, while the later Laws of the Realm and the town laws assume that the perpetrator could be female or male. This must be interpreted as a conscious attempt by the legislators to equate men and women and to create a more gender-neutral legislation. The ideological character of these changes becomes even more evident, since it was obviously still a general notion that a woman was more likely to commit the crime.

Sentencing for Witchcraft and Destruction

In general, the punishment for 'destruction' was death; however, this applied only to certain circumstances. As a rule, the victim must have died from the

168 Bjärköarätten 21. MESt, Rådstugubalken 31 §1.

169 MEL, Högmålsbalken 5.

170 MEL, Högmålsbalken 12.

witchcraft; furthermore, the perpetrator must have been caught in the act. If someone was accused of having destroyed another person, but not caught in the act, then the penalty was usually a fine. This was also the case if no one had died.

Witchcraft had a specific status in the Older Västgöta Law with regard to female criminal liability. As we saw previously, in the regulation of theft a woman is referred to as a legal minor and cannot be "hacked or hanged" for any crime with the exception of witchcraft.[171] So witchcraft is the only case when a woman was considered fully liable for her own actions. In all other cases, her guardian had to take the punishment for her. The Older Västgöta Law stipulates that a woman shall be sentenced to outlawry if a district court jury convicts her of 'destroying' another person. She shall have one day and one night's respite to the forest. This is followed by the statement: "and kill her thereafter."[172] The Younger Västgöta Law expresses the same idea: "then kill [her] when possible."[173] Outlawry here is basically a death sentence. There are no other outlawry sentences that are followed by these types of encouragement to kill the convicted party.[174] This demonstrates that witchcraft must have been regarded as a very serious and disturbing crime. Both laws, but the Older Västgöta Law in particular, demonstrate a very strong desire to not only punish the convicted witch but also banish her from society. This is one of the very rare occasions when a woman could be sentenced to outlawry in Swedish medieval law.

The rest of the laws also demonstrate that female criminal liability was well established for witchcraft and 'destruction.' Just like in "other cases of murder," a woman would be sentenced to death if she had managed to 'destroy' another person. Witchcraft follows the same pattern as murder; but there is a clear difference if we compare these rules with the legislation on homicide, where female liability had not been completely established and was still vacillating.

In the Östgöta Law the punishment for fatal 'destruction' is death by stoning.[175] We find in the same paragraph:

> Now she is accused of it, and certain destruction can be seen on the peasant or on his people or on his cattle, then she can prove her innocence with an oath of three times twelve men or pay a fine of 40 mark. If she is suspected of such a thing, but it [that is: signs] cannot be seen on his

171 ÄVgL, Tjuvabalken 5 §2.
172 ÄVgL, Slagsmålsbalken 8.
173 YVgL, Fredsbalken 12.
174 See for example: ÄVgL, Om mandråp 1 §3. Såramålsbalken 1, Detta är slagsmålsbalken 1 §2.
175 ÖgL, Vådamålsbalken 31 §1.

> cattle, then she can prove her innocence with an oath of twelve men or pay a fine of three marks.[176]

The differences in the sentencing (three versus 40 marks) has been a topic of scholarly discussion.[177] However, considering that the consequences were decisive for sentencing in Swedish medieval law, it would be highly surprising if the law regulated a harsh punishment for a case of 'destruction' in which no one had suffered harm. The law actually imposes a pretty significant fine, 40 marks, if signs of 'destructions' could be found. This underlines that the legislators focused on what was visible and measurable and kept a fairly pragmatic stance on witchcraft. The punishment for fatal 'destruction' in the Uppland, Södermanna, and Västmanna Laws was to be burned at the stake. However, the laws do allow the plaintiff to accept a fine if he wants to grant her life. It can be noted that these fines are very high, between 100 and 140 marks.[178] This places the fines way above the basic wergild of 40 marks if someone had died.

The regulation on witchcraft is more detailed in the Dala Law; it is also harder to interpret. The law states that it may well be called witchcraft if a woman is taken with witchcraft: with horns and with hair, with living and dead. It is not clear whether or not someone had actually died from the witchcraft, but since it is not mentioned it seems unlikely. This crime is punished with a fine. The law states that if she does not have money enough to pay the fine, then "she shall be food for stone and strand."[179] As noted above, the expression is much debated, and this quote follows one of the interpretations. According to this interpretation the imposed punishment was stoning. This is one of the arguments that stoning would take place on a shore, something that has been claimed with more certainty for medieval Norway.[180]

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176 I follow Wessén's interpretation. Holmbäck and Wessén, Östgötalagen, Vådamålsbalken 31 §1.

177 Ragnar Hemmer, "De svenska medeltidslagarnas stadganden om skadlig trolldom och förgiftning," *Tidsskrift for rettsvitenskap* 60 (1947): 423–424. Ankarloo, *Trolldomsprocesserna i Sverige*, 33.

178 In SdmL the fine is 120 marks. In VmL the fine in cases when someone had died is 100 marks, other cases: 40 marks. In UL the fine is 40 marks if no one died but 140 marks if someone had been destroyed. SdmL, Manhelgdsbalken 32. VmL, Manhelgdsbalken 16. UL, Manhelgdsbalken 19.

179 DL, Kyrkobalken 11.

180 Schlyter first claimed that the punishment was stoning and then that it was exposure to wild animals on a beach; to be food for wild animals. Schlyter, Västmannalagen, Glossarium, 'maþer.' Schlyter's dictionary, 'strand.' Also see: Ström, *On the Sacral Origin of the Germanic Death Penalties*, 106.

The Laws of the Realm and the town laws hold both men and women criminally liable for fatal 'destruction.' The older town law, *Bjärköarätten*, states that the one who gives another poison, man or woman, shall be burned at the stake.[181] As discussed above, Magnus Eriksson's Law has several different provisions for 'destruction.' In the first, a man shall be broken on the wheel while a woman shall be sentenced to stoning.[182] The second provision, which started with a male and a female perpetrator but ended mentioning only women, states that she shall be burned at the stake.[183] Magnus Eriksson's Town Law also contains two different provisions. The first one stipulates that a guilty man shall be broken on the wheel while a woman shall be burned at the stake. The second regulation imposes burning at the stake for both a female and male perpetrator.[184] The two provisions in Christopher's Law are more consistent and stipulate burning at the stake for women and breaking on the wheel for men.[185] Again we see a general tendency where the punishment for murder for women has been changed from stoning to burning at the stake in Magnus Eriksson's Town Law and Christopher's Law.[186]

The death penalties used for 'destruction' were stoning and burning at the stake for women and breaking on the wheel and burning at the stake for men. This is in line with the tendency seen before. Women and, in this case, men were integrated in the law and were equated as perpetrators. At the same time, men and women were often symbolically separated by the choice of death penalty. Magnus Eriksson's Town Law is an exception, since it stipulates burning at the stake for both men and women in its second provision. Burning at the stake was more commonly used for female criminals. However, as we have seen, it was a death penalty that could be applied to men for particularly serious crimes.

Concluding Remarks

The fact that the legislators regarded homicide and murder as different categories of crimes is evident. The simplest definition is that murder took

181 Bjärköarätten 36 §1.

182 MEL, Högmålsbalken 5.

183 MEL, Högmålsbalken 12.

184 MESt, Högmålsbalken 4, 11. In five manuscripts the female perpetrator is to be stoned. Schlyter, Magnus Erikssons stadslag, page 323, footnotes 38, 41 & 42.

185 KrL, Högmålsbalken 6, 15 & §1.

186 Holmbäck and Wessén, Magnus Erikssons landslag, Förklaringar till högmålsbalken, footnote 3.

place secretively, while homicide was the consequence of an open combat. However, this chapter has demonstrated that this distinction was not strict. One can interpret these provisions in a wider context. Deadly violence fell into many categories. The basis for most regulations of homicide was a situation of combat involving equal men. All other types of deadly violence were judged departing from this situation. Violence aimed at a person considered weaker was shameful, as was deadly violence that took place secretively. Any form of deadly violence could be defined as murder if it was perpetrated in a devious way or in non-public spheres. The definitions of homicide and murder vacillated when a killing took place within the family, which fits this interpretation. It was a killing that had taken place outside of the battlefield in a space where peace were to prevail. The laws seem to divide the world into a public sphere and a private sphere. The different spheres are also reflected in the assumed perpetrator. Homicide was something that occurred between men: as one law puts it, "when men meet." There are no instances where "women meet" in the public; in fact, if a woman acted violently in a feud setting, her deeds would still not be considered as breaking the peace. This can be contrasted to murder, which was more expected of a woman than homicide.

Female criminal liability is well established for murder and 'destruction'; it is actually better established for these crimes than for many other criminal acts. This shows that murder and 'destruction' were crimes that were more easily ascribed to women. The harsh sentencing also demonstrates a strong will to punish these crimes. This again points to a thought pattern that views the secretive and non-public as dangerous and alarming. The will to punish these crimes with the harshest penalties was connected to a fear of that which one could not control: acts that took place in secret. All acts committed in this way were far less accepted and respected. Legislators obviously considered it more likely for women to act in secretive and devious ways. Women were also symbolically linked to the home and to the family, so it comes as no surprise that women were expected to act criminally within this sphere rather than in the open and in public.

There is a clear tendency to integrate women as potential perpetrators in the younger legislation, the Laws of the Realm and the Town Law. We are reminded of the statute of Skara from 1335, issued in Magnus Eriksson's name, which states that a woman shall expiate all her crimes as a man and, in particular, the ones that lead to the death penalty.[187] The process worked in the other direction too, and legislators integrated men as perpetrators for the crime of witchcraft and 'destruction.' The legislation has clearly become far more gender neutral and equal. The number of social categories has also diminished.

187 Skarastadgan, DS 3106.

We find no provisions in the Laws of the Realm on homicides of foreigners, women, the elderly, or other categories. This is an important legal change. The legislators have accomplished a more generally valid law which removes differences between individuals due to gender, age, or status to fewer categories. These changes apparently took place reluctantly, and they were not necessarily in accordance with contemporary legal practice or mentalities. This can be shown by the provisions that start out mentioning men and women as possible perpetrators of witchcraft but then end up mentioning only women. This can also be detected in the reluctance to punish a female killer "just as any other killer." This cannot be explained by a general hesitance to sentence women to death, since the legislators obviously had no problem sentencing women to death for murder and 'destruction.' This reflects a conflict between ideas where women were not seen as "proper perpetrators" of certain crimes—such as homicide—and an effort to create a law that equated men and women, which was valid for all.

CHAPTER 5

Sexual Crimes: Fornication, Adultery and Bestiality

Introduction

Ruth Mazo Karras emphasises that the image of the Middle Ages as a time when sexuality was completely controlled by a repressive Church is misleading.[1] However, it was of course inevitable that the Church had a very strong effect on views of sexuality, and it is hard to claim that the medieval Church was particularly positive toward sexuality and sexual acts. To simplify matters: the Church disapproved of all sexual acts that did not lead to reproduction within wedlock. Both the Church and secular law held marriage to be the foundation for the categorisation of sexual acts as either prohibited or allowed. Marriage was, as noted before, the very epitome for how gender relations should be organised. The basis for gender relations was male dominance and female subordination. The sexual act itself was seen as a symbol of this. The Church mainly accepted one position for intercourse; that which today is referred to as the missionary position, with the man on top and the woman underneath on her back. The opposite position, with a woman on top, was considered to disturb the proper gender order.

Karras argues that, during the Middle Ages, the sexual act was not seen as a mutual act; instead, it was an act done by one person to another. This view was based on ideas of activity and passivity which maintained that, according to the proper order, the man was the active participant and the woman the passive. This had nothing to do with the ability to feel desire or lust; in fact, women were in many instances considered more lascivious than men. Neither did it define who initiated the sexual act.[2]

The same type of thoughts of an active male role and a passive female role can be found in research on Viking and medieval sexuality in the Nordic countries.[3] This chapter will argue that these ideas are clearly present in Swedish medieval law. The law codes reproduce a thought pattern in which men are active and women passive in the sexual act. The codes tend to describe the act as something that an active party, a man, did to another, a woman. But

1 Ruth Mazo Karras, *Sexuality in Medieval Europe: Doing Unto Others* (New York: Routledge, 2005), 1–2.

2 Karras, *Sexuality in Medieval Europe*, 23, 27.

3 Meulengracht Sørensen, *Norrønt nid*, 38–39, 71.

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as always, this is not completely consistent, and interesting contradictory tendencies will be highlighted as well.

The image of medieval sexuality that emerges is one of female subordination with an emphasis on controlling women's sexuality and their sexual acts. But it has been argued that the medieval Church had another, parallel view of sexuality which, at least in theory, was characterised by gender equality.[4] Both husband and wife had a right to demand sex within the marriage, and man and woman were supposed to be judged by the same standard if they strayed from the right way. The Church claimed that all issues of marriage and sexual crimes should be within its jurisdiction.[5] In Sweden, the Church never managed to get complete jurisdiction over sexual crimes, and they were often dealt with by both the Church and secular law. Since the secular laws undoubtedly are characterised by Christian thoughts, one cannot always distinguish "secular" views from the Church's view. The fact that the Church's law is gathered into the Church sections of the Swedish medieval laws and thereby separated from the rest of the legislation, however, helps us in this endeavour. Furthermore, in other cases an act was obviously considered to be a crime against the Church as demonstrated by the fact that the fines imposed were partly awarded to a representative for the Church. This chapter will explore whether the Church sections assigned responsibility for sexual crimes equally to men and women.

The purpose of this chapter is to analyse what some of the most important sexual crimes reveal about concepts of gender and liability for sexual crimes. The topics dealt with are sexual acts between unmarried people, adultery, and bestiality. The analysis confirms that women held little to no legal liability for fornication; the legal responsibility was solely placed on the man. Women were also not assumed to be perpetrators of bestiality, that is, having intercourse with an animal. This was largely defined as a male crime. For adultery the issue is more complicated. The laws clearly were more concerned with female adultery; however, the view that men never were punished for adultery is not true. The chapter will also examine the way in which a woman's honour was linked to her sexuality. It will reveal that although women were indeed

4 Brundage, "Sexual Equality in Medieval Canon Law," 67. Reid, *Power over the Body, Equality in the Family*, 150. Dyan Elliott refutes that these ideas had any positive influence in reality. Dyan Elliott, "Bernardino of Siena versus the Marriage Debt," in *Desire and Discipline, Sex and Sexuality in the Premodern West*, ed. Konrad Eisenbichler and Jacqueline Murray (Toronto: University of Toronto Press, 1996).

5 It was easier for the Church to establish jurisdiction over marital issues than sexual crimes. James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 319.

shamed by a sexual transgression, their male relatives also were considered to have been negatively affected by the action. As mentioned, both the Church and secular authorities used marriage to define whether a sexual act was licit or illicit. A brief overview of the institution of marriage in Swedish law and practice will therefore follow.

Medieval Marriage in Sweden

Mia Korpiola demonstrates that Swedish medieval marriage, unlike the marriage created by medieval jurists, was not a separate and clearly defined act. Marriage in medieval Sweden was a process that could take months and sometimes years.[6] The process was introduced by the engagement and ended the day after the official bedding of the parties. In the first stage the marriage guardian of the woman was responsible for the engagement of the two parties. This took place under the exchange of a so called 'friend gift' from the groom to the guardian. The wedding, which could take place long after the initial stage, was followed by a procession which took the bride from her home to her husband's. This part of the ceremony was finalised by the two parties going to bed. The first night together as a couple had great significance, not only symbolically but also economically and legally.[7] It was after this first night that the wife received her morning gift. From now on she formally entered under her husband's guardianship. He was responsible "to sue and to answer for her," as several laws put it.[8]

Many scholars emphasise that marriage was an economic agreement.[9] A wedding certainly meant that a property transaction, or several, took place.

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6 Korpiola, *Between Betrothal and Bedding*, xxi–xxii, 4, 17–53. The same tendency can be found in fifteenth-century England. Shannon McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy, and Reputation," in *Conflicted Identities and Multiple Masculinities: Men in the Medieval West* (New York: Garland Press, 1999), 248.

7 Korpiola, *Between Betrothal and Bedding*, 34–35.

8 HL, Ärvdabalken 2 §1. ÖgL, Giftermålsbalken 7. MEL, Giftermålsbalken 6 §1. KrL, Giftermålsbalken 9. In the Uppland Law a woman had come under her husband's responsibility/care when she had been delivered to his home. UL, Ärvdabalken 2 §1. So too in VmL, Ärvdabalken 2 §1.

9 Shannon McSheffrey claims that marriage for the large majority of the population was based on "affection, attraction and personal choice" but was also seen as an economic affair that involved family and friends. Shannon McSheffrey, " 'I Will Never Have None Ayenst My Faders Will': Consent and the Making of Marriage in the Late Medieval Diocese of London," in *Women, Marriage, and Family in Medieval Christendom: Essays in Memory of Michael M.*

In addition, a marriage altered the inheritance order; even if the inheritance primarily went to the children, property and land could pass from one family to another through a woman. The woman could also bring a dowry into the marriage. The size of this dowry depended on her family's wealth and status. Furthermore, a wedding would also entail a property transfer in the opposite direction: the morning gift that the husband gave to his wife on the morning after the wedding. The size of the morning gift could also vary quite a bit depending on the economic position of the groom's family. Mia Korpiola accurately notes that "wedding rituals partly existed to dramatise the property transfers linked to marriage."[10]

The property transfers that took place can indeed be regarded as business deals between families or, more correctly, between the men in these families. Lizzie Carlsson claims that neither man nor woman was an individual in medieval society; they were both primarily members of a kin group.[11] This way of equating female and male subordination under their respective families is not representative of how Swedish marital legislation is formulated. The laws make it clear that a man generally did not have to ask for his relatives' permission to get married. Only one of the laws, the Södermanna Law, states that a man should ask for a woman in marriage with the advice of his closest relatives.[12] This is, however, expressed as desirable but not required by law.

Mia Korpiola points out that the Swedish laws are characterised by requiring the consent of both the marital guardian as well as the two parties that were to be married.[13] However, she also notes that "the Church did not press particularly hard for the necessity of obtaining the woman's consent in medieval Sweden."[14] If one analyses the way the legislation has been formulated, it is evident that the patriarchal tendencies are very strong. In Swedish law, marriage was clearly an agreement and a negotiation handled by men. This image of marriage is seemingly in contrast to the Church's marital model based solely on the consent of the two parties. However, as we shall see, even if the laws rarely require a woman's explicit consent, there is indirect evidence that this

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Sheehan, C.S.B, ed. Constance M. Rousseau and Joel T. Rosenthal (Kalamazoo, Michigan: Medieval Institute Publications, 1998), 154–155, 174. Jacques Le Goff and Nicolas Truong claims that the Middle Ages most likely did not know what we would refer to as love, at least not in the sense that the emotion helped organise society. Jaques Le Goff and Nicholas Truong, *Une histoire du corps au Moyen Âge* (Paris: Editions Liana Levi, 2003), 113.

10 Korpiola, *Between Betrothal and Bedding*, 38.

11 Carlsson, *'Jag giver dig min dotter,'* 29–30.

12 SdmL, Giftermålsbalken 1.

13 Korpiola, *Between Betrothal and Bedding*, 111, 113–114.

14 Korpiola, *Between Betrothal and Bedding*, 182.

actually had been successfully enforced in Swedish medieval law. This will be discussed below in the analysis of control mechanisms aimed at women. The empowering effects of female consent to marriage should not be exaggerated, but the laws do reveal that it was considered a current problem and in conflict with the authority of the parents.

Fornication

Sexual activities between unmarried couples were a sin according to the Church, and in theory, as noted, this applied to both men and women (same-sex sexual acts between the unmarried was not primarily defined as fornication in the Middle Ages). The regulation of fornication as a crime against Church law is rare in the Swedish medieval laws. Only two of the Swedish provincial laws stipulate Church penance and fines to the bishop.[15] Christopher's Law stipulates a fine to the bishop if a man had slept with his betrothed before the wedding, though no provision stipulates a fine for any other type of fornication.[16] The Södermanna Law even states that fornication that happened in the fifth degree is free from both fines and fasting. This meant that only intercourse with someone to whom you were related within the four forbidden degrees was considered a crime against the Church.[17] In two other laws we also find the specific case of fornication by which a church had been made impure by someone having had intercourse in the church itself.[18] In this case, both woman and man were supposed to be sentenced to pay a fine. But this cannot be interpreted as a regulation of fornication, since a married couple should also pay the fine if they had intercourse in the church.[19]

Swedish medieval law clearly does not emphasise fornication as a crime against the Church. This does not preclude the crime being treated separately in ecclesiastical courts, but we have little evidence of this, since few records have been preserved. Nonetheless, it is clear that the main concern in Swedish medieval law is to establish to which degree a child born outside of wedlock

15 ÖgL, Kyrkobalken 15 §1. YVgL, Kyrkobalken 57.

16 KrL, Giftermålsbalken 2 §3.

17 SdmL, Kyrkobalken 15.

18 VmL, Kyrkobalken 22 §1. UL, Kyrkobalken 15 §6.

19 That intercourse in churches is so often mentioned during the Middle Ages indicates that it could be difficult for couples to find secluded places to have sex. Karras, *Sexuality in Medieval Europe*, 76.

had the right to inherit.[20] In other words, the laws do not stress the sinful character of fornication; rather, they are preoccupied with the practical consequences of the act. The judicial procedure in cases of fornication also underlines the practical consequences. Several of the laws specify when a person had a right to sue another for fornication. While the crime is usually defined as a man having had sexual intercourse with a woman, several laws have added the legal requisite that he also must have produced a child with her in order to be prosecuted.[21]

The Östgöta Law, for example, states that fornication can only be brought to court if the man is caught in the act or if the birth of a child is a testimony to what had happened.[22] The same type of specifications can be found in the Västmanna Law, the Uppland Law, and Magnus Eriksson's Law.[23] The two first laws add that fines for fornication shall be paid if a child has been born, if a man is legally proven guilty, or if he admits culpability. The phrasing "one cannot sue for fornication" seems like a deterrent to potential legal action. It must have been very difficult for a woman or her guardian to sue a man for fornication unless the act in some sense had been publicised. It is possible to interpret this as part of a patriarchal order that protects the man from liability. However, this interpretation does not take into consideration who was considered the victim in cases of fornication, something that actually reveals an even more profoundly patriarchal order, as we shall see. A more feasible interpretation is that the laws had a very pragmatic character, and only if the case had been publicised and therefore had become a potential source of conflict should it be brought to court. In accordance with this, Eva Österberg claims that during the early modern era it was the visible that counted, and only blatant public threats to decency were condemned.[24] It was the apparent and visible that was disapproved of—and, in this case, that should lead to a court case.

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20 See for example: ÖgL, Giftermålsbalken 5 §1. UL, Ärvdabalken 18. VmL, Ärvdabalken 13 §2. MEL, Giftermålsbalken 2 §4. MESt, Giftermålsbalken 2 §3. Also in KrL children inherited as if they were born within wedlock even if the fiancé should pay a fine of three marks to the bishop for fornicating before they were married. KrL, Giftermålsbalken 2 §3.

21 SdmL, Ärvdabalken 3 & §1 (revealed indirectly). YVgL, Giftermålsbalken 10. ÖgL, Ärvdabalken 14.

22 ÖgL, Ärvdabalken 16.

23 VmL, Ärvdabalken 17 §2. UL, Ärvdabalken 22 §2. MEL, Ärvdabalken 15.

24 Eva Österberg, "Den synliga och den osynliga synden. Sexualitet i norm och verklighet under 1600- och 1700-talen," *Lambda nordica: tidskrift för homosexualitetsforskning* 1 (1996): 68.

Social Status and Fornication

It has become obvious that the sentencing and crime descriptions in the provincial laws were affected by the gender, age, and social position of both perpetrator and victim. Social position in the meaning of being free, freed, or thrall certainly affected the regulation of fornication. In the Göta Laws, the woman's social status created clear distinctions between different cases of fornication. Regulations regarding fornication with female thralls exist in the Västgöta Laws and the Östgöta Law.[25] It is also mentioned in the Västmanna and Uppland Laws—in the latter, however, only to stress that the status of thrall no longer shall affect the punishment of the crime.[26] Nowhere is it mentioned that a peasant could be punished for having sexual intercourse with his own slaves. Ruth Mazo Karras has claimed that the female thralls probably were considered sexually available for the master of the household.[27] While there is no evidence of this in Swedish medieval law, there were certainly no legal restrictions on the peasant in this regard.

It was quite another matter to have intercourse with someone else's thrall. It is clear from the Göta Laws that this indeed was punishable, and the plaintiff was, as one can expect, the owner of the female thrall. In these provisions we also find that female thralls held different values and positions. A man had to pay higher damages if he had intercourse with a female thrall "who carried her owner's keys." That the thrall carried the keys indicates that the owner was not married, since the carrying of the keys was the duty of the housewife. This thrall was then the one responsible for the farm houses. Fornicating with a freed so-called *fostre*, meaning a slave born and raised within the household, led to an even higher compensation. This demonstrates that a freed thrall could have a social position and rank in between a free person and a thrall.[28] They did not automatically achieve the status of a free-born person. That the female thrall was seen as an object, as part of the property, is self-evident. Thus, a man who had impregnated another person's thrall had to compensate the owner for any lost work due to pregnancy and childbirth. The convicted man would also be responsible for the female thrall until "she could milk a cow and pull a mill wheel." If she died in childbirth, the man had to compensate the owner for his

25 ÄVgL, Giftermålsbalken 5, 6 §3. YVgL, Giftermålsbalken 4, 11. ÖgL, Ärvdabalken 14.

26 UL, Ärvdabalken 22. VmL, Ärvdabalken 17. Holmbäck and Wessén comment that VmL represent an older point of view. Holmbäck and Wessén, Västmannalagen, Ärvdabalken, footnote 91.

27 Karras, *Slavery and Society in Medieval Scandinavia*, 73–76.

28 ÄVgL, Giftermålsbalken 6 §3. YVgL, Giftermålsbalken 10.

loss.[29] These provisions reflect a very pragmatic view of the thrall woman; she is valued solely by her ability to work, and in no regard is she seen as a person. The Younger Västgöta Law places more of a symbolic importance on the thrall woman. Here, fornicating with a woman could be regarded as a crime aimed at a man. The man was considered the real victim. This law states that if someone had intercourse with another man's female thrall, then he had shamed the owner.[30] It was a shame for the man if someone had slept with "one of his women". Whether the woman had consented to the act is completely irrelevant to the legislators; accordingly, the owner was the one who received the monetary compensation for the act.

To have sexual intercourse with another man's thrall could therefore be regarded as a symbolic insult directed at his power and his ability to protect his women. If it led to a pregnancy, it was furthermore regarded as a property crime that lessened the peasant's ability to use the thrall as part of his work force. Fornication with another man's thrall may have been connected to property crimes also in another sense. We noted that a higher fine was imposed for intercourse with a female thrall who carried the peasant's keys. Carrying the keys marked the female thrall as responsible for the household property. The harsher punishment for having intercourse with a thrall who carried the keys can, of course, reflect her higher status. Nonetheless, the sentencing was most likely also affected by the fact that she carried responsibility for the owner's property. The woman who carried the keys was a link between the outside world and the inner realm of the household, and fornication with her could be seen as a breach of the boundary of another man's sphere. It can be interpreted as a threat that the woman would be lured or persuaded to steal from her master. The fornication regulations in the Hälsinge Law, discussed below, support the argument that such an idea existed in the Middle Ages.

The Svea Laws also mention fornication with thralls. The Västmanna Law has a rather obscure stipulation which states: "Fines for fornication for an unfree man and an unfree woman shall be all together 6 *öre*."[31] This could refer to the case when both parties were thralls, but more information on this situation is not provided. Åke Holmbäck and Elias Wessén state that the Uppland Law has departed from this older view when it declares that fornication between an unfree man and an unfree woman shall be the same as

29 ÄVgL, Giftermålsbalken 6 §3. YVgL, Giftermålsbalken 11. ÖgL, Ärvdabalken 14.

30 YVgL, Giftermålsbalken 4. Schlyter claims that 'shame' can denote 'injury' or 'damage.' My interpretation is that the word means 'shame' as in 'dishonour.' Schlyter's dictionary: 'skam.'

31 VmL, Ärvdabalken 17.

fornication between two free parties.[32] Apart from this there is no mention of the social status of the men involved. One could imagine that the transgression would be considered worse if a male thrall fornicated with a free woman, but this situation was never mentioned. A relationship between a thrall and a free woman was not unimaginable for the legislators, however, since there are provisions regulating the order of inheritance when a thrall married a free woman.[33]

Pre-Nuptial Sex and the Importance of Virginity

An unmarried woman could be a maiden or a widow or could be in a grey zone of being engaged but not yet married. Let us start in that grey zone. Only two of the laws contain provisions concerning fornication with a betrothed; the laws again start from a male norm and perspective. In the two Västgöta Laws, if a man had intercourse with a woman to whom he was engaged, he had to pay six marks in compensation.[34] This is actually the same sum that a man should pay for fornication with a free woman regardless of their relationship. A pragmatic view on fornication can be noted in the statement that follows the above-mentioned provision. It stipulates that if a man sleeps with a woman and then gives a 'friend gift' to the marriage guardian and thus gets engaged to her, then the intercourse has been paid for.[35] Strangely enough, the law stipulates that if a man has sexual relations with his betrothed, then he had to pay compensation; but if he does it the other way around and has intercourse with her first, then he did not have to pay compensation, only the 'friend gift.' One possible way to interpret these rules is that the engagement was a commitment and an agreement between two men. The intercourse was seen as a breach of that commitment and should be paid for. For the unengaged woman there was no agreement to break; it was therefore better to make the best of the situation and avoid conflict. This implies that it was harder for a woman to get married if she had had sexual relations; it was therefore a compromise and a remission to let him pay for the fornication by marrying her.

Most of the laws do not mention payment of fines if the engaged couple had sexual intercourse before the wedding. In fact, it does not seem to have caused problems. If the act resulted in a child, then the child was counted as born

32 UL, Ärvdabalken 22. Holmbäck and Wessén, Västmannalagen, Ärvdabalken, footnote 91.

33 For example see: UL, Ärvdabalken 19.

34 ÄVgL, Giftermålsbalken 6 §1. YVgL, Giftermålsbalken 8.

35 ÄVgL, Giftermålsbalken 6 §2. YVgL, Giftermålsbalken 9.

within wedlock or, actually and tellingly, as "a married woman's child."[36] This is completely in agreement with the above-mentioned pragmatism in views on sexual relations before marriage. It was the inheritance and property that were in focus, and once the child's legal status and right to inherit had been settled, there was no reason to intervene against the sexual activities themselves. It is furthermore possible that this shows that the legislators considered a legitimate marriage to be the result of sexual consummation after an engagement (an exchange of vows).

Christopher's Law from the fourteenth century is slightly harsher. It reduces the fine for fornication by half if the man marries the woman with whom he had sexual relations. However, this fine was only due if the woman was a "maiden of a lawfully married bed," meaning that she had been born within wedlock. If she was not legitimate, but a so-called "concubine's child," then the man did not have to pay a fine for fornication at all if he married her.[37] Obviously the youngest of the Swedish laws ranks a woman's status and her ability to get married according to whether she was born within or outside of wedlock.[38]

A woman who is not married is referred to as a maiden, *mö*. What the word *mö* really denotes in the laws is not completely clear. It can signify that a woman was a virgin and had not had sexual intercourse, but most commonly it simply denotes a young unmarried woman.[39] It is possible that the law codes use the term in the latter sense rather than meaning virgin. In several of the provisions on "intercourse with a maiden" it has been added to this requisite that the "maiden allowed herself to be bedded in maiden age." (The somewhat old fashioned expression "to bed" is used here because it resembles the verb used in Old Swedish, which can be transformed from an active verb originating with the man, "to bed someone," to a passive word from the perspective of the woman, "to be bedded.") The direct wording "in maiden age" has been translated into 'virginity.'[40] The provisions, however, seem to refer to the age and marital status of the woman rather than her virginity.[41]

Many scholars have assumed that female chastity was of great importance despite the fact that the significance of virginity and chastity in medieval

36 ÖgL, Giftermålsbalken 5 §1. UL, Ärvdabalken 18. VmL, Ärvdabalken 13 §2. MEL, Giftermålsbalken 2 §4. MESt, Giftermålsbalken 2 §3. KrL, Giftermålsbalken 2 §3.

37 KrL, Giftermålsbalken 3 §1.

38 KrL, Ärvdabalken 19 §1.

39 Schlyter's dictionary: 'mö.' Söderwall's dictionary: 'mö.'

40 Schlyter's dictionary: 'möiar alder.' UL, Ärvdabalken 22. VmL, Ärvdabalken 17.

41 Schlyter's dictionary: 'alder.' Söderwall's dictionary: 'alder.'

Sweden has not been studied closely.[42] It has been suggested, for example, that the morning gift not only had pre-Christian roots but also was given in order to compensate for the woman's loss of virginity. The morning gift would then function as proof that a woman was a virgin when she got married. In the Middle Ages, however, the morning gift was primarily meant to help support the woman if she became a widow.[43] The timing of the morning gift, the morning after the couple's first night together, can also be due to the fact that this marked the time when the husband was her legal guardian and indeed managed her property. The importance of the first night together indicates that, according to common popular belief, sexual consummation was considered necessary for a proper marriage.

In fact, it is difficult to capture the importance of virginity in Swedish medieval law. The sentencing in two of the laws, however, shows that it was not solely the loss of virginity that made fornication punishable. The Uppland Law and Västmanna Law stipulate pecuniary compensation for fornication also the second and third time a "maiden" is bedded. It might be redundant to note that she cannot have been considered a maiden in the sense of being virgin the second or third time. Furthermore, these laws also stipulate monetary compensation for fornication with a widow. It is therefore undeniable that it was not solely the woman's virginity that was being compensated. But it should be noted that the laws stipulate a much lower compensation the second time a woman was bedded and an even lower one the third time. Additionally, the compensation is generally lower if a widow was bedded. The provisions also clearly state that after a woman's third incident of fornication, no compensation is to be paid; for a widow, this rule applied after the second instance of fornication. Thus the plaintiff lost the right to compensation when fornication had occurred too many times. One possible interpretation of this is that a woman's honour had been diminished so much by the time of the third instance of sexual intercourse that there was no need to pay compensation for fornicating with her.

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42 Ruth Rajamaa has written on virginity but it is restricted to the monastic context. Ruth Rajamaa, "Jungfrulighet, kyskhet och avhållsamhet," in *Kvinnors rosengård. Medeltidskvinnors liv och hälsa, lust och barnafödandet*, ed. Hedda Gunneng, Beata Losman, Bodil Møller Knudsen and Helle Reinholdt (Stockholm: Centrum för kvinnoforskning vid Stockholm University, 1989), 49–50.

43 Carlsson, *'Jag giver dig min dotter,'* 220. Mia Korpiola, "An Uneasy Harmony. Consummation and Parental Consent in Secular and Canon Law in Medieval Scandinavia," in *Nordic Perspectives on Medieval Canon Law*, ed. Mia Korpiola (Helsinki: Matthias Colonius Society, 1999), 130–131. Korpiola, *Between Betrothal and Bedding*, 51.

Claude Gauvard has shown for medieval France that an unmarried woman who had had sexual relations was considered "publicly available." Her loss of honour was a fact no matter whether she had consented to the act or not. Women could also be deemed as "publicly available" by stubborn rumours that were not refuted actively and with violence.[44] These tendencies can be found in the Swedish laws as well but are far more nuanced. First of all, it seems as though a woman did not completely lose her honour after one instance of sexual relations, for it was also punishable to have intercourse with a woman who was not a virgin. Further, it is important to note that several of the laws make no distinction between a maiden and a widow and simply use the term 'woman.' In this case, the laws can hardly be said to put much emphasis on the loss of virginity.

The youngest of the laws, the fifteenth-century Christopher's Law, does seem to take virginity into account when defining the crime. "Whoever lures and beds another man's daughter, if she is a maiden of a lawfully married bed, the one who did so will pay 40 marks to be divided into three: her father, the king and the district [. . .].[45] The law emphasises that she is a maiden despite the fact that she is already defined as someone's daughter and that it is her father who receives part of the fine. The term 'maiden' must here refer to her virginity. It is also noteworthy that this law lacks provisions on fornication with a widow and does not stipulate fines if a woman fornicates again. The provision in Christopher's Law is obviously influenced by Magnus Eriksson's Town Law, which has a similar regulation and the same punishment for fornication.[46] However, another provision in the same law, placed in another section, has been taken from the older Law of the Realm.[47] The difference between these two provisions is evident and will be discussed below.

Criminal Liability and Sentencing for Fornication

To start with, women had no criminal liability whatsoever for fornication. Only men were punished for fornication, and this is completely consistent in all the

44 Claude Gauvard, "Honneur," in *Dictionnaire du Moyen Âge*, ed. Alain de Libera, Claude Gauvard, and Michel Zink (Paris: Presses Universitaires de France, 2002), 688.

45 KrL, Giftermålsbalken 3 §1.

46 MESt, Giftermålsbalken 3 §1. MESt seems to have taken its provision from the earlier town law Bjärköarätten and not from MEL. Interestingly enough the older town law, Bjärköarätten, does not separate between a man's daughter and his wife. Bjärköarätten 15 §1.

47 KrL, Ärvdabalken 17.

laws. Another general tendency is that the sentence for fornication is the payment of fines. The two town laws, *Bjärköarätten* and Magnus Eriksson's Town Law, depart somewhat from this tendency, since they stipulate corporal punishments as a secondary punishment if the perpetrator cannot pay the fine. Both of these laws state that in this case the man should pay for his nose with 40 marks.[48] This must mean that unless he paid the fines, his nose would be cut off. In addition to the pecuniary penalty, the perpetrator should also "flee the city," as it is called in these two laws.

In most of the laws the fines for fornication should go in their entirety to the plaintiff. It is evident that the fines were considered compensation as well as a punishment for the convicted offender. Neither the district nor the king got any portion of the fines in any law except the two youngest.[49] In Magnus Eriksson's Town Law and in one of the two provisions in Christopher's Law, the fines are to be divided into three portions: Magnus Eriksson's Town Law specifies one portion for the plaintiff, one for the king, and one for the city; Christopher's Law gives the city's portion to the district.[50] One can see some very interesting differences between Magnus Eriksson's Law of the Realm and the Town Law. First of all, the size of the pecuniary penalty differs markedly: three marks in the Law of the Realm compared to 40 marks in the Town Law. Moreover, the Law of the Realm states explicitly that the district or the king has no part in the payment; it belongs solely to the marriage guardian.[51] The Town Law and Christopher's Law obviously regard the crime of fornication as a

48 Bjärköarätten 15 §1. MESt, Giftermålsbalken 3 §1. Holmbäck and Wessén, Bjärköarätten, Förklaringar till Bjärköarätten, chapter 15, footnote 5, page 486. Cutting off the nose, whether it was used as a punishment or revenge, linked the victim to sexual transgressions. It should be noted that women were more often exposed to this. Valentin Groebner, "Losing Face, Saving Face: Noses and Honour in the Late Medieval Town," *History Workshop Journal* 40 (1995): 2–5.

49 The Västgöta Laws are somewhat unclear but it is likely the father who receives the fine. ÄVgL, Giftermålsbalken 6 §1–3. YVgL, Giftermålsbalken 9, 11. ÖgL, Ärvdabalken 16. DL, Giftermålsbalken 7. SdmL, Ärvdabalken 3 §1. UL, Ärvdabalken 22. VmL, Ärvdabalken 17. MEL, Ärvdabalken 15. Bjärköarätten does not state whether the fine is to be divided in three or if this is compensation to the plaintiff. The law does not separate between a man's daughter and wife, which could indicate that the law did not clearly separate adultery from fornication. If this is the case that might mean that the fine was to be divided in three parts, with two thirds to the authorities, as the fine for adultery in the preceding paragraph. It might be a characteristic trait for town law to let authorities receive parts of the fine. However, the interpretation is uncertain. Bjärköarätten 15 & §1.

50 MESt, Giftermålsbalken 3 §1. KrL, Giftermålsbalken 3 §1.

51 MEL, Ärvdabalken 15. MESt, Giftermålsbalken 3 §1.

public crime. The view that fornication is a crime that concerned the authorities is thus a late tendency in Swedish law; it can only be noted in the youngest laws.

The difference in the size of the fines is also quite telling. Most of the provincial laws stipulate penalties that are on a relatively equal level: between three marks and four and a half marks for a first offence. The Västgöta Laws have a somewhat higher sum: six marks. But the two town laws and Christopher's Law have increased the fines to 40 marks. This equals a basic wergild; the fine for fornication is the same as for a regular homicide. This difference cannot be explained solely by a change over time, since the older town law is believed to have been compiled at the end of the thirteenth century, while the younger town law was compiled sometime during the second half of the fourteenth century. High fines for fornication seem to be an urban phenomenon. It is possible that fornication was seen as a bigger problem in cities, where the families' control over women was weaker than in the countryside; therefore, legal resources were needed to prevent the birth of children outside of wedlock.

Whether the change also reflects a development over time is hard to establish, since the youngest law, Christopher's Law, contains contradictory provisions. While one of the provisions contains the above-mentioned 40-mark fine of which two-thirds went to the authorities, the other regulation has a lower fine, and no part of the fine goes to the authorities. So, the law apparently has one provision taken from the older Law of the Realm and another taken from the harsher Town Law. One possible interpretation can be that if a man had fornicated with a maiden, in the sense of a virgin, he was to pay the higher sum, but if he had fornicated with an unspecified "woman" who had gotten pregnant, only the lower sum had to be paid. Although possible, this interpretation must be regarded as tentative.

As shown above, the dominant view during the time of the provincial laws and until the younger Law of the Realm was that the fine for fornication was considered to be damages paid to the plaintiff. It should also be noted that in several laws the plaintiff is a man and not the woman herself. Magnus Eriksson's Law states this clearly: the fine is solely for the marriage guardian. This can be found in two other laws as well: the Östgöta Law states that neither district nor king has any part of the fine for fornication, since that is an 'honour fine' to the peasant.[52] The translation 'honour fine' is commonly used, but the Old Swedish word is *þokka bot*, and the meaning is actually the inverse: *þokki* means 'shame,' not 'honour.'[53] So the meaning of the term is a sum to be

52 ÖgL, Ärvdabalken 16.

53 Schlyter's dictionary: 'þokki.'

paid because someone had shamed a peasant; the purpose of the fine was, of course, to restore his honour. The Södermanna Law also refers to the fine for fornication as a "shame fine." In this law it should be given to the woman's marriage guardian but then distributed among her relatives.[54] The Östgöta Law demonstrates that this type of honour could be connected to whether or not a person was born within wedlock. The law stipulates that a person who was conceived with a "shame fine" can never receive a "shame fine" and, furthermore, that a "shame fine" is never paid for a woman who was conceived with a "shame fine."[55] So, in order to receive this payment it was necessary for both the woman and her guardian to have been born within wedlock. This demonstrates that honour, sexuality, and consequently legal status could be interconnected for both women and men.

The laws studied above demonstrate a view that a woman's consent and her own will are profoundly unimportant. The women are portrayed as passive objects. Fornication was an affair between men, and fornicating with a woman was an insult to the woman's family and to her guardian.

'To Bed and be Bedded'—Activity and Passivity

In the Middle Ages the sexual act was conceptualised not as a mutual act but a deed done by one person unto another. According to the proper gender order, sexual intercourse included an active penetrating man and a receptive woman. So far the laws have revealed that a man was expected to be active and a woman to be passive. In Swedish medieval law, the act of fornication is usually defined using the neutral equivalent of "intercourse" or the combination "fines for intercourse." It is equally common that the laws describe fornication from a man's perspective as: a man 'lies with,' 'beds,' or 'claims' a woman. In all these expressions the man is the active participant, while the woman is the passive recipient. Four of the law codes use an expression that actually originates from the woman's perspective, although they still emphasise her receptive role, as she 'lets herself be bedded/lain with.' It is thus obvious that Swedish medieval law also reflects a view of the man as the active participant and the woman as the passive participant, both in the sexual act and in the legal context.

Above I discussed fornication with another man's thrall woman, which was seen as either a property crime or an act that damaged the owner's honour. This way of thinking, that a woman was a man's property, is not restricted solely

54 SdmL, Ärvdabalken 3 §1.

55 ÖgL, Ärvdabalken 16.

to female thralls. An emphasis on women as a man's property characterises other regulations on fornication too. These provisions depict fornication as an affair between men; it was a deed one man did to a woman but which affected another man. Only men were plaintiffs, and they were seen as the true victims of the insulting behaviour of sleeping with another man's daughter or female relative. To refer to women as property might seem extreme, but this thought is clearly expressed in late medieval legislation. Christopher's Law states that the wife is the best object that a peasant has in his home; the one who steals her is the worst thief of all.[56] Here women are described not only as subordinate but also as objects, part of a man's property that can be stolen. However, it should be noted that this is a late addition to Swedish medieval law and is a new piece of legislation written for this law.

This might be the most apparent example of a view that women were mere objects, but the tendency certainly existed earlier, and we find many indirect expressions of this. The Hälsinge Law has an interesting provision on fornication that evidently links the crime to property crime. That the provision was intended to deal with fornication can be seen by the title: "About fines for fornication (intercourse)." Then the text continues (in free translation):

> if a man lures another man's mother or daughter, the fine is eight marks, four to the plaintiff, two to the king and two to all men [that is: the district]. If a man lures another man's wife from the farm and property or clothes are brought with her, then he shall give back the property, as much as he can testify to with an oath, and pay a fine of four marks to the plaintiff, one to the king and one to all men. If a man lures another man's sister, then he pays two marks to the plaintiff, one to the king and one to all men. If a maiden lets herself be bedded, he pays to her father sixteen *öre*, to her brother eight *öre*, to her nephews four *öre*, but if he lures her off the farm and property is brought with her, then the fines are doubled.[57]

Holmbäck and Wessén comment that we are dealing here with an older view that regarded the woman as a piece of property with monetary value. According to this view, it was theft to take her from her home. They explain that the loss was not symbolic or emotional; it was the woman's labour that was lost.[58] Without negating the importance of female labour in agriculture,

56 KrL, Tjuvabalken 1.

57 HL, Ärvdabalken 14.

58 Holmbäck and Wessén, Hälsingelagen, Ärvdabalken, footnote 96.

the loss certainly was symbolic as well. It was an insult to a man and diminished his honour. We can also see that fornication was closely linked to property crime. It was not only the woman who was taken; there was also a fear that she would take property with her. This can be compared to the case above which imposed a higher fine for fornicating with a man's female thrall who carried the keys to the house.

It can also be noted that the word used, translated to 'lured,' unlike the provision from Christopher's Law, is not 'steal.' The interpretation of the Old Swedish word used, *spana*, is to 'drag through seduction and persuasion.'[59] So it is not described as literally taking someone with force but as luring and persuading a woman to leave her husband, son, father, or brother. The provision reflects the view that women could come under another man's influence. A woman is weak and easily seduced; she is not described as fully responsible for her own actions. The provision also reveals that it was not viewed as essentially different to lure a man's daughter, mother, or wife. That is, all the women in a household were put under the same control. This provision lacks the very important distinction between fornication and adultery. To lure a woman or have intercourse with her was to insult the master of the household and all her other male relatives.[60]

If a woman is seen as a man's property, then the consequence should be that she can neither accept fines nor pay fines. That a woman never paid fines for intercourse is evident. Several of the laws are also clear about the fact that the woman did not receive the fines. The Older and Younger Västgöta Laws, the Östgöta Law, the Hälsinge Law, the Södermanna Law, Magnus Eriksson's Law of the Realm and Town Law, and Christopher's Law all have a male individual or collective (the woman's male relatives) receiving the compensation imposed for fornication.[61]

However, the Younger Västgöta Law allows for another perspective. The law contains a provision that deals with what happens if the fornicating man died before he could be sued. In this event, the woman's legal guardian should "seek out" the fine. The plaintiff is thus undeniably a man, but the fines should

59 Schlyter's dictionary: 'spana.'

60 While this reveals the importance of kinship, it is hard to connect this provision to canon law's influence on kinship in Swedish medieval law. There must have been a fundamental difference between fornication and adultery for the Church.

61 ÄVgL, Giftermålsbalken 6 §1–3. YVgL, Giftermålsbalken 9, 11. ÖgL, Ärvdabalken 16. HL, Ärvdabalken 14. SdmL, Ärvdabalken 3 §1. MEL, Ärvdabalken 15. MEST, Giftermålsbalken 3 §1. KrL, Giftermålsbalken 3 §1, Ärvdabalken 17.

actually be divided between the woman herself and her marriage guardian. The woman received one-third of the fines, while the guardian got the rest.[62] The legislators apparently regarded the crime as an act partly committed toward the woman, so she had a right to be compensated.

This leads to questions regarding the woman's actual consent to the act. The legislators most often found it unnecessary to discuss a woman's consent in cases of fornication. Was there a difference then between fornication and what we would call rape? Some kind of consent is actually implied in many of the laws. A woman might be considered easily fooled and seduced, but it still seems to be assumed that she had indeed consented to the sexual act. This is most clearly expressed in some of the Svea Laws. The Dala, Uppland, and Västmanna Laws contain similar provisions on fornication which differ from the other laws. In direct translation (with added punctuation) the provision from the Uppland Law reads:

> Now: a maiden lets herself be bedded, in maiden age; four and half mark. Lets herself be bedded a second time by another man, three mark. Lets herself be bedded a third time, third man; the fine is twelve *öre*. Lets herself be bedded more often: gets no fine. Now a widow lets herself be bedded: three marks fine. Lets herself be bedded a second time: twelve *öre*. Lets herself be bedded a third time: there is no fine. In these fornications the fine is no more than now is said.[63]

These laws make no mention of a father, a brother, or even a marriage guardian. And even if the expression is passive, "she lets herself be bedded," it obviously views the act from the woman's perspective. It indicates that she had indeed consented to the act; she had let it happen.[64]

The provisions also indicate that the fines were considered to belong to the woman. The wording "gets no fine" is placed directly after a sentence that refers to the woman. Both the Uppland Law and the Västmanna Law confirm this later on: "mother takes the fornication fine and shall raise the child."[65] It is interesting that the laws at the same time express that the act took place with the woman's consent and that she is the one who receives the fines. The

62 YVgL, Giftermålsbalken 18.

63 UL, Ärvdabalken 22. VmL, Ärvdabalken 17. DL, Giftermålsbalken 7.

64 I have cautiously interpreted *latær* as passive. The expression can possibly even be interpreted as active in the sense "to have or make something happen." See Christian Lovén, "Östgötalagens bestämmelse om kyrkobygge," *Historisk Tidskrift* 120 (2000): 33.

65 VmL, Ärvdabalken 17 §1. UL, Ärvdabalken 22 §1.

Västmanna Law adds that if a widow did not receive her fine, she could go to court and demand the compensation "for having let herself be bedded." In this case, the convicted man had to pay an additional fine of three marks divided into three (one-third to the plaintiff, the king, and the district, respectively).[66] One must assume that the case was settled at court and that the three-mark fine was to compensate all parties for the fact that it ended up at court a second time. The widow, who represented herself, was also the plaintiff in this case and could demand fines for having fornicated. It is somewhat paradoxical that she gets compensated for an act in which she willingly participated. One explanation is provided by the laws themselves: the fines were connected to the upbringing of the child. As noted above, an illegitimate child was a requisite for suing a man for fornication unless he was caught in the act or confessed. The legislators apparently protected the child and made sure that the woman got some financial aid in bringing up the child.

If we move forward in time, to the Law of the Realm, the legislators obviously rejected this legislation in their compilation. Instead, they chose a different way to describe fornication. Magnus Eriksson's Law defines the crime as "a man claims a woman." The law also names the woman's guardian as receiver of the fines.[67] We face a completely male perspective: a man is the active participant, and he lures a passive woman, and for this her guardian receives compensation. The Law of the Realm thus emphasises and establishes the patriarchal tendencies.

Mechanisms of Control

Ownership of land was the pillar of Swedish medieval society, and landed property was the most important part of inheritance law. Not surprisingly, the legislators were very eager to determine whether or not a child would have the right to inherit. In fact, the number of provisions regulating fornication as a crime is much lower than the number of provisions establishing the right to inheritance for an illegitimate child. The general tendency is actually not to exclude children from inheritance but, rather, to include them. Children who were conceived during the engagement period received full inheritance (which also can be explained by the view of marriage as finalised by intercourse). Also children that a man had with a woman whom he later

66 VmL, Ärvdabalken 17.

67 MEL, Ärvdabalken 15. MEL restricts the right to sue to cases when a child was born or a man was caught in the act.

married became the "children of a lawfully married woman" and received full inheritance.[68]

Nonetheless, tolerance towards women who had committed fornication had its clear limits. As noted above, a woman was not punished for illicit intercourse, but it is obvious that there were other repressive tendencies aimed at women. We find the Östgöta Law stating that if a woman lets herself be bedded while father and mother are still alive and they denounce her, then she does not take inheritance with her siblings unless her parents forgive her and take her back.[69] The expression used, *firi liggia sik*, has been interpreted as 'lets her-/himself be bedded.'[70] But a more correct translation would be 'by intercourse lose.' The provision continues and stipulates that if her parents are dead and she does not follow the advice of her new guardian, then she is barred from inheritance. But if the guardian forgives her, takes her back, and does her well, then she can inherit.[71] Similar rules can be found in many of the other laws, even if they are not formulated in the same way.[72] Several of the laws emphasise that if she disregards her father's advice and "takes a man," no matter whether she has an illicit relationship with him or marries him, she loses her inheritance.[73]

To bar the woman from inheritance was clearly a control mechanism for the parents, and it could be argued that the regulation was aimed at preventing an unwanted marriage rather than preventing an illicit relationship. These rules appear to be in stark contrast to the rule of consent that the Church pushed through as a requisite for a legal marriage. But the regulations actually demon-

68 ÄVgL, Ärvdabalken 8 §3, Giftermålsbalken 6. YVgL, Ärvdabalken 12, Giftermålsbalken 7. ÖgL, Giftermålsbalken 5 & §1. HL, Ärvdabalken 13 §1 & §6. VmL, Ärvdabalken 13 §2. UL, Ärvdabalken 18. SdmL, Ärvdabalken 3 §1. MEL, Giftermålsbalken 2 §4–5. MESt, Giftermålsbalken 2 §3–4. KrL, Giftermålsbalken 2 §3–4.

69 ÖgL, Ärvdabalken 1 §1.

70 Schlyter, Glossarium till Östgötalagen, 263. The prefix *firi-* expresses a loss caused by the action that the verb expresses. Schlyter's dictionary: 'firi' (meaning 17). For other examples see Schlyter's dictionary, 'firi biera,' 'firi fara,' 'firi giva' etc.

71 ÖgL, Ärvdabalken 1 §1.

72 UL, Ärvdabalken 1 §2, DL, Giftermålsbalken 3 §1. HL, Ärvdabalken 1 §2. VmL, Ärvdabalken 1 §2. SdmL, Giftermålsbalken 1. MEL, Giftermålsbalken 3. MESt, Giftermålsbalken 3. KrL, Giftermålsbalken 3. Not in ÄVgL, YVgL or Bjärköarätten. See Korpiola, *Between Betrothal and Bedding*, 111, 117–118.

73 For an opposite perspective see: YVgL. If someone marries off his daughter or female relative against her will and the couple get divorced, then the marriage guardian shall pay a fine of three marks to the bishop. YVgL, Kyrkobalken 52.

strate that the marital model of the Church had been established in Swedish law. That is why they required a way to prevent the inheritance from passing on to the children in case of an unwanted husband. Mia Korpiola expresses it accurately: "The laws insisted on parental consent, although they recognised that a valid marriage could take place without this consent."[74] The Church and the secular authorities reached a compromise on this controversial issue. The Church chose to disregard those instances when the woman's consent either can be considered as non-existent or had been reached through coercion and threat of losing her inheritance. The secular authorities chose not to confront the Church and demand that a marriage without the consent of the marriage guardian was invalid. The marriage was still legitimate, but the daughter was left without inheritance.[75] The secular authorities could not stop the marriage from taking place, but they could limit the unwanted consequences of the marriage.

Another example of control mechanisms can be found in the Laws of the Realm. They contain specific provisions regarding aristocratic women and fornication. In Swedish law a woman lost her aristocratic status and had to pay taxes if she married a peasant; her status followed her husband's. But also if she fornicated, no matter whether she was a maiden or a widow, she lost her aristocratic status and had to pay taxes as a peasant.[76] Yet another example of a woman's legal rights being diminished if she fornicated can be found in the Östgöta Law. In this law a woman has the right to half of the fines if she is beaten or injured; the rest goes to her marriage guardian. But if she has illicit sexual relations, she loses the right to these fines (again the expression is "by intercourse losing").[77]

Despite the fact that women were not punished for fornication, it is undeniable that they still faced repercussions. Not only could a woman's social status be jeopardised but also her legal and economic position could deteriorate as a result of illicit sexual activities. At the same time, these rules imply a fear of the woman as an individual. The expression used by the legislators is that a woman "took a man, to her husband or illicitly." The descriptions evidently make her into a subject. We also see another interesting tendency: that the woman could be seen as an active participant. The repressive rules are aimed at her free will and her status as a person with agency. It was her position as subordinated

74 Korpiola, "An Uneasy Harmony," 145.

75 Korpiola, *Between Betrothal and Bedding*, 117, 123, 127.

76 MEL, Konungsbalken 21 & §1–2. KrL, Konungsbalken 22 & §1.

77 ÖgL, Vådamålsbalken 14 §1.

that was at stake in these issues. This demonstrates that something indeed had happened that questioned and threatened women's subordination. This most likely stems from the Church insisting on a woman's right to choose her partner freely.

Female and Male Honour

There are two parallel tendencies in the laws: one establishes that a man's honour had been damaged, and the other that the reputation of the woman had been spoiled. These two tendencies are neither exclusive nor contradictory. Many scholars have underlined that a man's honour could depend on a woman's reputation or on her actual sexual activities. The honour fine paid to the guardian or the father demonstrated that it was the insult to the man that preoccupied the legislators here. Evidence also clearly demonstrates that a woman's reputation and social status deteriorated due to fornication. One apparent example of this can be found in the expression "to better a woman." In the Younger Västgöta Law, we find that if a man married a woman with whom he had illegitimate children, the children become legitimate because "when he bettered the woman, he also bettered the child."[78] The same expression can also be found in the Östgöta Law, Magnus Eriksson's Law of the Realm and Town Law, and Christopher's Law.[79] Thus, it was in the man's power to make her a better woman through marriage. He could improve her honour.

The most common punishable insults targeting women are also linked to their sexuality and sexual activities. To call a woman a harlot or a whore, for example, was punishable. It was also punishable to refer to a man as the son of a whore.[80] The two town laws also state that a woman's "female honour" has been shamed by having illicit intercourse.[81] This "female honour," which in Old Swedish is referred to as *qvinska*, only exists in these two paragraphs in Swedish law. The word, and its synonym *quindom*, meaning 'femaleness,' seems to mark that it is femaleness itself, the state of being a woman, which

78 YVgL, Ärvdabalken 12.

79 ÖgL, Giftermålsbalken 5. MEL, Giftermålsbalken 2 §5. MESt, Giftermålsbalken 2 §4. KrL, Giftermålsbalken 2 §4.

80 ÄVgL, Rättlösabalken 5 §5. YVgL, Rättlösabalken 9. HL, Manhelgdsbalken 7. SdmL, Manhelgdsbalken 34. Bjärköarätten 21. MESt, Rådstugubalken 31 §1–2.

81 Bjärköarätten 15 §1. MESt, Giftermålsbalken 3 §1.

was affected negatively by an act of fornication.[82] Female honour and femaleness itself seem to be connected to chastity. That a woman was defined based on her sexual activities is therefore undeniable.

Adultery

Adultery during the Middle Ages was a crime regulated by both the Church and secular law. Grethe Jacobsen has claimed that the view of adultery in Nordic medieval law was fundamentally unequal. She writes that Swedish laws only considered a wife's infidelity to be adultery and, in turn, a wife had no recourse if her husband had sexual relations with another woman.[83] According to Jacobsen, only women could commit adultery, and men's sexual activities outside of wedlock were never punished. She also contrasts secular law (customary law) with the Church's regulations. As noted above, scholars have claimed that the medieval Church had a more egalitarian perspective on sexuality than secular law and that it, in theory, demanded the same code of behaviour from men and women. The sexual vices were the same for men and women.[84] Ragnar Hemmer claims that this also influenced Swedish law. He argues that through the Christian Church, a new view on sexuality entered Sweden. One consequence was that marital fidelity was required also of the man. The Church's view can be detected in several of the Swedish law codes, but Hemmer claims that the crime of adultery remained a civil law suit and a violation of a man's private right.[85]

These aspects of the adultery provisions will be analysed next. It will be argued that even if the legislation is clearly unequal in favour of men, it is not correct that men could not commit adultery. It will also be claimed that a man's adultery affected his wife's honour as well.

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82 The word *quindom* can be found in manuscript D and G of the Town Law. Holmbäck and Wessén, Magnus Erikssons Stadslag, Giftermålsbalken 3. "Schlyter's dictionary" 'qvinska' and Söderwall's dictionary: 'qvindomber.'

83 Grethe Jacobsen, "Sexual Irregularities in Medieval Scandinavia," in *Sexual Practices and the Medieval Church*, ed. James Brundage and Vern Bullough (Buffalo: Prometheus Books, 1982), 84.

84 Brundage, "Sexual Equality in Medieval Canon Law," 67. Reid, *Power Over the Body, Equality in the Family*, 150.

85 Hemmer, *Studier rörande straffutmätningen*, 342.

The Church and Adultery

Unlike fornication, adultery is well established as crime against the Church in the Swedish laws. A Swedish diploma reveals that the bishop of Skara in Västergötland had received the right to fines for adultery sometime in the 1220–30s.[86] The Younger Västgöta Law comments on this and states that, according to "old law," the bishop has the right to receive a fine of three marks for double adultery and 12 *öre* for simple adultery.[87] Double adultery was the case when both parties were married and simple adultery when one party was married and the other unmarried. The bishop's right to receive a fine in cases for adultery seems not to be in question, since the bishop was supposed to receive a fine or part of the fines for adultery in all Swedish medieval laws except the Older Västgöta Law.[88] In other words, this right has been consistently established in Swedish law from the second half of the thirteenth century.

Adultery was obviously regarded as part of the Church's jurisdiction, since it can be found in the Church sections in all the laws. Nonetheless, one can see clear limitations on the Church's right to prosecute for adultery. In general, the Church's prosecutor had a right to sue a person to court in three cases, the most common being when either of the spouses publicly accused the other of adultery. In several cases the Church could also prosecute when one of the spouses had been caught in the act, as well as when there were witnesses who could testify that the crime took place. In this aspect the legislation is fairly gender neutral. Two of the laws, the Småland Law and the Östgöta Law, mention only the case of a man accusing his wife, but all the others state explicitly that a prosecution could follow no matter whether it was the wife or the husband who had accused the other of adultery.[89]

This is in accordance with the interpretation above that the legislation primarily aimed to suppress conflicts that could arise from illicit sexual activities. The legislators tried to restrict the Church's right to prosecute to cases in which

86 Holmbäck and Wessén, Yngre Västgötalagen, Kyrkobalken, footnote 68.

87 YVgL, Kyrkobalken 52.

88 YVgL, Kyrkobalken 52. ÖgL, Kyrkobalken 15. HL, Kyrkobalken 15. DL, Kyrkobalken 9 §3. VmL, Kyrkobalken 21, 24 §13. UL, Kyrkobalken 15 §3. SdmL, Kyrkobalken 15 §3. See also Hemmer, *Studier rörande straffutmätningen*, 341.

89 ÖgL, Kyrkobalken 27. SmL, Kyrkobalken 13 §5. Both spouses can accuse each other in: DL, Kyrkobalken 9 §5. VmL, Kyrkobalken 21. UL, Kyrkobalken 15 §3. SdmL, Kyrkobalken 15 §3. MESt, Giftermålsbalken 10 §1. The exception is the Hälsinge Law which allows a dean to accuse husband or wife for adultery. HL, Kyrkobalken 15 §2.

the sexual acts had led to, or would potentially lead to, conflicts between the parties themselves. This meant that one did not want the Church to prosecute or start investigations unless the case somehow had been made public, since that would create conflicts rather than solve them. In the Östgöta Law, for example, the Church's prosecutor had no right to accuse a peasant's daughter, sister, or female relative of illicit sexual activities unless a man had been found with her or the subsequent birth of a child testified to the event.[90] One of the laws also states that a peasant has the right to revoke his adultery accusation by claiming that he made it impulsively and in anger and not because an actual crime had taken place.[91] To conclude: the Church sections demonstrate that it was completely accepted that adultery was part of the Church's jurisdiction but that it was deemed necessary to clarify and restrict the rights to prosecute. The Östgöta Law stipulates high fines if the Church's prosecutor accused either spouse of committing adultery when they themselves had not accused each other.[92]

With two exceptions, the laws held both men and women criminally liable for adultery in the Church sections. The two exceptions, the Östgöta Law and the Hälsinge Law, both state explicitly that a woman shall not be punished even if the man is sentenced.[93] In the latter law, however, the woman had to fast to expiate her sin. It is apparent that these provisions did not focus on the woman as a perpetrator. Several are introduced by the phrase "if someone commits adultery with an unrelated woman." Just as in the regulations concerning fornication, the man is portrayed as the active participant and the woman as the passive. And the wording makes it difficult to establish whether the woman was married. They seem to assume that a married man had intercourse with an unmarried woman. In other words, the legislators apparently had a man in mind when formulating the provisions. The Church sections have no specific focus on female adulterers. Thus, the view that only women could commit adultery is not correct. But this stands in stark contrast to the secular parts of the laws.

90 ÖgL, Kyrkobalken 27 §2.

91 SmL, Kyrkobalken 13 §5.

92 ÖgL, Kyrkobalken 27.

93 YVgL, Kyrkobalken 52. (It is uncertain whether both shall pay a fine.) The woman is not punished in: ÖgL, Kyrkobalken 15. HL, Kyrkobalken 15 & §2. Both are punished: DL, Kyrkobalken 9 §3. VmL, Kyrkobalken 21, 24 §13. UL, Kyrkobalken 15 §3. SdmL, Kyrkobalken 15 §3.

Adultery in Secular Law

Adultery was regarded as a very serious crime by the secular authorities. Swedish medieval law had no tolerance for the act of adultery or even for the children that could be born from such an act. Unlike children conceived in fornication or in concubinage, children conceived in adultery had no legal right to inherit whatsoever.[94] The serious nature of this crime can also be detected in the sections on juridical procedure. A small number of very serious and urgent crimes gave the peasant the right to send out a message and call an extra court assembly between the scheduled ones. Three of the laws include the case of a man caught with another man's wife.[95] The male perspective is typical: a man finds another man in bed with his wife. The provisions reveal that adultery indeed was considered an insult by one man directed at another man.[96]

Unlike in the Church sections, the focus in the other sections of the laws is on the wife's adultery and the shame that it entailed for her husband. The consequences for adultery were indeed more severe for a woman than for a man. The female adulterer lost her right to the morning gift and all the rights she had as married; which meant her third of their communal property.[97] The Västgöta Laws give the husband the right to force his unfaithful wife to immediately leave the home.[98] The Older Västgöta Law also adds that she shall leave the home in her everyday clothes.[99] This might refer to what is explicitly said in the other laws: that she had lost all her rights to her morning gift and her third of the other possessions. Her leaving the home could also be combined with a shaming ritual. The Younger Västgöta Law specifies that an adulterous woman should be taken to the threshold, and her mantle and the back part of her skirt

94 ÄVgL, Ärvdabalken 8. ÖgL, Ärvdabalken 13. UL, Ärvdabalken 24 §1. SdmL, Ärvdabalken 3 §3. MEL, Ärvdabalken 18. MESt, Ärvdabalken 15. KrL, Ärvdabalken 20.

95 DL, Rättegångsbalken 1 §1. VmL, Rättegångsbalken 5. MEL, Rättegångsbalken 27.

96 See for example: ÖgL, Vådamålsbalken 30.

97 HL, Ärvdabalken 5. VmL, Ärvdabalken 5. UL, Ärvdabalken 5. MEL, Giftermålsbalken 11. KrL, Giftermålsbalken 11. MESt, Giftermålsbalken 10. In the Town Law it is stated that the wife has forfeited her dower, whether she also had lost her rights to the household's movable property—half according to town law—is not mentioned. This is the only law where the husband's economic situation is negatively affected by adultery; he lost the right to remain in an undivided estate after his wife's death. MESt, Giftermålsbalken 10 §2.

98 ÄVgL, Giftermålsbalken 5 §1. YVgL, Giftermålsbalken 5, 6.

99 ÄVgL, Giftermålsbalken 5 §1.

should be cut off.[100] This was meant to humiliate her in front of neighbours and villagers.[101]

There are two other examples of shaming rituals for adultery, both found in the town laws and neither focused solely on the woman. The older town law, *Bjärköarätten*, states that a female adulterer caught in the act should "carry the town's mantle" or free herself from this by paying a fine of 40 marks. A male adulterer shall be led through the town by the woman he slept with or pay a 40-mark fine.[102] The meaning of the expression "the town's mantle" has remained elusive.[103] Magnus Eriksson's Town Law stipulates that if an unmarried woman commits adultery with a married man, both shall pay the king, the bishop, and the city for their crime. If he cannot pay, a rope shall be tied around his penis and the town's stones shall be laid upon her, and she shall then lead him through the town. After this they are banished from the town. If one of them pays the fines, the town servant shall lead the other, him or her it is specified, through the town.[104] The "city's stones" were two stones that were hung in chains around the neck of the woman. In Stockholm, one pair of these stones has been preserved; they weigh 26 kilos with their chains.[105] It has been argued that the majority of the shaming rituals were aimed at women. Two of them clearly were, but the two others were, as shown here, gender neutral and involved both male and female perpetrator.[106]

Above we found that the recorded punishable insults reveal that a woman was much more likely than a man to be judged and stigmatised by her sexual reputation. There are far more examples of the epithet 'whore' or 'female adulterer' than 'male adulterer,' but it should be noted that the two town laws do contain the latter expression.[107] The man can be called the 'son of a harlot,'

100 YVgL, Giftermålsbalken 5, 6.

101 Holmbäck and Wessén, Yngre Västgötalagen, Giftermålsbalken, footnote 15.

102 Bjärköarätten 15. Holmbäck and Wessén, Bjärköarätten, Förklaringar till Bjärköarätten, chapter 15, footnotes 2 & 3. The text actually reads as if she is supposed to pay his fines.

103 Schlyter's dictionary: 'mantul, mantol.'

104 MESt, Giftermålsbalken 10 §2.

105 Dahlbäck, *I medeltidens Stockholm,* 179.

106 If Lizzie Carlsson referred to legal practice she would be correct. Carlsson, "De medeltida skamstraffen," 124–125. Göran Dahlbäck notes that the court records for Stockholm mention several cases of women being sentenced to carry the city's stones and to be banished, but no examples of a man being punished by a shaming ritual. Dahlbäck explains this by the fact that a man had money to pay the fines but that women, in general, had no assets of their own. Dahlbäck, *I medeltidens Stockholm*, 178–179.

107 *Horkona*: YVgL, Kyrkobalken 58. VmL, Ärvdabalken 6. MESt, Giftermålsbalken 10. ÖgL, Ärvdabalken 13 etc. *Horkarl*: Bjärköarätten 15, MESt, Giftermålsbalken 10.

but a woman is referred to as 'adulterer' or 'harlot.'[108] Only rarely can a man be insulted by references to his own sexual activities. But a woman's sexual activities could be used to insult the men around her: a man's honour could be lessened by making references to his wife's adultery or his mother's sexual behaviour.

One very important gender difference is, of course, that a man generally did not lose any rights, such as the right to property, when he committed adultery. The exception is Magnus Eriksson's Town Law, which states that a male adulterer loses the right to remain in an undivided estate if his wife dies.[109] This is a much milder punishment than actually losing part of the property itself. To conclude: secular regulations target female adultery far more than male adultery, and several of the laws lack provisions regarding male adultery completely. While it is incorrect that men could not commit adultery in Swedish medieval law, it is true that the legislation is thoroughly inequitable, to the benefit of men.

Revenge Killings for Adultery

The reason why the laws established the right to send out a message to summon the other villagers when a man had been found with another man's wife was not due only to the severity of the crime and the violation of the husband's right. It was most likely also due to the fact that most of the laws stipulate the right to revenge killings in case of adultery, and these cases required witnesses. The right to revenge killing is as consistent in the laws as fines for adultery, and the actual punishment for adultery is not easily separated from revenge.

The male right to revenge for adultery was well established in Europe long before the Middle Ages. It can be found both in Roman and Germanic law.[110] Norwegian medieval law gave a man the extended right to revenge killings if he found another man with any of his female relatives. However, it is important to note that the direct sanctions fell on the male party, not the woman; the offended man had the right to kill the male intruder, not his own female

108 ÄVgL, Rättlösabalken 5 §5. YVgL, Rättlösabalken 9. HL, Ärvdabalken 7. SdmL, Manhelgdsbalken 34. (Only a punishable insult to a man: *skökoson*.) Bjärköarätten 21. MESt, Rådstugubalken 31 & §1–2.

109 MESt, Giftermålsbalken 10 §2.

110 Nils Stjernberg, *Några blad ur horsbrottets historia i svensk rätt* (Helsinki, 1929), 102–103. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 30–31, 132. Also see: Ferm, *Abboten, bonden och hölasset*, 221–222.

relative. The Gulating and Frostating Laws establish the right to revenge killing for up to seven related women, among them the man's wife. The Borgarting Christian Law adds another six women. The revenge killing was restricted in time and should take place immediately. If there were no witnesses, the man should be able to show physical evidence: blood-stained clothes and sheets. If a man did not exercise his right to revenge immediately, it was transformed into a right to receive a fine instead. With time, the right to revenge for fornication eventually became prohibited. A man's right to fines for fornication also became limited to four women.[111] It is obvious that in Norwegian medieval law there was no established boundary between fornication and adultery. The wife was one woman among others in the household, and fornicating with any one of these women was an insult to the man.

The right to immediate revenge killing also existed in Swedish law; it can be found in legislation on homicide, rape, and adultery, but not for fornication. All provincial laws contain the right to revenge killings for adultery, while the two Laws of the Realm have removed this option. The right to revenge is relatively consistent in its form and phrasing, but the legislation varies with regard to its approach to the female right to revenge. The Older and Younger Västgöta Laws, as well as the Östgöta and Dala Laws, restrict the right to violent revenge to men. The Older Västgöta Law states that if a man kills another man, in bed with his wife or in another place if they are legally caught with witnesses, he shall take sheets and mattress, bring them to court, and display the blood and lethal wounds. He shall then sue the dead with 24 witnesses and the district judge. Then the homicide will be dismissed and considered legitimate.[112] The provision is typical, in the sense that the most important elements are present. First of all, the couple is either caught in the act or witnesses testify to what happened. The husband must be able to provide evidence as well as witnesses. At court, the dead man shall literally be sentenced as "invalid," meaning that the killing is not punishable.[113] The same principle can be seen in the other laws, even if the physical evidence consisting of blood on sheets, mattresses, or clothes are not always part of the provisions.[114]

111 Hilde Handeland, *I lyst og last. Seksualitet i de norske lovene i perioden 1100–1300* (Oslo: University of Oslo, 1997), 42–46.

112 ÄVgL, Om mandråp 11.

113 Per-Edwin Wallén calls this "the dead man's process" which he has analysed in Per-Edwin Wallén, *Die Klage gegen den Toten im nordgermanischen Recht* (Stockholm: Institutet för rättshistorisk forskning, 1958).

114 YVgL, Dråparebalken 22. ÖgL, Edsöresbalken 26. DL, Kyrkobalken 9 §4. HL, Ärvdabalken 6. VmL, Ärvdabalken 6 & §1–2. UL, Ärvdabalken 6 & §1–2. SdmL, Giftermålsbalken 4 & §1.

However, the quite significant detail that women also had the right to violent revenge for adultery in the Svea Laws is seldom discussed.[115] In fact, the Uppland, Västmanna, and Södermanna Laws actually start their regulations from the wife's perspective: "if a woman finds another woman in her bed."[116] The Hälsinge Law mentions both spouses: if a man kills another man, or a wife another woman in his/her bed."[117] In all cases, with the possible exception of the Hälsinge Law (see below), a wife's right to revenge is more limited than a husband's. While the man had the right to kill both the intruding man and his wife without punishment, the betrayed wife had the right to kill the other woman but not her husband in two of the laws. The Södermanna Law gives the wife the right to maim the other woman—cut off her nose or ears or tear her clothes—but the provision does not mention a right to kill her. The Uppland Law differs from the others by stating that if a wife finds another woman in her bed, the latter shall be taken to the court assembly and put on trial. If she is found guilty she shall pay a fine of 40 marks. If she cannot pay this sum, then she shall pay with her hair (more specifically: her curls) and with her nose and ears. After this, the legislators have added that if the wife kills the other woman in her bed, the homicide is justified and not punishable. So the first part of the provision is a court-regulated punishment, but with strong links to the right to revenge, which also allows the maiming of the woman's nose and ears. The second part, however, recognises a wife's right to revenge killing.[118]

A man's right to revenge for adultery was undeniably more extended than a woman's. He alone has the right to revenge killing in the Göta Laws and the Dala Law. In the other laws he has more extended rights to revenge compared

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MESt, Giftermålsbalken 10. Bjärköarätten differs somewhat. But that the person needs to be caught in the act is apparent. Bjärköarätten, chapter 15. Physical evidence in the form of bloody sheets can be found in: ÖgL, DL, and HL. In some the statement is merely 'take to the court assembly,' which can refer to the corpse and the possible survivor: YVgL, VmL, and UL.

115 See for example Göran Inger who only mentions male right to revenge. Inger, *Svensk rättshistoria*, 26, 58. Mia Korpiola only mentions a husband's right to kill his wife and her lover in the provincial laws. Mia Korpiola, "Fördelningen av domsmakten mellan kyrkan och staten avseende äktenskapsrätt och sexualbrott i Sverige cirka 1200–1620. Observationer och hypoteser," in *Rättslig integration och pluralism. Nordisk rättskultur i omvandling* (Stockholm: Institutet för rättshistorisk forskning, 2001), 84. Jacobsen, "Sexual irregularities in medieval Scandinavia," 82, 84. Some scholars, however, do mention a woman's right to revenge. One example is Gædeken, *Retsbrudet og reaktionen derimod,* 116–117.

116 VmL, Ärvdabalken 6 & §1. UL, Ärvdabalken 6 & §1. SdmL, Giftermålsbalken 4.

117 HL, Ärvdabalken 6.

118 UL, Ärvdabalken 6 & §1.

to a woman. Most notably, the laws give him the right to also kill his spouse; this is not permitted for a woman. The possible exception is the Hälsinge Law, which introduced what can be referred to as a double legal subject, "man or woman." The provision literally stipulates that a woman had the right to kill both the other woman and her husband. Legal historian Per-Edwin Wallén claims that this is an editing mistake. He notes the exceptional character of the provision; there is no similar provision in any of the Germanic laws.[119] The Hälsinge Law has been somewhat carelessly edited at times, so it is indeed possible that the phrasing of the provision is due to a mistake made by the scribe.[120] But it can in no way be excluded that the Hälsinge Law indeed awards the same right to revenge to both husband and wife.

Whether the latter part is a scribal error or not, the Hälsinge Law equated man and wife in the introductory sentence, while the Uppland, Västmanna, and Södermanna Laws start with the wife's perspective. Apparently the legislators considered it to be a violation for both a man and a woman to find another person in bed with their spouse. The wife was insulted by the woman who had slept with her husband, and she therefore had the right to avenge this offence. A woman also had an honour that departed from her rights as a wife: her personal honour was at stake when her husband was unfaithful, and she was expected to want revenge. Valentin Groebner argues that cutting off the nose can be seen as a way to save one's own face. A cut-off nose was strongly connected to adulteresses, and the act has been described as a way "to inscribe an illicit sexual act on the face."[121] These examples show that the Swedish medieval laws certainly were not unfamiliar with female use of violence of the same type as men's. The restrictions of a woman's rights are also interesting. They show that female honour could be seen as essentially the same as male honour.

It is no surprise that the right to revenge has been removed for both parties in the two Laws of the Realm. In general, the royal power desired to restrict revenge killings and self help. One part of this development is the introduction of the *edsöre* legislation directed at creating rules for feuding. The close connection between revenge killings and feuding has been underlined in this book. To restrict the right to revenge was part of an ideological change that aimed to strengthen the royal power. The right to use violence went from the individual man—and in this case the woman—to the king.

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119 Wallén, *Die Klage gegen den Toten*, 83.

120 See for example the paragraph that according to the title is supposed to deal both with homicides on islands as well as poisoning, but there is no actual provision on poisoning. HL, Manhelgdsbalken 27.

121 Groebner, "Losing Face, Saving Face," 6–7.

Crossing Borders—Same-Sex Intercourse and Bestiality

Same-sex activities and bestiality were often linked both in Church writings and in legal texts. Both could be described with the indefinite term 'sodomy.' The two sexual crimes are treated very differently in Swedish medieval law. The Swedish medieval laws had no regulations whatsoever regarding same-sex intercourse; neither female nor male.[122] There are, however, references to male same-sex intercourse that strongly resemble the Old Norse *nið*. *Nið* was a punishable defamation that could play on a man having had intercourse with another man. It was not necessarily the same-sex intercourse in itself that was offensive but, instead, the fact that a man, by being penetrated, was ready to take on the passive role and thereby become subordinate to another man. Through this act his manliness could be put in question.[123]

The Older Västgöta Law contains quite detailed rules on punishable insults, and among these we find the insult: "I saw that a man penetrated you."[124] The verb used is closely connected to the terms used in the Old Norse *nið*. The jurisdiction of this law bordered Norway; that may have affected the terminology used by the legislators. We saw this also in the use of the term 'the black blow,' which also might have been influenced by Norwegian legal terminology. One can note that it was punishable to say that a man had been penetrated, but it was not illegal to claim that a man had penetrated another man. This is in accordance with the view that it was the passive or receptive party that had been humiliated because of the submission this role entailed. Even more interesting is that it was illegal to claim that some had been *serðad*, anally penetrated, but there is no regulation that determines the illegal character of the act itself.

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122 However, bishop Brynolf's statute from 1281 regulates fornication against nature. Jonas Liliequist, "Staten och 'sodomiten'. Tystnaden kring homosexuella handlingar i 1600- och 1700-talets Sverige," *Lambda nordica. Tidskrift för homosexualitetsforskning 1–2* (1995): 9 and footnote 4. In Norwegian medieval law there are two examples of provisions aimed at same-sex sexual activities. They can be found in the Gulating Law and in Sverre's Christian Law, from the 1160s and 1260s respectively. Yet another provision in the Gulating Law regards sexual abuse of thralls. In connection with a fine for fornicating with a female thrall it is mentioned that the owner had the same right to a fine for fornication with his thrall. Handeland, *I lyst og last*, 71–75.

123 Henric Bagerius, "I genusstrukturens spänningsfält: om kön, genus och sexualitet i saga och samhälle," *Arkiv för nordisk filologi* 116 (2001): 34. Meulengracht Sørensen *Norrønt nid,* 31, 39.

124 "Iak sa at maþær sarþ þik." ÄVgL, Rättlösabalken 5 §2.

This is the only provision that mentions same-sex intercourse. Jonas Liliequist argues that the silence was a conscious strategy on behalf of the legislators. The main purpose was not to give people any new ideas of what they could do in bed.[125] Sodomy was called the unmentionable vice during the Middle Ages; its existence was best left unspoken. It was contagious; if people talked about it, then everyone could start to commit it. It was best to maintain silence surrounding this seemingly tempting possibility.[126] The politics of silence was only maintained for same-sex sexual activities, as other sexual crimes were both mentioned as well as punished.[127] This also corresponds well to the general interpretation that the Swedish legislators had little interest in regulating activities that did not lead to either complication in the transfer of property or to open conflicts in society. Sexual activities between two men or two women were in general assumed not to lead to offspring, and for this reason it was not in the legislators' interest to introduce provisions that would contradict the politics of silence.[128] Unlike same-sex intercourse, bestiality was apparently something that could be mentioned and something that should be harshly punished.

Male same-sex intercourse was considered to be "against nature"; those who committed such an act had definitely crossed a border. In Swedish law, a person who committed bestiality had also crossed the border of the realm of human beings. But unlike homosexual intercourse, bestiality is often mentioned in Swedish law. Six of the law codes contain provisions that regulate bestiality.[129] It is also mentioned as a punishable insult in another two laws.[130] One study of Norwegian medieval law claims that the phrasing of the crimes of bestiality

125 Liliequist, "Staten och 'sodomiten,'" 11–12. Jens Rydström, *Sinners and Citizens: Bestiality and Homosexuality in Sweden 1880–1950* (Stockholm: Stockholm University, 2001), 41.

126 Michael Goodich, *The Unmentionable Vice. Homosexuality in the Later Medieval Period* (Santa Barbara: ABC-Clio, 1979), 26, 60. Jacques Chiffoleau, "Dire l'indicible: Remarques sur la catégorie du nefandum du XII^e^ au XV^e^ siècle," *Annales ESC* 45:2 (1990): 289. See also: Henric Bagerius and Christine Ekholst, "En olydig sodomit. Om Magnus Eriksson och det heteronormativa regentskapet," *Scandia* 73:3 (2007): 12–13.

127 Eva Österberg talks about a "passive silence" in legal practice. Österberg, "Den synliga och den osynliga synden," 61–62.

128 Liliequist, *Brott, synd och straff,* 151. Eva Österberg states that sexual crimes that were thought to lead to offspring were more carefully regulated in rural societies and she refers to the notion that bestiality could lead to offspring. Österberg, "Den synliga och den osynliga synden," 67.

129 YVgL, Urbotamål 3. DL, Kyrkobalken 10. VmL, Kyrkobalken 23. UL, Kyrkobalken 15 §8. SdmL, Kyrkobalken 15 §1. KrL, Högmålsbalken 14.

130 ÄVgL, Rättlösabalken 5 §3. YVgL, Rättlösabalken 8.

and same-sex intercourse demonstrates that the legislators wanted to separate these activities from heterosexual intercourse. This is interpreted as reflecting the Church's stance: that these forms of sexual activities were against nature.[131] That bestiality is described as something different from inter-human sexual activities can possibly be detected in the Younger Västgöta Law. Here the expression used is "if a man destroys [or ruins] himself with a horse or a cow." This expression cannot be found in any other provisions on sexual activities.[132] But the expression "have his will" with sheep or cow, which is found in the same law and the older version of the law, can also be seen in a provision on rape, even if the expression is not commonly used.[133]

In fact, in Swedish law one can find the opposite tendency: to compare the act of bestiality with heterosexual intercourse. In the Dala Law we find the following introduction to a provision on bestiality: "Now: a man can commit bestiality with an animal, whatever animal it may be, claims it like a woman."[134] The same type of phrasing is found in the Västmanna and Uppland Laws.[135] So, instead of separating the act of bestiality from intercourse between a man and a woman, it is compared to having intercourse with a woman. The phrasing also indicates that penetration is part of the necessary requisite for the crime. As noted by Jens Rydström, this also means that the provision implies a male perpetrator.[136] Female perpetrators of bestiality were unusual, but examples of women convicted for bestiality can indeed be found from the early modern period.[137]

There are further reasons to study the crime descriptions for bestiality. Several of the provisions indicate that this crime was considered particularly serious. The Younger Västgöta Law calls the crime an abomination. Of course, this denotes that it was serious, but this term is also used for other sexual crimes. The Södermanna Law, however, does not compare bestiality to heterosexual intercourse; instead, it describes the crime as "falling into sin with an animal."[138] The word 'sin' is very rarely used in Swedish law; this goes for the Church sections as well. But for the crime of bestiality, it is, in fact,

131 Handeland, *I lyst og last*, 66.
132 YVgL, Urbotamål 3.
133 ÄVgL, Rättlösabalken 5 §3. YVgL, Rättlösabalken 8. KrL, Edsöresbalken 12.
134 DL, Kyrkobalken 10.
135 VmL, Kyrkobalken 23. UL, Kyrkobalken 15 §8.
136 Rydström, *Sinners and citizens*, 44, 47.
137 Liliequist, *Brott, synd och straff*, 49.
138 SdmL, Kyrkobalken 15 §1.

also used in the Uppland, Västmanna, and Dala Laws.[139] In two of the laws we even find examples of some very rare emotional expressions in Swedish medieval law. The Dala Law states that both the man and the animal he had sinned with shall be buried alive: "let him do his penance there," the scribe has added to the provision.[140] A harsh comment to a man condemned to death. The expression in the Södermanna Law is somewhat more empathetic. It states that if the misery happens that someone falls into sin with an animal and commits bestiality, then both man and animal shall be buried. "They may not enjoy life" has been added to the provision.[141] It is equally rare that the term 'misery' is used to describe a crime. Also the youngest law, Christopher's Law, uses comparatively strong expressions. The provision there states that "if such a devilish act happens that a man commits bestiality with an animal, then he shall be buried alive together with the animal or burnt on the stake. They may not live on earth."[142] The choice of words stands out quite strikingly and represents strong emotional expressions compared to the value-free and non-judgemental language usually used in Swedish medieval law. This type of emotional expression is generally used only in cases of sexual crimes and is, in any case, very rare.[143] In comparison with all other crimes, this crime stands out as more serious and as an act needing condemnation and expressions of regret that it had happened.

It is obvious that bestiality fell under the Church's jurisdiction. Already in the 1170s, Pope Alexander III had written to the archbishop in Uppsala because he had heard that bestiality and other serious sins flourished among the Swedes.[144] All the provisions on bestiality are found in the Church sections, except for in the Younger Västgöta Law, which nonetheless confirms that it was considered

139 DL, Kyrkobalken 10. VmL, Kyrkobalken 23. UL, Kyrkobalken 15 §8.

140 DL, Kyrkobalken 10. Schlyter's dictionary: 'inna.' For a different interpretation of the expression used see: Jan Erik Almquist, *Tidelagsbrottet. En straffrättshistorisk studie* (Uppsala: Lundequist, 1926), 10.

141 SdmL, Kyrkobalken 15 §1.

142 KrL, Högmålsbalken 14. Another crime that is presented using an emotionally strong expression is suicide. "Can such a bad thing happen that a man destroys himself." KrL, Högmålsbalken 4. It is likely that the Södermanna Law was the inspiration for the younger Law of the Realm. Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 126. But Christopher's Law has enhanced the expression further and it is not question of a direct transcription. Also see: Wendt, *Landslagsspråk och stadslagsspråk*, 54.

143 One of the few examples is the Dala Law which begins its provisions on sexual offences with the saying: "Much has happened and often those that are bad." DL, Kyrkobalken 9. Schlyter's dictionary: 'ilz döme.'

144 Almquist, *Tidelagsbrottet*, 6–7.

a crime against Church law because it required penance. This is also confirmed by the fact that the bishop acquired part of the fine if the death penalty was turned into a pecuniary punishment. The exception is Christopher's Law, where the crime has been secularised.[145]

But it is not, as one could have expected, the Church which is the plaintiff in these cases. When the plaintiff is mentioned, it is, in fact, the owner of the animal. Moreover, in these three laws it was the plaintiff who was supposed to execute the death penalty.[146] Legal historian Jan Erik Almquist claims that this can be explained by the fact that the death penalty in Swedish medieval law was only a surrogate for revenge killings.[147] It is not common, however, for the laws to state that the plaintiff shall bring the criminal to court and execute the death penalty. In the Västmanna and Uppland Laws, the plaintiff is also given the right to choose if he wants to spare the perpetrator's life and instead accept the payment of a fine. There are several examples of this, and it confirms that Swedish medieval law was strongly focused on the rights of the plaintiff. It is hard to see what personal interest the plaintiff could have in suing someone who had committed bestiality with his animal.[148] One simple explanation could be that it was most likely the owner of the animal who would catch the perpetrator. It could also be a question of property, since the animal was to be killed after the act. Nonetheless, the issue was probably not unproblematic, for we see that the legislators have repeated the responsibilities of the plaintiff in this case. The laws also do not reveal what would happen if the perpetrator and the owner were the same person. The provisions all seem to assume that the person who committed bestiality was a person who either came from outside the community or, more likely, was a servant or farmhand. The peasant was not expected to commit this crime, at least not with his own animals.[149]

The punishment for bestiality is harsh; in general, the crime led to the death penalty. There is a clear difference between the Svea and the Göta Laws. Only one of the Göta Laws, the Younger Västgöta Law, actually regulates bestiality as a crime. It is apparent that both punishment and the formulation of the crime in this law differ from the eastern Svea Laws. The crime has been placed in the small section called *Urbotamål* (cases that could not be expiated with fines). In

145 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 127.

146 In DL, VmL and UL the plaintiff is the owner of the animal.

147 Almquist, *Tidelagsbrottet*, 12.

148 Almquist, *Tidelagsbrottet*, 12.

149 Mainly young men and farmhands were accused of bestiality during the early modern period. Liliequist, *Brott, synd och straff*, 50.

this section, crimes are categorised as either *urbota*, which led to outlawry; heinous deeds, which led to fines; and, finally, abominable deeds. Bestiality, along with other sexual offences, is placed in the latter category. Bestiality should be "led out of the country," which meant that the crime should be expiated by a pilgrimage to Rome as penance. It also led to the payment of a fine consisting of three times nine marks.[150]

It is very rare, however, that the primary punishment for bestiality is pecuniary; the crime usually led to death. In the Dala, Uppland, and Västmanna Laws, the punishment for bestiality is burial alive of both perpetrator and animal.[151] Also in the Södermanna Law, the stipulated punishment is to be buried alive, but the law has added that the perpetrator alternatively could be burned at the stake.[152] As mentioned before, Magnus Eriksson's Law of the Realm and Town Law does not have a Church section, and the district courts had to use the Church section from one of the provincial laws as an addition. Most commonly, the Church sections from Uppland and Södermanland came to be used, and both of these contain provisions on bestiality. Christopher's Law also lacks a Church section, but in this law a provision on bestiality has been added to the section of *högmålabrott*, which contained the most serious crimes. This means that if Christopher's Law of the Realm was completed with the same Church sections as Magnus Eriksson's Law, then the law contained two provisions. The crime was then dealt with both by Church law and secular law.[153] In Christopher's Law, bestiality led to either burial alive or burning at the stake, just like the Södermanna Law.[154]

In the Södermanna Law, the capital penalty is unconditional, which is very rare in Swedish medieval law. But in most cases the person had to be caught in the act for the crime to be punished with death. If the man was accused of the crime, he was allowed to take an oath to free himself from the accusation. If he failed to take the oath and was sentenced as guilty of the crime, the penalty was a fine. Burial alive was a punishment used primarily for women. It is not a very common punishment in Swedish law, but when it was used it was reserved for female criminals. Bestiality is the only crime for which the

150 YVgL, Urbotamål 3. Holmbäck and Wessén, Yngre Västgötalagen, Urbotamål, footnote 31. Compare YVgL, Kyrkobalken 52 which states that the bishop shall receive a three-mark fine for all abominable deeds.

151 DL, Kyrkobalken 10. VmL, Kyrkobalken 23. UL, Kyrkobalken 15 §8.

152 SdmL, Kyrkobalken 15 §1.

153 Gabriela Bjarne Larsson suggests that it was intended that KrL would be without a Church section, unlike MEL. Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 127.

154 KrL, Högmålsbalken 14.

punishment of burial alive was used for men. As we saw above, men could be burned at the stake for arson, for example, but Christopher's Law characteristically reserved this punishment for female criminals.[155] It is interesting that this crime, which is treated as a particularly serious one, prescribes a punishment for men that was most often used for women. The serious character of the crime helps explain the choice of death penalty.

Bestiality was shameful, as the perpetrator was shameful. Jonas Liliequist concludes, regarding bestiality during the early modern period in Sweden, that the human degradation was an important aspect of the authorities' view of bestiality. Reason and soul separated mankind from animals, but in sexuality and in other bodily needs and instincts, the border between human and animal was fragile and easy to traverse.[156] Joyce Salisbury describes how medieval views on bestiality changed due to shifting perceptions of animals and, in particular, of the differences between animals and humans. In the early Middle Ages the animal was seen as an object, and consequently bestiality was viewed as equivalent to masturbation. Far more anxiety over the borders between human and animal was demonstrated in the later Middle Ages, and therefore bestiality was strongly condemned.[157] The perpetrator was impure, ruined by his actions, and there was a strong desire to hide the criminal and the animal with which he had committed the sin. Neither the perpetrator nor the animal could be allowed to live on earth, as one of the laws states. Some scholars have claimed that this was a way to purify the community and that the purpose of burying the animal was to extinguish the memory of what had happened, not to punish it.[158] But in fact, animal trials existed in the Middle Ages, and they too, interestingly enough, took place during the latter part of the medieval period. Esther Cohen argues that their existence can be explained by popular views that anthropomorphised animals and ascribed to them reason and will as well as by learned ideas of universal justice.[159]

The Swedish laws certainly confirm that bestiality was seen as an outrageous deed that provoked anxiety regarding both the animal and the

155 Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 126.

156 Liliequist, *Brott, synd och straff*, 145.

157 Joyce E. Salisbury, "Bestiality in the Middle Ages," in *Sex in the Middle Ages: A Book of Essays*, ed. Joyce E. Salisbury (New York: Garland Pub., 1991).

158 Almquist, *Tidelagsbrottet*, 9. Carbasse, *Histoire du droit pénal et de la justice criminelle*, 22.

159 Esther Cohen, "Law, Folklore and Animal Lore," *Past and Present* 110 (Feb 1986): 21, 36–37. Also Peter Dinzelbacher argues that even if the animal trials might have been public rituals used to heal the community, they do seem to give animals a "juridical personality." Peter Dinzelbacher, "Animal Trials: A Multidisciplinary Approach," *Journal of Interdisciplinary History* 32:3 (Winter 2002): 420–421.

perpetrator. This can explain the chosen punishment. If one considers that the burial alive is combined with burning at the stake, the element of purification in the execution method becomes even more evident. By committing the act of bestiality, a man's body had become impure, and an impure body was not something to put up on display. The female body in itself was charged, strongly linked to sexuality and to thoughts of impurity. The body of a female criminal should not be put on display but should be hidden and destroyed by the punishment. This was also valid for the ruined male criminal who had committed bestiality. He was sentenced to be executed in the same way as a woman.

CHAPTER 6

Taking a Woman with Force: Rape and Abduction

Introduction

The medieval legal understanding of rape had its basis in the Roman legal concept *raptus*. The term *raptus* originally meant abducting a woman against her guardian's will, and a completed intercourse was not a necessary legal requisite for the crime. The offence consisted in the act of stealing away the woman from her parents, guardian, or husband.[1] In the Middle Ages the term *raptus* could mean both rape and abduction, and while many legal systems differentiated between the two crimes, they were still considered as parts of a fluid continuum.[2] This conflation of the two criminal acts can be seen also in Swedish medieval law. The requisites for the two crimes vary and have been interpreted differently in different legal systems. James Brundage shows that for Gratian, *raptus* meant either abduction of a girl without her parents' consent or intercourse with her against her will. The crime could thus be seen as directed against either her or her family. Violence was a necessary component in *raptus*, but the violence could be directed at the victim or her family. Gratian's followers and interpreters focused upon the degrees of force used. In order for the crime to be considered rape, the victim had to protest or resist. Again, the violence could be directed at the woman, her parents, or her family; this would not change the definition of the crime.[3] Furthermore, canon law considered rape a very serious crime, an *enormis delicta*, which merited a far harsher punishment than any other sexual offence.[4]

1 James Brundage, "Rape and Marriage in the Medieval Canon Law," in James Brundage, *Sex, Law and Marriage in the Middle Ages* (London: Varorium, 1993), 63.

2 Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 209, 249. Corinne Saunders, "A Matter of Consent: Middle English Romance and the Law of *Raptus*," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 105. See however Brundage, "Rape and Marriage in the Medieval Canon Law," 69. Carolyn Dunn, *Stolen Women in Medieval England: Rape, Abduction and Adultery 1100–1500* (Cambridge: Cambridge University Press, 2012), 18–19, 29.

3 Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 311.

4 Brundage, "Rape and Marriage in the Medieval Canon Law," 66–67. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, 396.

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In English common law the distinction between the two crimes became blurred over time.[5] Carolyn Dunn notes a conflation between abduction and rape in legal practice after the Westminster Statutes from 1275–85.[6] Kim M. Phillips separates English medieval legal practice into three chronological stages which she refers to as: "the bleeding body," "the deflowered body," and "the abducted body." The names represent the different aspects that were emphasised in rape prosecutions. The victim's physical injuries were stressed in the first phase. In the second stage the prosecutors underlined that she had lost her virginity. In the third stage, the emphasis was upon the fact that she had been abducted.[7] Whether or not the chronology is accurate, these stages underline important aspects of how rape and abduction were interpreted.[8] The first phase emphasised the woman's own physical injuries and bodily harm, while the other two stages focused more strongly upon the loss of property value for a man. The importance of deflowering centred upon the woman's loss of value on the marriage market, while the abduction phase seems to regard her as an object and pays less attention to what had actually happened to her.

Research on Nordic medieval legislation has raised the question of whether there were differences between abduction and rape. Lizzie Carlsson partly separates the two crimes and regards abduction as the act when a man, without the consent of the guardian, kidnaps a woman with the purpose of making her his wife. In Carlsson's view, rape is also a case of abduction, but where the man did not want to keep the woman as his wife.[9] In this interpretation, the woman's consent is entirely unimportant in either case. More recently, Karin Hassan Jansson has argued that Swedish medieval rape legislation must be understood as a way to protect male property. The sexuality of their wives and daughters had a value for men, a value that was lost if the women were raped. She notes that many scholars claim that a more modern view, which considers rape a crime against a woman's right to autonomy and bodily integrity, then

5 Kim M. Phillips, "Written on the Body: Reading Rape from the Twelfth to the Fifteenth Century," in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell, 2000), 136–137. Corinne Saunders, *Rape and Ravishment in the Literature of Medieval England* (Cambridge: Cambridge University Press, 2001), 46, 59, 63.

6 Dunn, *Stolen Women in Medieval England*, 29.

7 Phillips, "Written on the Body," 129–137.

8 In a later article Kim M. Phillips reevaluates her earlier work and writes that although she would step back from a clear chronology of changing perceptions the main points are valid. Kim M. Phillips, "Four Virgins' Tales: Sex and Power in Medieval Law," in *Medieval Virginities*, ed. Anke Bernau, Ruth Evans and Sarah Salih (Toronto: University of Toronto Press, 2003), 97, footnote 17. Dunn, *Stolen Women in Medieval England*, 58–59.

9 Carlsson, *'Jag giver dig min dotter,'* 32.

replaced this notion. However, the exact time period for this change differs and, unsurprisingly, usually coincides with the time period any given scholar has studied. Jansson questions whether such a change actually took place and refers to new scholarly work which demonstrates that several contemporary perceptions of rape can be detected in almost any time period.[10]

This chapter will analyse the link between the two crimes in Swedish medieval legislation. It will explore whether abduction and rape should be seen as property crimes or as sexual assaults in the modern sense. Lack of consent is implicit in most crime descriptions, but whose consent? The analysis demonstrates that Swedish law indeed contained several and partly contradictory discourses. The chapter confirms a duality in Swedish law: women were seen as part of a household and essentially treated as property but also as individuals with their own integrity. The chapter will argue that although the two crimes, abduction and rape, must be seen as closely related or on a continuum, Swedish medieval laws do distinguish between them. What differentiated them was, indeed, the woman's consent.

Terminology

Strong protection of women and laws against rape were considered signs of a powerful king and a good society in English medieval romances.[11] Thus, rape legislation could be seen as tied to the king and to his peace legislation.[12] This connection was clearly present in medieval Sweden. The crime of rape is part of the *edsöre* legislation. Like the other notions of peace, the concept of women's peace also departs from the 1280 Alsnö statute in its prohibition of *quindi walførœ*. This term includes both rape and abduction. Elsa Sjöholm claims that rape in this context is not primarily a sexual offence; it was seen instead as part of feuding. Rape was a way to demonstrate power and insult an adversary.[13] In accordance with this, rape in the medieval laws can be seen as a hostile act: practically done to a woman, yet aimed to harm the men who were her relatives. Alternatively, rape could be a hostile move directed toward the men who had reached an agreement about her marriage. This meant that 'peace for women' was not primarily aimed to protect a woman's sexual

10 Karin Hassan Jansson, *Kvinnofrid. Synen på våldtäkt och konstruktionen av kön i Sverige 1600–1800* (Uppsala: Acta Universitatis Upsalensis, 2002), 33–35.

11 Saunders, "A Matter of Consent," 108–109, 112, 124.

12 Dunn, *Stolen Women in Medieval England*, 26.

13 Sjöholm, *Sveriges medeltidslagar*, 174. Jansson, *Kvinnofrid*, 294.

integrity.[14] The introduction of the legal term 'peace for women' was instead part of a process to restrict feuding in society.[15]

The legislation regarding abduction is scattered throughout the law codes and can be found in several different sections. Regulation of abduction can be found in the sections on marriage, on inheritance, and the sections on *edsöre*. Both rape and abduction are also part of the legal regulations concerning the right to inheritance, and the terminology demonstrates how difficult it is at times to separate these two crimes. If one reads the modern translations of these provisions, it seems obvious that there was a difference in how rape and abduction were defined and described. Two different words are used to denote the crimes. One example is the Uppland Law, which seems to contain first a provision on rape, followed by another on abduction.[16] However, the Old Swedish text is far from clear in this regard, and the interpreted difference between the two crimes is not based on a difference in legal terminology in original texts. The terms used for rape and abduction vary somewhat in the medieval laws, the most common being 'a man takes a woman with force/violence,' or the passive 'taken with force' or 'taken with robbery.'[17]

The connection between rape and abduction in medieval Sweden is thus clearly present, and the same words are often used. Karin Hassan Jansson has argued that in medieval Swedish law, the opposite of "taking a woman with force" could be to "take a woman with law." Or in other words, "abducted/raped" versus "legally taken." In this view, the force or violence that the term includes in Old Swedish had more to do with the act of unlawfully taking something than with any actual physical violence directed toward the woman's body. Jansson concludes that since there were more people interested in preserving the woman than just the woman herself, it is therefore not necessary for her will to be considered the most important or even at all relevant.[18] In both Jansson's and Sjöholm's interpretation, rape is primarily seen as a property crime, and the difference between abduction and rape was either fluid or nonexistent. Both were crimes seen to be directed at a man.

Let us see how these terms were used in Swedish medieval law. One instance where we meet the terms is in the sections that deal with marital legislation. The regulations on marriage enforce the view that marriage was an affair

14 Jansson, *Kvinnofrid*, 295. Also see: Larsson, *Stadgelagstiftning i senmedeltidens Sverige*, 24, 34.

15 Jansson, *Kvinnofrid*, 296.

16 Holmbäck and Wessén, Upplandslagen, Konungabalken 6 & §2.

17 As has been discussed, the Old Swedish term *vald* had several meanings.

18 Jansson, *Kvinnofrid*, 51–52.

between families or, rather, between the men of these families. In Claude Lévi-Strauss's research on gift economies, the woman is presented as the most important gift. Lévi-Strauss writes: "For the woman herself is nothing other than one of these gifts, the supreme gift among those that can only be obtained in the form of reciprocal gifts."[19] This fits strikingly well with the description of marriage negotiations in some of the laws. The Östgöta Law, for example, describes the process as a gift exchange, and the law introduces the section on marriage with the words: "Now; the one who needs asks and the one who has gives."[20] One man asks for a woman and another man has the right to give her away. It is evident that the woman is described as an object—as a gift to receive or to give—and the reciprocal gift in this case would be the so-called friend gift that the groom gave to the guardian. The other laws also emphasise that the marital agreements are made between men. The Dala Law describes the process as such: "Now; a man rides to a farm to ask for a wife. Then the peasant shall answer for his daughter."[21] The male perspective and the exclusion of women are evident in these descriptions, but they actually do not correctly reflect the legal situation. In many of the laws that portray the process as an affair exclusively between men, women could actually be marriage guardians. Several provincial laws state that the mother could give her daughter away in marriage if the father was not alive.[22]

The legal descriptions clarify that female consent was not of interest here. Several of the provisions on marriage are also introduced by the phrase "A man shall ask for a wife and not take her with force."[23] This can hardly mean rape; it must refer to abduction and furthermore seems to refer to bridal abduction. This can also be said for some of the cases when the verb 'rob' is used, such as

19 Claude Lévi-Strauss, *The Elementary Structures of Kinship* (London: Eire and Spottiswood, 1969), 60–65.

20 ÖgL, Giftermålsbalken 1.

21 DL, Giftermålsbalken 1. The other laws describe the same procedure: HL, Ärvdabalken 1. VmL, Ärvdabalken 1. UL, Ärvdabalken 1. The Södermanna Law specifies that the man has to approach the right marriage guardian. SdmL, Giftermålsbalken 1. The Västgöta Laws state that a 'son of a peasant' shall ask the closest relative if he could marry a woman and that he shall present a 'friend gift.' ÄVgL, Giftermålsbalken 2. The Younger Västgöta Law established that the friend gift shall be handed over to father, brother or the woman's heir. YVgL, Giftermålsbalken 2. MEL and KrL state a man shall find a woman's right marriage guardian and her closest relatives. MEL, Giftermålsbalken 1. KrL, Giftermålsbalken 1. MESt, Giftermålsbalken 1. Note, however, that both mother and father were marriage guardians for their daughter in Magnus Eriksson's Town Law.

22 VmL, Ärvdabalken 1. HL, Ärvdabalken 1. UL, Ärvdabalken 1.

23 VmL, Ärvdabalken 1. Same wording in: UL, Ärvdabalken 1. HL, Ärvdabalken 1.

when the Östgöta Law describes the bridal procession to the groom's house. In this provision we find that if a bride is robbed off the bridal procession, that robbery shall be reimbursed with a 40-mark fine, which is paid to the peasant to whom she was married and given.[24] Here, 'taken with robbery' seems to denote 'abducted with force.' However, the exact same expression seems to denote 'raped' in a provision regarding the inheritance right of a woman who had been 'taken with robbery.' The term 'take with robbery' is used in the title; the provision itself uses the term 'raped/taken with force.'[25] The term is also used in the Södermanna Law for when a woman is legally taken from her home by her fiancé: she shall be called "taken with law and not taken with force."[26]

The Old Swedish expressions shed light upon how the legislators viewed the crimes of rape and abduction. As demonstrated before, the Old Swedish word for 'force' or 'violence' had several different meanings. The term meant 'violence' or 'assault' as well as 'strength,' 'power,' 'reign,' 'authority,' and 'right.' As with robbery, this was a case of unequal power balance, but it was also a case where one of the primary distinctions regarded whether or not a man had a 'right' to a woman. The expressions used clearly demonstrate that the difference between rape and abduction was vacillating and elusive. Both expressions, "take a woman with force" and "take with robbery," have double meanings. They variably denote the case when a woman is forced to have intercourse against her will, as well as the case when she is abducted with or without her own consent. The question is whether the legislators saw a difference between these two.

An analysis of how the crimes were expressed reveals that rape and abduction indeed were seen to be on a fluid continuum. They were seen as the same type of crime, yet they were also separated by who was considered the primary victim. While rape is formulated as directed at the woman herself, abduction is formulated as a crime against her guardian. In establishing this argument, the crimes will be divided into two categories and analysed separately. However, it should be noted that in several cases it is not possible to conclude whether the provision refers to rape or abduction. What can be said with certainty is that the legislators assumed lack of consent on behalf of the woman in provisions that regulate inheritance for children conceived when a woman was 'taken with force or robbery.' A child conceived in fornication had a limited right to inherit, while a child born to a woman 'taken by force or robbery' had the full

24 ÖgL, Giftermålsbalken 9 §1.

25 UL, Ärvdabalken 20. Same in: VmL, Ärvdabalken 15.

26 SdmL, Giftermålsbalken 2.

right to inheritance. This must mean that there was a difference. That difference was the woman's lack of consent.

Abducting a Woman

Georges Duby has argued for a quite negative image of abduction, claiming that it was a part of competitive masculinity which saw both rape and abduction as a sport and a contest between young aristocratic men with women as victims in the process.[27] Lizzie Carlsson claims that bridal abductions, when the purpose was to obtain a wife, were a reality in the Nordic countries during the Middle Ages. She also claims that these abductions were particularly common during the bridal procession.[28] Carlsson claims that so-called *Raubehe* (bridal abduction) was standard procedure in Germanic culture until it was replaced with the bride purchase. The bride was thereafter purchased with a "friend gift" or engagement gift.[29] However, abduction of women has been interpreted from a different point of view as well. Abduction is most often described as taking place with or without the woman's consent; the one who definitely did not consent was the woman's guardian. This latter interpretation has allowed for a more romanticised picture of abduction as an expression of love: a couple eloped in order to be able to live together.[30] Indeed, Carolyn Dunn notes that during the thirteenth and fourteenth centuries, English legislators neglected unwilling victims of bride-theft because they were so preoccupied with preventing and legislating against consensual elopements.[31] Undoubtedly, abduction was primarily seen as a crime directed at the woman's guardian. The Uppland Law provides a good example when it states: "If a man takes a woman with force and flees the country with her, if he is legally convicted of this act of violence, he shall never have peace unless the woman's marriage guardian prays for him."[32] Holmbäck and Wessén argue that this provision on abduction in the King's Section was added because of a real case of a bridal abduction that took place in 1288. The nobleman Folke Algotsson abducted Ingrid, who was daughter to a knight, Svantepolk Knutsson. Ingrid was engaged to be married to another man, and Algotsson fled with her to Norway. King Magnus Birgersson

27 Duby, *Makten och kärleken*, 36–37.
28 Carlsson, *'Jag giver dig min dotter,'* 39–40.
29 Carlsson, *'Jag giver dig min dotter,'* 32.
30 Handeland, *I lyst og last*, 105.
31 Dunn, *Stolen Women in Medieval England*, 82.
32 UL, Konungabalken 6 §2.

(Ladulås) punished Algotsson's male relatives harshly for this crime.[33] In the Uppland Law, the crime consisted of actually kidnapping a woman as well as leaving the kingdom of Sweden with her. There is little doubt that this piece of legislation was aimed not at the peasantry but at the aristocracy. Apart from this, we are not given any information about the type of "violence" used or whether or not she had resisted. It seems as though the only necessary legal requisite was that the woman in question was gone. As discussed in previous chapters, crimes against the *edsöre* were counted as crimes against the king's peace and were punished with outlawry in the entire kingdom. This was also the punishment in this case, as well as the corresponding provisions in the Västmanna, Hälsinge, and Södermanna Laws.[34] It is undeniable that this was a crime directed at the woman's guardian and that the woman's will or possible consent was unimportant.

As noted several times, the Older Västgöta Law lacks *edsöre* legislation. The law actually does not contain general provisions on either rape or abduction in the sense that any woman could be the target. However, it does contain a provision regulating the case of a man's fiancée being taken. In this case also, it is the plaintiff who controls the destiny—the future peace and reintegration—of the perpetrator. Moreover, the fines to be paid are very high compared to those for other crimes in the law. The fines were to be divided between the woman's closest relative and her fiancé, and two parts went to the king and the district. The provision also adds a prohibition against the perpetrator living with the woman. This may refer to the time after he had paid the fines, was reintegrated into the community, and had regained his peace.[35] The same provision can be found verbatim in the Younger Västgöta Law.[36] The prohibition against the perpetrator living with the woman can be seen as an indication that these provisions were meant to target consensual elopements. The Västgöta provisions can be seen as intermediary between the provisions on bridal abduction in the sections on marriage and the general provisions on abduction in the *edsöre* legislation. The combination of a payment of fines and the requirement that the plaintiff had to pray for the perpetrator in order for him to come back in peace is strongly reminiscent of the *edsöre* legislation. However, the fact that they only refer to the abduction of a fiancée is reminiscent of the provisions targeting bridal abductions during the wedding ceremonies.

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33 Holmbäck and Wessén, Dalalagen, Edsöresbalken, footnote 14.

34 VmL, Konungabalken 3 §2. HL, Konungabalken 3 §2. SdmL, Konungabalken 6 §2.

35 ÄVgL, Giftermålsbalken 3. Also see: Holmbäck and Wessén, Äldre Västgötalagen, Giftermålsbalken, footnote 11.

36 YVgL, Giftermålsbalken 2.

The Östgöta, Hälsinge, Västmanna, Uppland, and Södermanna Laws all contain similar provisions that describe cases when a betrothed woman has been abducted (or 'robbed,' as some of the provisions state). Whom the legislators considered the plaintiff varies: the Östgöta Law identifies the man to whom she was married and given as the one who alone should keep the fine as compensation.[37] In the Hälsinge Law, the marriage guardian and the fiancé divide the fine between them.[38] In the Västmanna, Uppland, and Södermanna Laws, the plaintiff is the woman's fiancé.[39] The crime of abduction is thus established as either taking a woman and fleeing the country with her or simply taking a woman from another, usually named, man. The provisions contain simple descriptions and reveal that the victim in question was the man who had lost his lawfully acquired property. All the provisions on 'robbing' a man's fiancée or a bride during the bridal procession have been placed among the marriage regulations. As previously noted, the rules on marriage are indeed often introduced by the saying: "A man shall ask for a wife and not take her with force." How are we to understand this?

The rules on abduction enforce the image that marriage was an affair between men and that women were intermediates—or gifts—in a patriarchal network. The woman was the link between men in societies in which the primary economic unit was a heterosexual couple. Gayle Rubin has elaborated on Levy-Strauss's ideas and has launched the theory of traffic in women, which underlines the lack of female consent and free will in this type of system. She claims that for this traffic to work smoothly, society at large and marriage in particular must be characterised by a lack of choice for women. The women therefore have no right to their bodies or to their desires; these are controlled by the men who exchange women.[40] As noted, the regulations on marriage

37 ÖgL, Giftermålsbalken 9 §1.

38 HL, Ärvdabalken 2 §1.

39 The fine is 40 marks. UL, Ärvdabalken 2. VmL, Ärvdabalken 2. SdmL, Giftermålsbalken 2.

40 Gayle Rubin, "The Traffic in Women. Notes on the 'Political Economy' of Sex," in *Toward an Anthropology of Women*, ed. Rayna Reiter (New York: Monthly Review Press, 1975), 174–177. The traffic in women, as described by Rubin, is also very restrictive toward female homosexuality since such a relationship would remove not only one but two women from possible exchanges and trafficking. Rubin "The Traffic in Women," 183. The latter is interesting since medieval legal regulation of female same-sex relationships is quite rare. It cannot be found in Swedish medieval law. Jacqueline Murray claims that female same-sex sexual acts were not taken seriously since it was difficult to imagine sexual activities without the active participant; the man. The woman was by nature and essence passive; that would explain the silence that surrounds lesbian acts. Obviously, this does not mean that female same-sex acts or relationships did not take place. Jacqueline Murray, "Twice Marginal,

are to be regarded as an agreement between the marriage guardian and the man who asked for the woman. This is also how we should understand the conflicts surrounding the exchange of women that are described in the laws. The provisions on abductions sometime assume that a third party had interrupted the gift exchange that was supposed to take place peacefully. But often the conflicts arose between the men who had agreed on a marriage; in fact, the moments when the woman was exchanged are portrayed as tense and ripe with conflicts between the men involved.

It is apparent that the bridal procession, when the woman was to be delivered to her husband, was a moment when legislators thought the risk of her being abducted was especially prevalent. Also the moment when the fiancée was to be presented to her future husband was one of a high risk of conflicts between the fiancé and the marriage guardian. The bridal procession and the delivery of the fiancée were charged moments. The bridal procession was highly symbolic and manifested that the woman went from one household to another and, moreover, from one guardianship to another. These moments can be characterised as transitional stages and rites of passage.[41] They seem to have been intense moments of potential conflict. In fact, regulations that determine what to do if the woman's marriage guardian refused to give the woman to the fiancé when the wedding had been set are very common in the laws. A generalised description would be that the fiancé shall ask for her, and if she is not delivered to him, then the marriage guardian must pay a fine. If the guardian does not give her to the fiancé the third time he asks for her, then the fiancé can gather his male relatives and take her by force. The provisions in several laws end by stating: "that woman shall be called legally taken and not taken with robbery." Some use the term 'taken with force.'[42] It is obvious that Karin Hassan Jansson is correct when she interprets the opposite of "forcibly taken" to be "legally taken." This corresponds well with the definition of robbery provided earlier in this book. Robbery was the taking of something unlawfully, without

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Twice Invisible: Lesbians in the Middle Ages," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Routledge, 1996), 202.

41 Korpiola, *Between Betrothal and Bedding*, 25–26.

42 HL, Ärvdabalken 2. UL, Ärvdabalken 2. VmL, Ärvdabalken 2. SdmL, Giftermålsbalken 2. MEL, Giftermålsbalken 4. MESt, Giftermålsbalken 4 & §1–2. KrL, Giftermålsbalken 4 & §1. According to MEL, KrL and MESt a man had to ask for permission at the local court assembly, or from the bailiff and the mayor in the towns, before he was allowed to take out his fiancée. In HL, the Laws of the Realm and MESt she can be taken immediately. In UL, SdmL and VmL he can take her out with force when he had asked for her three times without result. HL, UL, VmL, MEL and KrL use the term 'taken by robbery.' SdmL uses the term 'taken with force.' MESt interestingly enough uses both terms 'taken by force or robbed.'

the legal right to take it. The patriarchal tendencies are very strong in these descriptions. Several of the laws state that if either the man or woman changes his or her mind and breaks off the engagement, the one who caused the annulment shall pay a fine to the bishop, unless both are responsible, in which case both pay the fine. The preceding case clearly does not represent a case of the woman herself changing her mind; it represents a case of her guardian either changing his mind or for some other reason wanting to withhold her from the groom.

As mentioned, Lizzie Carlsson claims that bridal abduction was a reality in the medieval Nordic countries. She writes that bridal abduction was particularly common during the bridal procession; of course, her evidence for this can be found in the Swedish medieval laws and not in practice.[43] It is interesting that the laws stipulate against 'robbery' of a bride at the very time when she was to be taken to her new husband's home. It has been claimed that the woman was more exposed at this time. This argument is hard to comprehend; it seems highly unlikely that the woman was more exposed and easily accessible at this moment. In fact, the opposite could be true. She should have been more protected than ever during a very public moment when her relatives, her fiancé, his relatives, and a number of guests were near her. Carolynn Dunn notes that wealthy widows were more likely targets of bride theft because young unmarried women were more heavily guarded.[44] Nonetheless, it is obvious that the idea existed that the woman was more targeted by possible abductors at this time. Another interpretation, of both the regulations on bridal abduction and the refusal to give the woman to the fiancé, is that these moments were highly charged and held great symbolic importance. To abduct the woman was a way to humiliate the man to whom she had been given. The consent and will of the woman are unimportant in these situations. Instead, the conflicts surrounding the delivery of the fiancée were part of a competitive and symbolically charged idea of masculinity in which a man's honour was at stake.

Lizzie Carlsson takes the provisions in the laws as literal reflections of reality, and the marriage legislation has been interpreted as largely customary. Scholars have claimed that the marriage rituals had not gone through any substantial changes for a very long time.[45] Considering the circumstances of the bridal procession and delivery that are depicted in the laws, that a woman might be forcibly taken by a gathering of men or might become a victim of abduction, one can ask whether this is customary law that reflects real-life

43 Carlsson, *'Jag giver dig min dotter,'* 39–40.

44 Dunn, *Stolen Women in Medieval England*, 87–88.

45 Korpiola, *Between Betrothal and Bedding*, 3. Carlsson, *'Jag giver dig min dotter,'* 15.

conflicts. Is it reasonable to assume that a man needed to get his future bride with a gathering of male relatives in the small local communities where the majority lived? Is it a credible scenario that the neighbouring son abducted a bride in order to make her his wife?

It is possible that bridal thefts were a reality and were seen as one accepted way to get married. This tradition would naturally then be in the process of being prohibited, as is indicated by the many prohibitions on taking a woman with force and not asking for her. Carolyn Dunn states that bride-theft was not common in late medieval England, but, in fact, in 11% of her abduction cases (61 out of a total number of 556) the reason for the abduction was that the perpetrator wanted to marry the victim.[46] This number is surprisingly high, since even if the perpetrator managed to get his way, a marriage contracted in this way must have caused conflicts on many different levels, not just between the victim and perpetrator but also, primarily, between the perpetrator and the woman's friends and family.

Furthermore, even if this certainly allows for the possibility that bride-thefts occurred in medieval Sweden, it still does not explain why the focus is on fiancées to be married and on the bridal procession. A more likely interpretation is that the laws do not reflect society as it was but provide us with an ideological and quite possibly historical image of society. As mentioned previously, this society was supposed to be based upon strong egalitarian self-owning peasants, an image that was far from the medieval reality. This was an image of society that the legislators wanted to produce, an ideological construction of a society in which all men were expected to participate in contests for status and honour. This seems to have its basis in an aristocratic identity representing those who legislated. It was not an accurate or general portrayal of Swedish medieval society.

Rape as a Crime

Regulations on both rape and abduction can be found in the sections on *edsöre*. While the Older Västgöta Law lacks *edsöre* legislation, the younger version of the law deals briefly with the crime of rape. In this case it cannot be discerned whether the term refers to abduction or rape—or, indeed, both. The law simply concludes: "If a man takes a woman with force. That is an *urbota* case." (This meant that it could not be expiated with a fine.) A provision further down specifies that this is part of the king's *edsöre* and that the crime has

46 Dunn, *Stolen Women in Medieval England*, 83.

broken the king's peace. The perpetrator shall pay for his peace or, literally: "pay himself out of the forest" with a 40-mark fine after the plaintiff has pleaded on his behalf to the king. Furthermore, the property of the convicted shall be divided as well.[47] As noted, it is not possible to tell whether this regards rape or abduction. A reasonable interpretation is that it includes both.

We do get more information and clearer requisites for rape in the other laws, where it is defined as "taking a woman with force." The crime is described fairly uniformly. A direct translation of the provision in the Västmanna Law reads:

> If a man takes a woman with force, and marks can be seen either on her or him [reflecting] what he did to her or she did to him, or if it is so close to a village or a road that cries and supplications can be heard. And if this is legally announced to witnesses, [then] a district jury shall find out the truth. If a man takes a woman with force and is caught in the act, and twelve men testify to it, then he shall be sentenced under sword.[48]

That marks, signs of violence, could be seen on the woman or the man, or that cries for help could be heard, are part of all the provisions on rape.[49] The focus is thus on the violence that the woman suffered and on the fact that she attempted to defend herself or called for help. That the woman put up resistance was essential, and that resistance should be heard or seen. Kim M. Phillips describes rape as a crime that was written on the body.[50] These aspects clarify that the crime described in these provisions more resembles the crime that we would define as rape or sexual assault, in which the woman's lack of consent is the core element.

The Laws of the Realm have kept the main elements but have added some interesting aspects. Magnus Eriksson's Law describes the crime as:

> Now, a man takes a woman with force; then he has broken the *edsöre*. If it can be seen on the man, or on his clothes that she clawed him, or are cries and supplications heard, then a district jury shall find out the truth in this. Now; he wrestles with her and cannot get his will through, tears

47 YVgL, Urbotamål 1 §7 & §13.

48 VmL, Konungabalken 3.

49 ÖgL, Edsöresbalken 3. UL, Konungabalken 6. DL, Edsöresbalken 3. HL, Konungabalken 3. SdmL, Konungabalken 6. MEL, Edsöresbalken 14. MESt, Edsöresbalken 11. KrL, Edsöresbalken 12.

50 Phillips, "Written on the Body," 125.

> her clothes, are cries and supplications heard; then he has broken the *edsöre*.[51]

As Karin Hassan Jansson has noted, the violence in these provisions is described entirely differently than violent acts between men. She points to the absence of weapons and the choice of words, 'wrestles and claws,' which are not used when describing male-to-male violence. Furthermore, she writes that men were not expected to try to get help by using cries and supplications.[52] The latter may be true for the Laws of the Realm (which are her sources), but one of the provincial laws shows that men could also be expected to cry for help. A provision on robbery in the Östgöta Law that describes both perpetrator and victim as male states: "Now a man robs another man, then he wants to cry for help."[53] The man then gets tied up and the perpetrator gags him. One could, indeed, interpret the provision as if the perpetrator had emasculated the man by turning him into a subordinated victim; this is why he needs to call for help. William Ian Miller writes: "Victimizers, according to our common notions, will tend to be male, and victims, if not female to the same extent as victimizers are male, will, in many settings, be gendered female nonetheless. A male victim is a feminised male."[54] Indeed, this confirms the general interpretation that rape, abduction, and robbery are described as cases of unequal power and strength where the rapist or robber was the superior party. They were all conducted "with force," that is, violently, with superior strength and power.

Christopher's Law describes the crime in much the same way, but with further additions. Here it is stated that the district judge shall send out a message and call an extra court assembly if the rapist is caught in the act. He shall have the perpetrator sentenced under sword and not postpone it. The formulation in Christopher's Law demonstrates that the crime was considered a very serious offence that required immediate action. If the man was not caught in the act, the woman had the right to claim "that he got his evil will through with use of force" or that he wrestled with her, yet did not manage to get his will through. She then had to show that his clothes or hers had been torn and that bruises or bloodshed had resulted from the struggle.[55] Again, evidence of resistance was required for the crime to be considered rape. However, it also has another

51 MEL, Edsöresbalken 14.

52 Jansson, "Våldsgärning, illgärning, ogärning," 148.

53 ÖgL, Vådamålsbalken 31 §2.

54 William Ian Miller, *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence* (Ithaca: Cornell University Press, 1993), 55.

55 KrL, Edsöresbalken 12.

consequence. The focus upon her body, her person, and her resistance makes it clear that she is regarded as the victim. The deed was a violation of her bodily integrity and her honour. Furthermore, she also received part of the fine if the punishment were converted to a fine, which emphasises that she is regarded as a victim. There is no mention of her guardian receiving compensation.

In Kim M. Phillips's classification of the three legal phases of the definition and treatment of rape, the middle phase focuses on the woman's loss of virginity. If rape were considered as a property loss for the woman's guardian, one can expect that the crime would be classified and sentenced differently depending upon the woman's marital status and whether an unmarried woman was a virgin. However, there is no indication in the legislation that it was different to rape a married woman, nor are there any indications that rape was viewed differently depending on whether or not the woman was a virgin. The victims in the laws are defined merely as 'a woman.' Only in two of the laws is the expression "woman or maiden" used, and the woman's status does not affect either the legal requisites or the sentencing.[56] On the contrary, these two laws seem to equate rape of a maiden and rape of a woman. The provisions on rape do not reflect the view that the loss of virginity was the main aspect of the crime because it represented a property loss for the marriage guardian. The sentencing is also unaffected by the woman's social status; in fact, the woman's social status is not mentioned in any of the provisions. As always, this should not be taken as evidence of how the crime was treated at court. It is likely that a woman's reputation affected the sentencing during a trial. Dunn has pointed to the fact that virgins were more likely to prosecute for rape. It was easier to argue a loss in these cases, and their fathers might have seen this as a way to lessen the damage.[57] Rape was most likely an underreported crime in the Middle Ages, as it remains today.[58]

Unlike abduction, the image of rape in legislation is one of a crime directed at the woman, not her male relatives. This can be connected to English legislation which held rape to be one of the few crimes that women, even married women, could prosecute independently.[59] Another argument for this interpretation is that rape in Swedish law is one of the very few cases where a woman expressly had the right to the revenge killing of a man. The above-quoted Västmanna Law continues by stating: "If a man takes a woman with force and she thereby kills him, and 12 men can testify to it, then he [the homicide]

56 Bjärköarätten 12 §4. MESt, Edsöresbalken 11.

57 Dunn, *Stolen Women in Medieval England*, 55–56.

58 Österberg and Lindström, *Crime and Social Control*, 99–100.

59 At least up until 1382. Dunn, *Stolen Women in Medieval England*, 53.

is dismissed."[60] As previously noted, this meant that the killing was considered justified and the homicide was not punishable. The same rule can be found in the Uppland, Dala, Hälsinge, and Södermanna Laws and in Magnus Eriksson's Law of the Realm and Town Law as well as Christopher's Law.[61] As previously mentioned, revenge killings were something that the Church and the king strongly attempted to limit. We have met revenge killings before, for sexual offences in Swedish medieval law and in Norwegian (as well as Icelandic) law. The extensive right to avenge fornication was exclusively male and aimed at another man in the Norwegian legal tradition.[62] There is reason to emphasise the difference between these two legal traditions. Norwegian medieval law stresses the man's right over the women, who were considered his responsibility. However, it is clearly expressed in the Swedish law that it was the woman herself who had killed the man who had attempted to rape her. It is obvious that the legislators considered the violation an offence against the woman and that she, therefore, had the right to react. It is also interesting that the provisions reflect the view that a woman could kill a man in a one-on-one situation, if it was needed.

Sentencing for Rape

In the Younger Västgöta Law and the Östgöta Law, rape is punished like other crimes against the king's peace: by outlawry.[63] However, in the other laws, rape is punishable by death, despite the fact that it is a crime against the *edsöre*. In these laws a man who takes a woman with force shall be sentenced under the sword; he shall be decapitated.[64] Holmbäck and Wessén comment on this in their modernised interpretation of the Uppland Law, noting that it is strange that the law has introduced decapitation as a punishment for a crime against

60 VmL, Konungabalken 3 §1.

61 UL, Konungabalken 6 §1. DL, Edsöresbalken 3 §1. HL, Konungabalken 3 §1. SdmL, Konungabalken 6 §1. MEL, Edsöresbalken 14 §2. MESt, Edsöresbalken 11 §1. KrL, Edsöresbalken 12 §1.

62 Handeland, *I lyst og last*, 42–45.

63 YVgL, Urbotamål 1 §7 & §13. ÖgL, Edsöresbalken 3, 8.

64 DL, Edsöresbalken 3. HL, Konungabalken 3. VmL, Konungabalken 3. UL, Konungabalken 6. SdmL, Konungabalken 6. Bjärköarätten 12 §4. MEL, Edsöresbalken 14 §1. MESt, Edsöresbalken 11. In the Town Law the plaintiff can choose if he wants to accept a fine or wants to take his life. It should be noted that the plaintiff here is referred to as 'he' and not 'she.' KrL, Edsöresbalken 12.

the king's *edsöre*.[65] They then assume that the Uppland Law functioned as a model for the other laws. It cannot be a coincidence that all the Svea Laws as well as the two Laws of the Realm and the town laws all prescribe decapitation as punishment for an act that is classified as a crime against *edsöre*. Note that the provision on abduction that follows immediately after the regulation on rape is, indeed, punishable as a crime against the *edsöre*. This means that the two crimes distinguished here as rape versus abduction actually had two different punishments in the majority of the provisions. This is another indication that these were seen as two different crimes even if they were part of the same category.

It is difficult to determine with any certainty why the death penalty was introduced for rape. One possible interpretation is that the use of the death penalty simply indicates that rape was considered a very serious offence in Swedish law. During the Middle Ages, rape was generally seen as a very disturbing crime that the king was supposed to suppress. Enforcing the capital penalty for rape could be part of this European tendency. A strong king was a guarantee for the safety of women, and a righteous king prevented rapes from taking place and punished rapists harshly. It can also be noted that the punishment, decapitation, is one of the more honourable death penalties and a method of execution considered suitable for members of the aristocracy. Even if the formulation of the provisions indicates that the focus came to be on the female victim, there should be no doubt that rape legislation was also part of an attempt to prevent and restrict feuding among the aristocratic fractions.

A Question of Consent?

The expression used in rape legislation is consistently that "a man takes a woman with force." For the crime of rape, Swedish medieval law has the legal requirement that the victim resisted or protested and that the perpetrator used physical violence or force. Visible or audible evidence of the woman's resistance was part of the crime descriptions. By the above analysis, it becomes clear that "to take a woman with force" meant that a man had used physical violence to force a woman to have sexual intercourse with him. The sexual violence might seem implied, but none of the laws actually mention the actual sexual act or require penetration. However, the sexual act is clearly implied in provisions regulating inheritance for children conceived during a

65 Holmbäck and Wessén, Upplandslagen, Konungabalken, footnote 20.

rape or possibly abduction.[66] For example, the Hälsinge Law states: "if a man takes a woman with force and she gets pregnant due to this."[67] Therefore, even if the sexual act is not explicitly mentioned, it is apparent that it was taken for granted. This highlights the difference between rape and fornication. Rape is never expressed by using the terms 'bedded' or 'claimed,' which we saw were common phrasings in cases of fornication. In the case of rape, the woman's own responsibility was non-existent; this is further demonstrated by the fact that a child fully inherited from the man who had raped and, thus, impregnated a woman. Moreover, a rape did not affect a woman's right to inherit from her parents, which we saw could be the situation in cases of fornication or marriage without parental consent. In theory, Swedish medieval law had a very clear distinction between consensual and non-consensual sexual intercourse.

During the Middle Ages, the idea existed that a woman would not get pregnant if she had not felt pleasure during the intercourse. In the case of rape, this could be of crucial importance to judge whether the woman had consented to the act or not.[68] Swedish medieval law clearly did not share this view. Several of the law codes have provisions concerning a raped woman's child. According to these provisions, a child conceived during a rape had the full right to inherit "whenever that inheritance happens."[69] This may be interpreted as a comment on the fact that the perpetrator was at risk of being punished by death and, furthermore, that the child had a right to inheritance whether or not the perpetrator was sentenced to death.

Claude Gauvard notes that in late medieval France, a woman who was raped would be dishonoured and seen as publicly available. This raises the question whether a case of rape could also stigmatise a woman or, indeed, the male guardian. Swedish medieval law is very tacit regarding the values behind provisions. This is also evident in the rape legislation. The only law that passes any kind of judgement on the crime is Christopher's Law, which calls the rapist's will 'evil.'[70] In this case, it is the perpetrator, or rather his will, that is described negatively. There are no judgements or values expressed in the rest of the laws, and neither the woman nor the man is described as being insulted or shamed

66 VmL, Ärvdabalken 15. UL, Ärvdabalken 20. SdmL, Ärvdabalken 4 §2.

67 HL, Ärvdabalken 13 §2.

68 Saunders, *Rape and Ravishment in the Literature of Medieval England*, 29, 73–74. Dunn, *Stolen Women in Medieval England*, 53.

69 VmL, Ärvdabalken 15. UL, Ärvdabalken 20. SdmL, Ärvdabalken 4 §2.

70 KrL, Edsöresbalken 12.

by a rape.[71] There are no comments regarding her status or reputation following the rape. Nonetheless the fact that a woman could feel violated and was entitled to revenge indicates that the assault was an attack upon her honour as well as her bodily integrity.

In conclusion, rape and abduction must be seen as part of the same continuum. However, there were differences between the two crimes. The crime descriptions reveal different contemporary and often contradictory views of women, which is typical for Swedish medieval law. The legislators balanced and negotiated the facts that a woman was responsible for her own actions while, at the same time, she must accept remaining under the hand of a male guardian. The laws are very ambivalent in their portrayal of women. One clear example of this is Christopher's Law, which refers to the woman as a thing or an object yet, at the same time, treats her as a subject with agency in other regards. The woman vacillates in Swedish medieval law between being a person and a part of the property. In fact, she is portrayed as both: an individual and an object.

71 The exception is the Guta Law which indicates that it was considered shameful for the woman to be raped. Gutalagen 22.

CHAPTER 7

Conclusions

The Male Norm and Legal Rights

Swedish medieval law is characterised by a male norm; all the laws are based on a male legal subject, and only men had full legal rights. The male legal subject in the medieval laws is not just any man; he is a clearly defined man. The laws assume that he is a self-owning, permanently residing peasant. Furthermore, he is a husband and the master of a household. The laws are centred upon a group of men who owned land and had landed property to pass on to the next generation. The provisions were likely valid also for women when they were the masters of a household; however, the self-evident assumption is that the master of the household is male.

This legal persona—the peasant—is the one who has full legal capacity and full legal rights. All other categories are contrasted and defined in comparison to him. These comparisons help enforce his identity by defining what he is not. The most obvious contrast is to thralls and women, as well as to vagrant men. The peasant is also an adult; underage persons are yet another category that is compared to the peasant, and they are portrayed as lacking legal rights as well as responsibilities. The term used for underage individuals in the laws is 'legal minors' (*ovormaghi*); this term has also been used in scholarship to describe the legal status of Swedish medieval women. The woman in the Older Västgöta Law comes closest to the status of a child. Here she is, indeed, referred to as a 'legal minor,' the very same term used for an underage person. However, in general, an underage person had substantially less criminal liability than women, and it is inappropriate to use the term 'legal minor' when referring to women without explaining the usage of the term and separating it from children.

Detecting gender inequalities in Swedish medieval law is not difficult; a study of their respective rights makes this clear. There were many restrictions placed upon women's free agency. A married woman could only make purchases up to a certain restricted value; her husband had the right to reclaim the money if she were to make purchases beyond this set value. A woman could not be a plaintiff; she could neither testify nor take oaths in the local court assembly. If she were accused of a crime, her abilities to defend herself were very limited; it was required that her guardian represent her. She was not considered a reliable witness unless the case considered childbirth or certain

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types of accidents. Women were also excluded from appearing in juries, which together with oath-taking was a pillar of the legal procedure.

However, women did have a direct right to inherit in all laws except two: in the Older Västgöta Law and the Dala Law, women had secondary right to inheritance, and a daughter inherited only if there were no sons. In the towns, daughters had a right to inheritance equal to that of sons; if there were one son and one daughter, each took half of the property. This was not the standard in the countryside. A daughter had the right to half as much of the inheritance in all the other laws with direct inheritance for women. In a family with one son and one daughter, he took two-thirds and she received one-third. The same distribution can be found within a married couple's household: the wife had the right to one-third of the movable property, while her husband had the right to two-thirds. Inherited land was never divided between the spouses; land was always considered the property of the heir, whether the heir was a he or a she. If a couple had no children and one spouse died, any inherited land would go back to the original family.

Female and Male Honour

Scholars have repeatedly emphasised the importance of honour and reputation in pre-modern society. Honour is an elusive concept; its content and meaning often seem to be taken for granted or assumed, and any clear definition is difficult to attain. In this book, honour is used in a broad sense, often meaning that it is something that could be lessened by an insult, thereby causing shame for the person in question. The laws confirm a view of male honour based on use of violence and protection of his family. In the same way, they confirm that female honour was linked to women's sexual activities. A woman could be insulted by being referred to as "a whore"; it was also possible to insult a man by referring to a woman's sexual activities. Calling a man's wife a "whore" or a man a "son of a whore" was a way to use a woman's sexual activities to insult a man. Her activities reflected poorly on him, and he could be considered the victim.

Women were linked to sexuality, and their actions reflected upon a man's honour. Women are portrayed as passive and easily fooled in the provisions on sexual offences. A woman is 'bedded' or 'lured,' while the man 'claims' or 'beds' a woman. It is also always the man who paid any fines due for fornication, never the woman. Women held no criminal liability for fornication. Her passive status is also revealed in the view that a man could "make her a better woman" by marrying her after premarital sexual intercourse. It is furthermore predominantly a man who is considered the real victim when a woman had

premarital sex; the woman's guardian is the one who is awarded compensation in cases of fornication. This compensation is sometimes referred to as 'honour fines,' which were to compensate for the shame one man had inflicted upon another. The laws of eastern Sweden—the Svea Laws—present another perspective. In these laws, it is the woman herself who accepts compensation for fornication. The crime description also openly alludes to her consent by stating that she "has let herself be bedded." These provisions thus put the focus upon her own will and her participation in the act; at the same time, she receives compensation for the crime and is considered the victim.

Some provisions clarify that, in certain cases, a woman had a personal honour that more or less resembled the male honour. In the provincial laws, a man had the right to revenge killing for adultery. He had the right to kill the other man and, in certain cases, to kill his wife if he were to catch them in the act. Less attention has been paid to the fact that women also possessed this right. The wife also had an honour that had been violated by another woman; she too was expected to seek revenge if she were to find her husband in bed with someone else. Her right to revenge was, in all cases, more restricted than that of a man (except in one possible case), but a woman who found another woman in bed with her husband was expected to want to kill the other woman, maim her by chopping off her nose, or tear her clothes. It is obvious that a man's and a woman's respective honour in this case was based upon the same thing and could be violated in the exact same way. This also shows that violence could be an appropriate and expected way to respond to an insult—both for a man and a woman. Interestingly, both the female right to revenge and the regulations on fornication that focused upon the woman as a subject are found in the same group of laws: the Svea Laws. Indeed, my results indicate that the laws of western Sweden, the Göta Laws, in general demonstrate stronger patriarchal traits. Some of these patriarchal traits were then passed on to the Laws of the Realm.

It is no coincidence that the laws reveal the view that a woman's marital bed had been violated. The bed was the symbol for the household; to "put another woman in this bed" was to interfere and intrude upon the wife's rights. The wife was undeniably subordinate to her husband, yet she still had the right to be treated with respect as the mistress of the household. One can see, in accordance with this, that a man had an unquestioned right to beat his wife—to "discipline" her—with the restriction that he could not inflict open bloody wounds. However, in some cases the husband had to pay a fine to his wife if he beat her outside the home in a public gathering. These fines were considered part of her property if they were to separate or he was to die. This is undoubtedly compensation to her for an insult and a violation of her honour. Violence and the right to use violence created hierarchies in the society. Women were

considered subordinate to men, and a man, therefore, had the right to beat a woman—but only if she were in a direct dependency relationship with him. A man could not beat another man's wife. In this system of hierarchies where violence was a core element, the men who were subordinate to women, such as servants or thralls, were also exposed to violence. A woman certainly had the right to beat men who were dependent upon her. Violence thus created and maintained power imbalances and hierarchies both inside and outside of the household.

Women's Path to Criminal Liability

The status of women in the laws vacillates, and, as with men, their legal status depended on their social status as well. The freeborn woman is sometimes portrayed as part of a household or a family, and her status and agency are so limited that she appears to be regarded as a man's property. In other cases, she is seen as an individual with agency, responsible for her own actions. This creates a duality and ambivalence in the laws. To make women responsible for their own actions obviously created problems for the legislators; this explains the many ambiguous or paradoxical provisions on female criminal liability. Legislators of course wanted to keep women subordinated and wanted to maintain the patriarchal household structure. A number of different factors may explain and provide background to the development of female legal responsibility. There is no one simple explanation that covers all aspects of this legal development. In general, Swedish medieval law does not lend itself to simple explanations; any study of these sources will reveal both ambiguous and contradictory tendencies that are impossible to reconcile. However, the least satisfying explanation is to see female criminal liability as part of a "natural evolution" that needs no further explanation or interpretation.

In most of the criminal cases it was irrelevant whether a man or a woman had committed the crime, and there were no statements that stressed that women were criminally liable or should be punished for committing this type of crime. This can be seen in the many lesser property crimes in Swedish law. The medieval village appears as an entirely male community in the laws; it is as though women hardly exist. Women could clearly commit these lesser crimes, such as the illegal lending of a rake or riding over someone's property; however, only male perpetrators are assumed. Only in one case do women appear as perpetrators; this is the case of illegally milking another person's cow or sheep. Milking was a strongly gendered activity, and milking was taboo for a man. In this case a male perpetrator was deemed unlikely. The peasant, the main legal

subject in the laws, absolutely dominates as the assumed perpetrator in these sections. The peasant was the full member of the local village community, a community that had to collaborate extensively in order for farming to function. Many of the conflicts described in these sections seem to be due to this collaboration among villagers or neighbours. The local community is described as an open community, where everything that happened should be announced and made public. There were constant suspicions below the surface, which in part stemmed from the legal system itself. The legal procedure often meant that one was presumed guilty until proven innocent. The many lesser property crimes also reflect conflicts in which honour was at stake. Another man's thralls, animals, or fences became targets in the process to restore one's honour or respond to an insult. The laws depict this as a completely male honour system.

One interpretation is that women's activities were not seen as conflict generating—at least not in the sense that they resulted in violence or conflict between the masters of the households. The disinterest for everyday female activities is quite profound in the laws. More important though, is that all the lesser property crimes led to the payment of small fines or compensation. This was dealt with between the households, and there was little problem for the master of the household to take the punishment for his wife or daughter if she were to commit a crime. He could, of course, also punish her or "discipline" her physically afterwards, if he wished. For this type of crimes there are no major changes in the transition to the Laws of the Realm, apart from a greater level of legal abstraction. For the lesser crimes, the unity of the household was maintained, and the man represented the household in the public. In other cases too, we see no change over time. For example, women had no criminal liability at all for certain sexual offences, such as fornication. There were, however, other control mechanisms aimed at restricting her activities and punishing her. She could lose her right to inherit if she were to fornicate, and an unfaithful woman lost her right to her third of the household chattels, as well as her morning gift.

For some serious crimes, women's criminal liability was well established, for example for the type of witchcraft called 'destruction.' This crime primarily denotes poisoning when it is regulated in Swedish medieval law. Witchcraft was the only crime for which women were sentenced to outlawry, as in the Older Västgöta Law. Women's criminal responsibility for murder, defined in Swedish medieval law as secretly killing another person or attempting to hide the act or the body, was also already well established in the provincial law codes. Female criminal liability had also been introduced for theft, yet not for robbery. The original meaning of robbery was to openly and unlawfully

acquire another person's property. This often, but not always, assumed the use of violence or force. With time, the use of force and violence was stressed as a legal requisite for robbery. These differences in liability can be explained by the simple fact that female criminal responsibility was introduced for those crimes where a female perpetrator was expected or for crimes that were connected to women. These crimes were often portrayed as secretive and hidden acts. While men acted more openly in public, women acted secretively and deviously. The provincial laws portray a world in which women kill deviously and steal deceitfully, while men fight with each other and take other's property with force. Men and masculinity are clearly closely linked to violence and the use of violence. Women were not expected to use violence in the open sense and with weapons. Instead, femininity was linked to the night, secret acts, and deceit.

We are met by a far more gender-neutral criminal law in the Laws of the Realm and the Town Law. It is obvious that the royal power had been an influence in this process, especially for the crimes of theft and homicide. The Laws of the Realm assume that the perpetrator for all serious crimes is "a woman or a man." The laws have introduced a double legal subject referring to both genders. In many cases, this meant that women had been integrated as perpetrators and that their criminal liability is underlined. For 'destruction' and infanticide, however, this meant that the man had been fully integrated as a possible actor. These changes do not reflect changes in legal practice or the society. There is no reason to believe either that men suddenly started to use witchcraft or kill their own children or that men were convicted for these crimes to a greater extent than before. Conversely, in the early modern time period, the original gender coding for these crime has actually been enforced. Infanticide was then defined as a female crime, the crime of an unwed mother. Thus, also after the Law of the Realm in 1350, witchcraft and infanticide were considered female crimes. There is no doubt that this change, enforcing the notion that both women and men could be possible perpetrators, was part of a conscious ideological development.

I claim that the transformation we see from provincial laws to the Laws of the Realm should be interpreted as abstract legislative changes rather than the reflection of actual legal practice. This can be demonstrated by comparing lesser crimes with more serious kinds of criminal acts. Both sexes were, of course, more likely perpetrators of lesser crimes than of murder, homicide, and theft. However, the later laws specifically emphasise women's criminal liability for those serious crimes which they were, in reality, quite unlikely to commit. As noted above, one explanation is that the punishment for the lesser crimes was a low fine. This allowed for the unity of the household to be maintained and did not cause a problem for the male norm in the laws. Yet another

explanation is that individual guilt, emphasised by the Church, was more strongly activated in cases of serious crimes that were also serious sins. In these cases, a woman should expiate her crimes just like a man.

Female criminal responsibility was also an indirect consequence of the introduction and increased use of the death penalty. Capital punishment was used far more often and more consistently for serious crimes in the Laws of the Realm. The introduction and use of the death penalty has also been connected to the royal power and should be seen as part of a broader ideological shift. The use of the death penalty instead of pecuniary punishments changed views of shared responsibility. It was one thing to sentence a man to a fine for the crimes of a female relative; it was completely different to sentence him to death for the crimes committed by someone else. The introduction and extended use of the death penalty must have activated thoughts on individual guilt and personal responsibility, which in turn led to an individualisation of criminal liability.

To conclude, the background to the changes in Swedish medieval law is a royal power that attempts to define and create subjects through legislation. The king enforced his power by demanding the right to decide the destiny of his criminal subjects. To make a woman criminally responsible was to separate her from the family and the household and claim that it was society's, or the king's, right to punish her. This meant that part of the authority moved from the husband or the woman's guardian to the public. In other words, more power to the authorities and less to the individual man—or, rather, the 'peasant.' Furthermore, with the introduction of the death penalty, the king literally held the ultimate power over matters of life and death. At the same time, the Church stressed a more personal concept of guilt that came to affect legislation and, thus, criminal responsibility.

The earliest establishment of female criminal responsibility is also connected to specific thought patterns. The legislators assumed certain behavioural tendencies for women and men, and they connected men and women to different types of crimes. This certainly does not exclude the possibility that women might have been more common perpetrators of certain of these crimes—they most likely were—especially infanticide. The changes that took place in the shift from provincial to nationally valid law, however, were conscious attempts to create a more gender-neutral legislation. The law texts keep repeating "man or woman" as a legal subject, also regarding victims of crime: "if a man murders another man or a woman, or a woman murders a woman or a man." These categories consequently appear far more important than before. Gender appears as the most important criteria used to categorise people in the Laws of the Realm. This is true for the most serious crimes; as previously

mentioned, other sections are characterised by a strong continuity from the provincial laws.

The introduction of female criminal liability caused women to appear as subjects with agency, albeit in actions that were not always honourable. In a longer perspective, these changes in the gender system most likely affected how women were viewed. Without exaggerating the importance of this change, I will still claim that, when women were made responsible for their own actions, the view of women as individuals with agency was enforced. The duality in women's status remained in younger legislation: she was both a subordinate member of a household and an individual with her own responsibility. I argue that the strong patriarchal tendencies in the youngest law, Christopher's Law, demonstrate that a balance had been reached. In fact, the youngest of the medieval laws is the one which most strongly emphasises women's subordination. At this stage it was accepted that women were punished for their crimes; any potential threat that they therefore also should obtain stronger legal rights or escape patriarchal control must have been averted. The two parallel tendencies, female criminal responsibility and female subordination, were no longer seen as in conflict with each other.

To Expiate One's Crime: Death Penalties for Men and Women

It is not a new discovery that different methods of execution were used for men and women. Many scholars have noted that death penalties tended to be gendered. Different punishments were used for different criminals: gender was but one factor which determined the method of execution. For example, being decapitated instead of being hanged was a privilege for the aristocracy. Decapitation was not only less painful; it was also less dishonouring. The use of different death penalties for men and women is not unique to Swedish medieval law; it can be found in many places and during many time periods in history. The gendering of the death penalties in Swedish legislation also often corresponds with legal practice in other parts of contemporary Europe. Typical punishments for men were hanging or breaking on the wheel, while decapitation could be used regardless of gender. The death penalties typically used for women were stoning, being buried alive, and being burned at the stake. These punishments were also used for men in specific cases: bestiality, arson, and 'destruction.'

Some have claimed that the death penalties used for women were more painful than those used for men, which demonstrates a will to punish female criminals in a harsher way. This is most likely not the case in Swedish medieval

law. While it is always difficult to measure different levels of pain, the female and male methods of execution seem to correspond. For example, when women were sentenced to stoning or burning at the stake, men were sentenced to be broken on the wheel. There is nothing that indicates that breaking on the wheel would have been a less painful way to die. The methods of execution in these cases are painful, frightening, and therefore have the potential to be a strong deterrent for both men and women. One possible case of unequal sentencing can be found in the case of theft: women were sentenced to be buried alive, while men were hanged. However, it is not certain that hanging was a less painful alternative. Both methods of execution led to slow asphyxiation; only in later times, with more advanced gallows, did hanging mean that the neck was broken and that death was instant.

Others have explained that women were buried alive because of a reluctance to display the female body in public, as would be the case if she were hanged. This interpretation of why different death penalties were used for men and women is based upon the view that a woman's honour is linked to her body. Indeed, "for her female honour's sake" was one of the very few contemporary explanations of why a woman should be buried alive and not hanged. Contemporary views of female and male bodies explain the choices of methods of execution. The male punishments all put the body up on display. Both hanging and breaking on the wheel left the body hanging and uplifted. The punishments were used to disclose and present the criminal's body to the public; they were used as literal warning signs in the landscape with the purpose to deter others. These punishments also belong to the open and public sphere. The male body belonged in the public part of society—in life as in death. The male body allowed the man to participate in public life, in the same sense the male body could be used to warn others in public. The female punishments were all executions that destroy the female body or make it disappear. It is buried, covered with stones, or burned. The choice of death penalties shows that the female body was to be hidden away, while the male body could be displayed. The female body was symbolically charged in a way that the male body was not. Burning at the stake was also a method of execution with strong links to purification through fire. The female body can be interpreted as impure in itself, and the body of a female criminal—guilty of serious, shameful, and devious crimes—was, of course, the pinnacle of impurity and horror.

The femininely coded punishments in some instances were also used for men. For arson, witchcraft/'destruction,' and bestiality, male criminals were buried alive and burned at the stake. These choices have different explanations, as there are many diverse thought patterns that influenced the legal system and legal practice. The choice of punishment can be explained by the

nature of the crime. Arson was a serious and transgressive crime that "mad people" were thought to commit. The punishment was to be burned at the stake, and this is likely one of the few mirroring death penalties in Swedish medieval law: the punishment was meant to reflect the crime. Witchcraft and bestiality were shameful crimes, especially for a man. To commit bestiality and witchcraft was to cross social borders, and for a man these crimes might also be seen as gender transgressive. This is particularly true for bestiality, which is described as a deeply alarming crime in Swedish medieval law. When a man had crossed this social border and had committed sexual acts with his own body that were taboo, his body had become charged and impure. His body should be destroyed and hidden just as a female criminal's body.

The Laws of the Realm are far more gender neutral with regard to the most serious crimes. In most instances it means that women have been integrated as possible perpetrators. Above I stated that gender became a more important category in order to define individuals in the laws. It is obvious that, parallel to this integration of women and equation of male and female criminals, a segregation of men and women can be seen in the choice of death penalties. The methods of execution separate men from women, signalling that men and women are different in a fundamental way. The death penalties emphasise the differences in the bodies and underline that gender was the most important category that defined people.

The King's Subjects: Masculinity and Categorisation

The male norm of the provincial laws provides us with an image of an egalitarian society in which all peasants had equal status and equal possibilities. This image had little to do with reality. The division of individuals in the laws was strongly connected to owning land and the status of being a master of a household. However, the laws also used violence and the right to use violence as primary criteria to categorise individuals. If we analyse presumptive perpetrators and victims of violent aggression, it is apparent that Swedish medieval law emphasised that the core individual in society is a man. This man, who carries "folk weapons," pays taxes, and is allowed to participate in all activities at the local court assembly, is the centre of the laws. He is also the self-evident comparison to all other categories. He is contrasted to both boys and old men, the ones too young or too old to carry weapons and fight. People were divided into two groups according to the ability to defend themselves. The social importance of access to violence and weapons is therefore incontestable.

Physical ability to a "man-to-man" fight and the use of violence were important. However, it was not the only factor, since adult male thralls also had the physical ability to use violence but were barred from doing so. It is not hard to guess where women were located in this hierarchy. They belonged to the group that did not have access to violence and were not expected to use honourable forms of violence or weapons. Yet another point of departure for the laws is that certain types of violence were honourable while others were not. Humiliating an adversary by using degrading forms of violence, to a point where he could no longer defend himself, was considered shameful and was, therefore, punished harshly. Attacking a person who was in a position where he could not defend himself at all was equally shameful.

The link between masculinity and violence is still present in the younger laws; however, this connection gets stronger the further back in time we go. In the Older Västgöta Law, the 'peasant' is an assertive man of high social status. In this oldest Swedish law, a man is responsible for close female relatives to the extent that he must flee as an outlaw if they had committed a crime. He was the one who was shamed if a female relative had intercourse with an unwanted man: "if she were bedded," as the legislators would have expressed it. The high status of the peasant is unique in the oldest law and cannot be found in the other laws. Thus the 'peasant' as a legal concept already went through some changes in the provincial laws. Nonetheless, the peasant is given rights to self-defence and control over his household members in the other provincial laws as well. Revenge and self-help were fundamental parts of how a man was expected to act. This can be exemplified by the concept of *manhelgd*: the free man's right to personal integrity, self-defence, and respect.

The division of violence into honourable and shameful deeds can also be found in the Laws of the Realm and has, to a large degree, been kept intact. However, most other categorisations have been removed; we no longer find that individuals are defined according to their ability to defend themselves or access violence. The Laws of the Realm stipulate that killing a woman or an old man is the same thing as killing an adult male. This new legislation does not compare individuals and base the punishment of a perceived power and strength imbalance between victim and perpetrator. This type of division was apparently no longer of interest. Restricting the right to revenge killings is part of this development. Scholars have long accepted the fact that the king and the Church were driving forces in this development. Revenge and self-help have been limited to a few cases in the Laws of the Realm, as well as in the new Town Law. The emphasis on a peasant's ability, possibility, and duty to defend himself and his close ones is no longer present in the Laws of the Realm.

This can also be demonstrated by highlighting another change: the disappearance of the concept *manhelgd*. This notion is elusive already in the provincial laws; in several laws it is only present as part of the section title. This demonstrates that while the concept was still part of the legal tradition, it was losing its importance. *Manhelgd* is never even mentioned in Magnus Eriksson's Law of the Realm. This signifies a greater change than that of a legal term becoming obsolete: it reflects a new view of masculinity and a new ideology. This view can already be found in the provincial laws, and the change is gradual, but the notion of a new societal model has become stronger in the Laws of the Realm. According to this new thought pattern, it was not the responsibility of each peasant to defend himself and his family. Justice was to take place through a controlled legal system, a system that began with the king. The king was the guarantor of justice and peace.

Of course, this does not mean that men and masculinity ceased to be connected to violence. It is primarily men who are depicted as fighting and using violence in the Laws of the Realm as well. However, this legislation reflects other social hierarchies. In the sections on marriage, it is no longer the peasant who is the only self-evident point of departure; we now find several classes and social groups mentioned. Some of these are clearly connected to the king. We also find that use of violence is beginning to be seen as a privilege that belonged to the aristocracy. The aristocratic man is defined by his weapon service owed to the king; this is the group which fights from this point onward. Magnus Eriksson's Law states that if a man wants to become an aristocrat, his weapons and his horse must be assessed. However, the law also points out that his masculinity and ability to fight should be tested. The one who is expected to show manliness and courage is no longer the peasant; it is the male aristocrat.

Two groups appear as more clearly defined: those who work and those who fight. More important, those who work are no longer those who fight. The Law of the Realm, thus, shows us a different type of society. This is part of a process which ends with linking violence to one group in society instead of all men. Through legislation, the king attempted to create subjects, and the central authorities no longer wanted self-helping and revenging peasants who were responsible for their own safety and for their women. From this point on, all individuals should be directly related to and dependent upon the king. The safety of these persons—as well as their destiny, if they had committed a crime—was in the hands of the king. He was the symbol for safety and peace.

Of course, the royal power certainly had no possibility to actually ensure the safety for all of the king's subjects or even punish those who got caught. Legislation shows society not as it is but how the legislators thought it should

be. What we see is the development of certain ideological premises for how society should be organised and how the relationship between the king and his subjects ought to be defined. The medieval laws are ideological texts. The medieval legal system can never be understood by studying only these normative texts.

Laws fill many functions in society. Laws established and legitimated the organisation of society; when society changed, the laws helped to redefine this organisation. Magnus Eriksson's Law of the Realm was a tool in a redefinition of societal relationships. It is possible or even likely that the changes had actually taken place long before the law was compiled. This would possibly also explain why the provincial laws seem to reflect a society based upon egalitarian peasants, a society that poorly reflected the realities of medieval Sweden. Laws, in many ways, lagged societal change. However, this does not mean that the laws had no effect or did not influence the society in which they were created. The laws were a very important part of a society's self-understanding. The societal definition that the medieval Laws of the Realm established turned out to be very functional in a longer perspective. With some additions, the medieval Christopher's Law from 1442 remained in force until the second half of the eighteenth century.

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