

JENNY JOCHENS

## Gender symmetry in law?:

### The case of medieval Iceland

Arnkell Þórólfsson, a second generation Icelandic chieftain, was described in *Eyrbyggja saga* as “the most gifted of all men in pagan times. He was remarkably shrewd in judgement, good-tempered, kind-hearted, brave, honest and moderate. He came out on top in every lawsuit, no matter with whom he had to deal, which explains why people were so envious of him . . .”. Not surprisingly, his success eventually caused his enemies to kill him after his father’s death. At this time his two brothers-in-law were also dead or out of the country, and since Arnkell was one of the few Icelandic men not recorded to have either wife – hence no in-laws – or children, the task of prosecuting his murder devolved upon his two sisters. With women as *aðilir*, or principals, “the case was not followed up as vigorously as people might have expected after the killing of so great a man.” Since only one person received an out-law sentence of three years, the saga added that “the leading men of Iceland made a law that neither a woman, nor a man under the age of sixteen, should ever again be allowed to raise a manslaughter action, and this has been the law ever since” (ÍF 4.37–8:98–104).

The historicity of the Icelandic sagas is notoriously problematic. This particular vignette implies an original period of gender symmetry on the issue of prosecution for homicides, allowing either men or women to act as principals. The saga’s internal chronology suggests that the law ending this alleged phase was introduced about 993. Since asymmetrical gender relations are almost universal, gender symmetry in any society would warrant an investigation.<sup>1</sup> Before pursuing the problem of possible legal gender equality on this and other issues, a brief rehearsal of Icelandic law is necessary.<sup>2</sup>

### The law

During the medieval period Icelandic society was governed sequentially by three different laws, *Grágás*, *Járnsíða*, and *Jónsbók*.<sup>3</sup> Among these, *Grágás*

<sup>1</sup> For a discussion of gender symmetry/asymmetry, see Ortner and Whitehead 1981, ix; Lerner 1986, 16–18; Scott 1988, 4.

<sup>2</sup> For an analysis of similar problems among the Anglo-Saxons, see Klinck 1982 and Fell 1984 (passim).

<sup>3</sup> For texts, see “Works Cited” under *Gg* 1a, 1b, *Gg* 2, *Gg* 3, *Járnsíða*, and *Jb*.

(“Grey Goose”), the most comprehensive of all Germanic legal texts, deserves Andreas Heusler’s respectful epithet, “the giant bird”. According to reliable tradition, its irretrievable core consisted of laws conveyed by Úlfjljótr, one of the first settlers, from his native Norway (ÍF 1.2:7; 313). Returning to the home country in the 920s in search for laws suitable for the colony, Úlfjljótr was inspired by the Gulathing legislation from the west-coast province, augmenting and modifying it to suit Icelandic conditions. No Norwegian laws are extant from the early tenth century, however, and Úlfjljótr undoubtedly carried his precious cargo in mind and memory, not in manuscript. Having chosen the site for the Althing, he was most likely the first law-speaker, although a continuous list commences only in 930.

Since the most important task of these law-speakers was to recite the entire legal corpus during three yearly meetings of the Althing, the law was known only through this oral performance for almost two hundred years. The shift from orality to text was taken in 1117 when the General Assembly decided that the laws should be written down at Hafliði Másson’s farm during the following winter according to the memory of the current law-speaker Bergþórr Hrafnsson, assisted by other wise men who were empowered also to make new laws, pending approval of the next Althing (ÍF 1.10:23).

Hafliði’s text does not exist, however, and revisions of the law continued for several generations. An important addition was the so-called Christian law section, approved sometime between 1122 and 1133, which prefaced the existing versions of the secular laws. Clearly then, *Grágás* as known today, consists of a compilation within which it is difficult to distinguish obsolete rules and recent enactments – the latter identified as *nýmæli* (new laws) and perhaps never implemented – from a larger body of legal material normally assumed applicable to the twelfth century, although many regulations were undoubtedly of more ancient origin. The two chief manuscripts, *Konungsbók* (*K*) and *Staðarhólsbók* (*S*), date from the late thirteenth century.

In contrast, the two other texts, *Járnsíða* and *Jónsbók*, are not compilations but codifications, sanctioned by the Norwegian king and intended to take immediate effect in Iceland. More influenced by Norwegian than Icelandic law, the former, introduced in 1271, was highly unpopular and was replaced by *Jónsbók*. Preserving more ancient Icelandic law, the latter was accepted by the Althing in 1281 after initial resistance and remained in effect until modern times.

## Juridical functions

Let us return to the prosecution of Arnkell's killing.<sup>4</sup> Since *Grágás* was in effect during the period in which *Eyrbyggja saga* and the other family sagas were set, still functioning when they were first written, and continued to undergird the code in force when extant copies of these narratives were made, this text will obviously provide the best hunting ground for the juridical gender symmetry alleged by the episode. The *Grágás* texts do concur, in fact, with the second half of the saga's statement, that women and men under sixteen were not allowed to prosecute as principals in cases of *vígsgak* (homicide). In both manuscripts the list of men assigned this role was headed by the victim's son, provided he was over sixteen, freeborn, a lawful heir, and of such mental capacity (*hyginn*) that he was able to manage his inheritance. If no son existed, the case devolved in sequence upon the victim's father, full brother, half-brother, or illegitimate son (*Gg* 1a:167–8; 2:334–5). The omission of women speaks loudly enough, but *Staðarhólsbók* eliminated remaining ambiguity by adding that “in no circumstances does a killing case fall to a woman” (*Gg* 2:335).

Corroborating the principle enunciated by the first half of the saga's claim, in a few cases the law did allow women to act as principals, not on their own behalf – to be sure – but for their daughters. Grouping the sexual crimes of adultery and fornication under the term *legorð* (literally, “a sentence or rumor of having lain”) – an offence perceived as implicating the woman's family and not herself – the law placed the mother of the woman against whom this crime had been committed as sixth on a list of principals for prosecution. They were headed by the victim's husband, father, son (over sixteen), son-in-law, or brother (*Gg* 1b:48; 2:177). Likewise, those responsible for a woman's betrothal (*festning*) consisted of men in sequence ranging from son, son-in-law, father, or brother, but if these were lacking, the mother was in charge. The law added that this was the only case in which a woman could betroth (*fastna*) another woman (*Gg* 1b:29; 2:155). We are not told as to how women performed under such circumstances. Since both lists added more distant male relatives if the mother was not alive, it is likely that in cases involving *legorð* and *festning* when women were in charge, they may have delegated responsibility to more distant male relatives.

This conclusion is reinforced by still a third group of cases in which women were actually admitted as first principals (*aðilir*) for themselves. The law was explicit that they were expected, not to *sækja*, but to *selja*, that is not to prosecute on their own, but to turn the cases over to male relatives. If the

<sup>4</sup> The most complete study of family relations as revealed in *Grágás* is Finsen 1849, 1850. See also Grönbech 1931, Philpotts 1913, Hastrup 1985, Miller 1990. On gender, see Clover 1993.

women agreed to let the men *setja* (to reach a compromise with the defendant), the men were not allowed to settle for less than the fines imposed by law. In this group were cases that involved women's personal and economic safety and integrity, including attacks and bodily injury (*Gg* 1a:170; 2:364), minor sexual molestations (*Gg* 1b:47; 2:176), verbal sexual harassment (*mansqngr*; *Gg* 1b:184; 2:392–3), and a husband's attempt to take the wife's property out of the country (*Gg* 1b:44; 2:172).<sup>5</sup>

Since law in medieval Iceland did not envisage the executive power, implementation and the execution of sentences handed down by the courts fell to private individuals. As we have seen, these tasks were normally performed by men. Women were allowed to act through intermediaries only in cases involving their own personal safety. In serious sexual crimes, when the male offender was caught *in flagrante delicto*, the *aðili*, or principal, was permitted to carry out justice immediately and kill the culprit on the spot. Normally, however, a crime, including homicide, was a *stefnusqk*, or summoning case, requiring the *goði* (chieftain) over the district in which the defendant lived, to call in a panel, or jury (*kviðr*), consisting of five, nine, or twelve men who were to meet at the local assembly (*þing*) and decide on the case (*Gg* 1a:51, 157; 2:316).

Only men who were *þingfærr* (able to travel to the *þing*, or “assembly-fit”) were to be called to the *kviðr*, or jury. To be assembly-fit was defined as a person “able to ride full-day journeys, bring in his own hobbled horse at resting places, and find his way alone where the route is known to him” (*Gg* 1a:160; 2:321). The text employed the term *maðr* (pl. *menn*), and although this word can be used about both genders, in this case its restrictive application to males is clear from the following paragraph. Here a woman and an unfit man were mentioned in the same phrase, as the law listed the candidates eligible as *kviðr* representative for a woman's farm, together with those among whom a representative for a farm headed by an unfit man was to be chosen.<sup>6</sup> The law identified four males (son, stepson, son-in-law, or foster son) who were allowed to appear in place of the unfit man, and added the woman's husband as a fifth possibility in the case where she owned the farm and her husband resided with her (*Gg* 1a:160–1; 2:322).

<sup>5</sup> In addition to these cases, a paragraph found only in *Staðarhólsbók* states that the woman herself always was the *aðili* in cases involving the retrieval of her *mundr* from a marriage, whether the bishop has given his permission to the divorce or it was caused by her husband's neglect to sleep with her for three years (*Gg* 2:200). This privilege may have been produced both by property considerations and by the church's program to increase gender symmetry. In another unique paragraph this manuscript also stated that after marriage the husband was to be the *aðili* for all those cases which the wife earlier had handled by herself, but specific cases or areas are not indicated (*Gg* 2:199).

<sup>6</sup> “Unfit man or woman” were also mentioned in the same phrase in the case of a person who had fostered a needy individual but who later wanted to retrieve his expenses (*Gg* 2:136).

This definition of *þingfærr* obviously excluded women, not only from *kviðr* duty, but also from participation at the local *þing* and the Althing. With horses as the chief means of locomotion, women were able to ride, of course, and the sagas often report the presence of women at the Althing, but apparently for social purposes and not for legal functions. *Þing* meetings took place during the Spring and Summer seasons when weather rarely was likely to hinder travel. In other words, neither women's physical fitness nor geographic and atmospheric conditions would normally furnish reasons for their exclusion. It might have been argued that pregnancy, lactation, and old age presented such a continuous series of obstacles preventing many women from frequent and regular attendance that all females were entirely excluded. As suggested by the category of unfit men, it is worth noticing, however, that the law made specific allowances for occasional illness among men, excusing them from *kviðr* duty if it did not seem likely that they would get well in time, and even permitted sworn testimony at sickbed to be conveyed by others to the meeting (*Gg* 1a:58, 202; 2:330–1; 3:432).

This right for men to participate *in absentia* was granted especially to witnesses summoned by the *kviðr* to testify in specific cases. In other words, in addition to occasional membership in a *kviðr* and regular attendance at local and national *þing* meetings, civic duties also included the obligation to serve as a *váttir*, or witness. The requirement of being *þingfærr* ensured that this responsibility also was reserved for men, but males were specifically designated in a paragraph that regulated the time allowed to pass before a homicide had to be announced. Referring to witnesses able to report what they had heard and seen (*lögsegiandi* and *lögsjáandi*), the passage specified that they had to be “*karlar* (men) capable of understanding an oath, twelve years or older, and free with fixed domicile” (*Gg* 1a:153; 2:312).

If the *aðili* represented the simplest and most private level of the executive power, the *kviðr* brought ordinary men in contact with the first level of the public institutional and juridical superstructure. As member of a *kviðr* or as a *váttir* (witness), a male Icelander served – frequently but intermittently – in specific cases. Long-term positions, however, were judges and chieftains (*goðir*). While the barring of women from being principals, members of panels, and witnesses in most cases was stated indirectly, these two formal positions of leadership clearly were limited to males. To be appointed to the *dómr* (court) a person had to be a “*karlmaðr* (male), sixteen or older, capable of taking responsibility for his word and oath, and a free man with a fixed domicile” (*Gg* 1a:28). A chieftaincy (*goðorð*) was usually inherited but could also be obtained through purchase or gift. If a chieftain died, his son – twelve years or older – would take over. If the *goði* became ill (*vanheill*), he was obligated to transfer (*selja*) his position to another. The physical requirement suggested by this stipulation may explain why a woman inheriting a

*goðorð* had to consign the position to a male within her district (*Gg* 1a:141–2).

Our analysis has thus revealed that in juridical functions and implementation – subjects pertinent to Arnkell’s killing – little evidence has survived of gender symmetry. The law also dispensed privileges and imposed obligations in which the full spectrum of gendered responsibilities included not only further evidence of asymmetrical gender relations, including both unfavorable as well as preferential treatment of women, but also certain efforts toward gender symmetry. Rather than distinguishing between legal benefits and obligations, we shall keep our focus on women, and divide their treatment between the categories of symmetrical and asymmetrical treatment, the latter including both adverse and preferential stances.

## Gender symmetry

Although far from universal, the principle of gender symmetry was articulated and implemented to a limited degree in *Grágás* within two areas, one more ancient dealing with property transactions, and another and newer dominated by Christianity. Favoring gender symmetry in principle and reinforced by native tradition, churchmen were able to advance equality for women on several important issues. Since they were closely involved in the process of writing and modifying the laws, however, ecclesiastics occasionally applied their legal training to express gender symmetry more forcefully than warranted by social practice.

### 1 Property

We have already noticed that a mother could replace missing male relatives in cases of adultery and fornication (*legorð*), and betrothal (*festning*) involving her daughter. Occasional substitution for men provides a modicum of equality for women and suggests that they were not mere chattels, but fellow human beings, able and eligible to take on public functions in men’s absence. In addition to *legorð* and *festning*, this occurred in other limited situations.

Most significant is the woman designated as the *baugrýgr*, or ring-woman. The term is found only in the so-called *baugatal* section (ring-count) in the *Konungsbók* version (*Gg* 1a:194–204; esp. 200–1).<sup>7</sup> Outlining the payment in cases of homicides, the chapter divided the *wergeld* into four main portions, or rings, to be paid or received by the closest male relatives of the killer or

<sup>7</sup> The section seems ancient and is missing from the *Staðarhólsbók*. See article “Mansbot; Island”, KLMN 11:225–37 and “Böter; Norge”, KLMN 2:533–7. See also the entry for “rétrr” in *NGL* 5:518–21, and Arnórsson 1951.

victim respectively. These were grouped into four classes according to the degree of relationship to the deceased. Two thirds of the total fines came from these four rings. More distant relatives were graded in six additional steps, paying or receiving fines ranging from one mark to one ounce (*eyrir*), totaling slightly more than fifteen marks. Starting therefore with the closest relatives of father, son, and brother – responsible for the first ring of three marks – and ending with fourth cousins inclusive of both male and female sides, all males within the kinship reckoning were included within these ten groups.

If no men could be found in one of the ten classes on either side, this part of the payment was normally skipped, but it was distributed among the other categories if only one side was missing. A single woman was admitted to this comprehensive list of male kin, namely the *baugrýgr*, or ring-woman, the unmarried daughter of a son-less, father-less and brother-less man. Until she married, it was her responsibility to pay or to receive the first ring, normally distributable among the deceased's father, son, and brother:

There is also one woman who is both to pay and to take a *wergeld* ring, given that she is an only child, and that woman is called ring-woman. She who takes, is the daughter of the dead man . . . She who pays, is the daughter of the killer . . . she is to pay the three-mark ring like a son, and this until she enters a husband's bed and thereby tosses the outlay into her kinsmen's lap.<sup>8</sup>

This passage has been used as evidence for female warriors, who, in the absence of brothers, on occasion played the male martial role in poetry or fiction (Clover 1986). In view of preoccupation with property and its orderly transmission from one generation to the next, we are probably on safer ground to see this unmarried woman simply as the channel through which important payments for dead bodies were transmitted to living relatives and not forfeited because of biological vagaries.

So far, evidence for gender symmetry has dealt with property. In men's absence women passed wealth and fines from one family to another, most often in horizontal patterns. In the process they established kinship ties and resolved disputes. Undoubtedly, Icelandic women were accepted in these roles because as property owners in their own right, they also transmitted wealth in strictly vertical patterns from one generation to the next. It is true that men were privileged in inheritance rules and in financial transactions to the extent that if a male and a female relative were equally qualified, the *karlmaðr* prevailed (*Gg* 1a:220; 2:64). The husband further administered the couple's combined assets, whether the partners decided to join their wealth (*gera félag*), or the wife took the option of keeping her property separate

<sup>8</sup> Translation (modified) from Dennis 1980, 181.

(Gg 1b:44–5; 2:174–5). In either case, however, if the husband died or the couple divorced, the wife was entitled to her original share of the parental inheritance, the *heimanfylgja*, or dowry, as well as the *mundr*, or bride price, paid by the husband at the start of their union. To this original capital, further shares could be added from additional parental or other kin inheritance, as well as from the woman's own children. According to an elaborate inheritance system women followed at one class behind male heirs in the same cohort; in other words, a sister inherited from her parents only in the absence of brothers, a mother only if her child had neither father nor uncle (Gg 1a:218; 2:63). Women also received a share of fines paid for slain kinsmen and for sexual crimes committed against kinswomen, again ranked after male kinsmen. A mother would thus receive one third of the fines for the killing of her son, while other sons shared two thirds (Gg 1a:171; 2:173, 354).<sup>9</sup>

Although women did not inherit equally, they could clearly amass property. One rule, however, appears to favor females at first sight. Women came of age at twenty and men at sixteen. It may seem that a woman was treated equally and even given preference by the added regulation that allowed her to inherit already at sixteen and even younger, and also permitted her to administer her own property and that of others (*fjárvarðveizla*; Gg 1a:225–6; 2:69). Since the woman's condition in these situations was modified by three important words: *sú er gefin* (she who is married), it is obvious that all women would be under the exploitative financial guardianship of males. In other words, this rule benefitted, not the woman herself, but her husband, father, brother, or other guardian who legally pocketed interest from the property (and that from property belonging to young men under sixteen), while ensuring that the capital did not diminish, except for the expected inroads made by the yearly tithing (Gg 1a:17; 2:19, 20, 80; 3:18, 320).

The two partners in a marriage did not, therefore, inherit from each other, but their property was passed on to the subsequent generation. The next cohort's rightful claim on that property also lay behind another rule exempting one spouse from the obligation to maintain the needy relatives of the other. In fact, this situation provided one of three conditions in which divorce was granted automatically (Gg 1:40; 2:168). When this rule was abolished by a *nýmæli* (Gg 2:203; 1b:236; 3:457), it may have been inspired by an enactment that, except in cases of insanity, one partner was to take care of the sick spouse (Gg 1b:26; 2:141, 150).<sup>10</sup>

<sup>9</sup> Originally a woman who had given birth to illegitimate children could not inherit, but a new law abolished this rule; see Gg 1a:249; 2:101.

<sup>10</sup> The reason for the exception of insanity, referred to as *gæzlusótt* (sickness that required supervision), was the need for of additional help in the household. The insane person was to be brought to relatives, but should be returned to the spouse if he or she had been *anmarkalauss* (without symptoms) for a year.

These regulations introduce us to medieval Iceland's remarkable system of social welfare that envisioned maintenance for the needy as a civic right and not as charity. Administered by the local community constituted as a network of *hreppar*, or communes, the operation – not surprisingly – favored men, because as local politicians they distributed help to the needy, but it delegated the obligation to pay and the benefit to receive with little or no gender bias. Within the local district poor and needy people from the area were provided for by their better-off relatives and neighbors. A system of insurance against fire and loss of livestock further prevented the wealthy from falling into need. The origin of the system may antedate Christianity, but it is clear that the new religion greatly heightened social awareness and resulted in expanding the poor laws.<sup>11</sup>

This conclusion stems from the fact that a great deal of the information about the council, or meeting (*samkváma*), of the *hreppr* and its function is found in the Christian law section, but, in addition, both manuscripts contain large sections devoted to poor laws (*ómaga bálkr*), and a special section in *Konungsbók* and several chapters in *Staðarhólsbók* treat the organization of the poor district (*Um hreppa skil*).<sup>12</sup> Administering social welfare at the lowest level has often been an avenue for women's entry into the political arena. Although much of the *samkváma*'s work in Iceland consisted of distributing gifts of food (*matgjafir*) – prepared by women and saved from fasts imposed the night before important church celebrations – membership in this local council was restricted to men, for whom property qualifications were not required in all cases if the council was agreed (*Gg* 1b:171; 2:249).<sup>13</sup> In fact, if a farmer was prevented from attending one of the three yearly meetings, he was allowed to send, not his wife, but a capable *húskarl* (farmhand) as his substitute (*Gg* 2:258).

Kin were responsible for their needy relatives following the order of succession found in the law of inheritance. Needy foreigners stranded in Iceland and poor people without relatives and lodgings became *hreppsómagar*, paupers attached to the commune, distributed and maintained equally among the inhabitants. The system worked by rotating, on the one hand, gifts of food and the share of the tithing reserved for this purpose, and, on the other, the *manna eldi* (the needy) among the better-off people throughout the district, who were obliged to keep paupers at their farms normally

<sup>11</sup> On this issue, see Finsen 1850, 125–92, Jóhannesson 1974, 83–9, and Stein-Wilckshuis 1982.

<sup>12</sup> The references to *samkváma* can be located from Finsen's glossary under *hreppr*; *Gg* 3:624–5. The *ómaga bálkr* (poor law section) is found in *K* in 1b:1–28 and in *S* in 2:103–51. The section *Um Hreppaskil* in *K* (1b:171–80) corresponds to chapters 217–227 in the section *Um Fjárleigur* (On Rent) in *S*; 2:249–61).

<sup>13</sup> The five members of the *samkváma* were also responsible for distributing that part of the tithe used for poor relief. Their most important task, however, was to be present when people swore an oath attesting to the size of their property for tithing purposes (*Gg* 1b:171).

for two half-year seasons (*Gg* 1b:12, 172; 2:121, 250).<sup>14</sup> A poor person was to be provided with food and clothing in the same manner as the farm servants (*Gg* 1b:172; 2:250). If he were given such harsh treatment that “he could not stand it”, anyone in the neighborhood was free to remove the pauper to a better place and demand double compensation from the original host (*Gg* 1b:173–4; 2:252).<sup>15</sup>

Male and female paupers were doubtless treated alike in this system, but differing food requirements – the original reason for gender distinctions in salaries – rendered men more expensive to keep than women. Operating with both yearly and daily expenses for paupers and workers, *Jónsbók* set the requirements for men 50% higher than for women.<sup>16</sup> Gender differences in maintaining paupers was well-known already in the twelfth century, however, as suggested by numerous references in ecclesiastical charters to *ómagi karlgildir* and *ómagi kvenngildir* (the endowment needed to keep a poor man and a poor woman respectively). If women received less food than men, their fertility presented additional problems. Fear of increasing the number of poor people stipulated that a farm not be burdened with both a man and a woman in her childbearing years (*Gg* 1:173; 2:251). In such cases the provider undoubtedly made his choice of a pauper based on the needy person’s usefulness for work and/or sexual attractiveness.<sup>17</sup>

If a needy person from outside the district descended on a property owner, the latter could call an emergency meeting of the *hreppr* council by dispatching a stick in the form of a cross, thereby signaling a meeting at his house within seven days (*Gg* 1b:173; 2:251). If the council decided that the pauper was not the district’s responsibility, he or she was designated as a *göngu maðr* throughout the country (*eiga fqr*). The law penalized people for feeding or lodging beggars from outside their own district, however, although it was permitted to give them gifts of clothing or shoes, ostensibly to speed them on their way (*Gg* 1b:173, 178; 2:252, 257). Furthermore, a wandering beggar could be given a full whipping (*hýða fullri hýðing*), even allowing three men to beat one pauper (*Gg* 1a:179; 2:258). A property owner would suffer outlawry if he brought to the Althing a needy relative

<sup>14</sup> *Eldi* is the dictionary version; *Grágás* consistently uses *elþi*. The term seems to refer to the maintenance and not to people.

<sup>15</sup> In addition to poor kin and *hreppsómagar*, the law operated with a third group of paupers, the *þurfamenn* (people with needs). In charge of their own household, these people were too poor to maintain themselves fully and received gifts from the *hreppr* provided from a special tithing, the *þurfamannatiund* (*Gg* 1b:208, 214, 228; 2:50, 60; 3:47).

<sup>16</sup> The poor law in *Jónsbók* set the yearly expenses for maintaining a poor man at 3.5 and for a woman at 2.5 *hundrað* (*Jb* 101). Measuring the daily intake of food in dairy containers (*kerqld* or *askar*), the law defined a *karlaskr* as being *hálf annarr kvenaskr* (one and one-half; *Jb* 235). See also article “Kostplan: Island”, KLMN 9:237–8.

<sup>17</sup> The law allowed a man to sleep with a beggar woman, provided he took responsibility for her offspring (*Gg* 1b:48; 2:178).

with the purpose of letting him beg. To discourage beggars from thinking that the larger world of the Althing might be more generous than the local community, the law enjoined people to close their booths at meal time and urged them to remove possible beggars, by force if necessary, as long as these were not seriously injured (*Gg* 1b:13–14; 2:123; 3:499–501). Given human nature, these references to physical force undoubtedly targeted male beggars. Poor men risked the additional punishment of gelding, an operation for which the performer did not incur penalty, even if the patient was further injured or died (*Gg* 1b:203; 2:151). Fear of reproduction, aimed primarily at local women, however, may be seen from the prohibition against feeding male beggars from outside the district for people living in fishing stations, but including women in child bearing years also from within the commune (*Gg* 1b:176; 2:254).

## 2 Christianity

At this point we can conclude that Icelandic law favored men by offering them political privileges, but ensured to women a measure of equality in sharing property and social benefits. Anchored in property rights within the native tradition, the notion of equality was promoted by churchmen in the area of consent, procedures for establishing paternity, tithing, and additional social benefits.

Although advanced in these areas, the Christian ideal of gender symmetry was at times articulated with reluctance, as illustrated on the subject of baptism. Providing details for emergency baptism when priest or other clergy could not be reached, the law instructed a *karlmaðr* (male) to perform the act, but if he did not know “the words or the *atferli* (“proceedings”, in this case perhaps “gestures”), it was right for a woman to teach him” (*Gg* 1a:6; 2:5).<sup>18</sup> Only if other men were not present, was a father allowed to baptize his own child.<sup>19</sup> If no grown men were available, a boy at age seven or older assumed the responsibility, although a younger boy could take charge if he knew the lord’s prayer and the creed (*Gg* 1b:215; 2:6).

Only in the utmost emergency, when the child was on the brink of death and no men available, was a woman permitted to baptize (*Gg* 2:5; 3:6, 58, 150), but the privileging of males still made some texts add that if a baby boy was present, the woman was to place his hands on the child she was about to baptize (*Gg* 2:5; 3:297). The acknowledgement that women could baptize in

<sup>18</sup> The woman teaching the man the words is the most consistent feature in the many manuscripts of the Christian law section; see *Gg* 3.

<sup>19</sup> The problem was that the performance of the sacrament brought him into spiritual kinship with his child and necessitated separation from his wife (*Gg* 1a:6). A later paragraph removed this requirement (*Gg* 1b:215).

emergencies and the repeated permission for them to teach men the ritual, resulted in the requirement for both males and females to know the lord's prayer and the creed from the age of twelve. The law specified that women even incurred the same punishment as men if they were deficient (*Gg* 1a:7; 2:6).<sup>20</sup>

If churchmen were reluctant to admit women to the performative act of baptism, no doubt existed about their support of female consent in marriage, a doctrine they labored hard to introduce into the North. Anxious to extend to women the freedom of choice in matrimonial matters that Germanic society accorded to men, churchmen on the Continent had developed the doctrine of female consent by the middle of the twelfth century (Jochens 1986, 1993). Although not incorporated into *Grágás*, the notion was promulgated in Norway and Iceland already in the 1180s, as is clear from a letter written by Archbishop Eiríkr of Niðaróss (Trondheim) to the two Icelandic bishops. Following a doctrine fully formulated by Pope Alexander III (1155–81), he declared that complete matrimony was established as soon as a man in the presence of witnesses had betrothed a woman *með jákvæði hennar sjálfrar* (with her own yes-word; *DI*, 1:287). The doctrine was incorporated in Icelandic church law during the thirteenth century, but it conflicted with marriage regulations in the secular laws that were concerned mainly with property. Here it was stated specifically that if a woman married without her kin's advice, she forfeited her inheritance to the next in line.<sup>21</sup> Eventually, however, the doctrine of female consent was accepted throughout the North.

Since women owned property, it is not surprising that churchmen required that "women should pay tithe as well as men" (*Gg* 1b:206; 2:47). Listing women before men suggests that they were added later in an attempt to eliminate all ambiguity. The phrasing was undoubtedly taken from Bishop Gizurr's tithing law from about 1096, in which the first paragraph enjoined the ambiguous *menn . . . allir* (all people) to pay one tenth of their property, but later specified "women . . . as well as men".<sup>22</sup>

The church also provided a relatively symmetrical method of ascertaining paternity in unwanted pregnancies. We shall see that the traditional system advocated the use of torture against the pregnant woman to make her reveal her impregnator. Churchmen sponsored the *skírsla*, or ordeal. Although it never became a general method of proof, it was used in paternity cases, allowing a man to prove his innocence by *járnburðr*, the carrying of hot iron, and a woman to support her claim against her impregnator by *ketiltak*, the

<sup>20</sup> See also *Gg* 3:6, 59, 101, 151, 197, 235, 300.

<sup>21</sup> For the further acceptance of the doctrine, see Jochens 1993.

<sup>22</sup> See *DI* 1:70–162. See 77 and paragraph 7 in the various manuscripts: 78, 101, 110, 134, 143. In *Grágás* the regulation is omitted in the Christian law section in *K* (Finsen thinks by mistake; see *Gg* 2:47 note 3) and added in the last section on the payment of tithe (*Gg* 1a:205–18).

retrieval of stones from the bottom of a kettle of boiling water (*Gg* 1a:25, 49; 2:149, 178, 182, 192, 206; 3:419).<sup>23</sup> Replacing the old *kviðr* method, the *skírsla* was referred to more frequently in the later *S* than in *K*, and the procedure was occasionally identified as *nýmæli* (new law). This suggests at least an attenuation and perhaps a more equal gender distribution of identifying responsibility for unwanted pregnancies. Since, however, the man's ordeal was to prove his innocence and the woman's to demonstrate his guilt, the system could work at cross purposes if applied to the same case. That a few men escaped by a favorable outcome is suggested by an additional rule that bishops were allowed to administer an ordeal more than once in paternity cases "if they thought it necessary, and then the last one shall be valid" (*Gg* 1b:216; 2:58; 3:20, 146, 456).

As this addition suggests, the notion of gender symmetry was undoubtedly stronger among church leaders than within the native tradition. When – as we recall – churchmen became involved in the writing and modification of the laws, their clerical and legal training occasionally caused them to introduce the principle of symmetry in areas where it belonged logically but was implemented only rarely. In the section on *vígslóði*, for example, the version in the *Konungsbók* identified every imaginable kind of attack that men might attempt against each other, defining the procedures to be followed in the prosecution and designating the penalties that varied with the severity of the wounds (*Gg* 1a:144–92). The tenor of the entire chapter strongly suggests that the lawmakers had in mind men fighting other men. This impression is strengthened by the inclusion of castration and the infamous *klámhægg* across the buttocks, an assault inflicted only by men on other men and considered particularly humiliating because of its suggestion of passive homosexuality (*Gg* 1a:148).<sup>24</sup> The law included not only the idea that women could be victims of minor wounds, as we have noticed already, but also that free women and slaves could be killed outright, even if they were pregnant, in which case the defendant was charged with two cases of homicide (*Gg* 1a:170–1, 190).

These regulations from *K* were elaborated in *S* where the chapter on *Vígslóði* (homicide) is nearly three times as long as in *K* (*Gg* 2:291–407). Among the changes is the notion of the woman not only as victim, but as violator (*Gg* 2:350). Repeating the punishment of full outlawry for manslaughter from a previous passage (*Gg* 2:298–9), this new paragraph worked through all possible permutations pertaining to gender and age of killer and victim, thus including an unique provision that "a woman should be pros-

<sup>23</sup> See Finsen's glossary, *skírsla*, *Gg* 3:671–2.

<sup>24</sup> A rare occurrence of a *klámhægg* against a woman is found in *Hrólf's saga Gautrekssonar* during a war, but, characteristically, the woman in question was in male disguise and even used a male name (*FSN* 4.13:95).

ecuted in the same way as a man if she succeeds in killing a man or a woman". It is indeed likely that women occasionally were victims of manslaughter, although Icelandic society prided itself on protecting women against violence. That a woman might be the offender is less likely, however, if for no other reason that women were not armed and had no training in using weapons.<sup>25</sup> That the writer responsible for this passage thought it improbable is suggested by the qualifying "... if she succeeds ...", but he seems pleased with the completeness of his analysis when he added "that now all legal offenses have been dealt with".<sup>26</sup>

The suspicion that these legal writers occasionally were moved more by cerebral categories than by social situations is reinforced when we turn to a lengthy paragraph in the inheritance section, found in slightly different versions in the two manuscripts.<sup>27</sup> Enumerating legal heirs, the law listed fourteen categories of people immediately related to the deceased, ranging from the legitimate son to the illegitimate half-sister with the same mother. Extending one generation earlier and later than the deceased, these heirs included seven men and seven women.<sup>28</sup>

These rules applied to free people, but not all free men and women could inherit. Following the listing of legitimate heirs, the law enumerated fourteen categories of people who, although free, were not allowed to inherit (*Gg* 1a:222–5; 1b:239–40; 2:66–9, 77).<sup>29</sup> Specific impediments of these people modified the terms *maðr* (person; 3 cases), *barn* (child; 7 cases), and *börn* (children; 3 cases).<sup>30</sup> We remain well aware of the gender ambiguity in *maðr*. Often referring to a male, it could nonetheless denote a female, and,

<sup>25</sup> The narrative corpus does include a few women who attacked men with swords or knives, but they were particularly inept. Among the most famous examples, see Þórdís in *Gísla saga* (ÍF 6.37:115–17 and in *Eyrbyggja saga* (ÍF 4.13:24), Auðr in *Laxdæla saga* (ÍF 5.35:98), and Þorbjörg in *Sturlu saga* (*St* 1.31:109).

<sup>26</sup> The notion of gender symmetry, including the area of violence, is also evident in one of the three cases in which divorce could be granted automatically: when one of the partners inflicted such severe injuries (*áverk*) on the other that they were classified as major wounds, elsewhere identified as *heilund*, *holund*, and *mergund*, that is wounds that penetrated the brain, caused internal bleeding, or exposed the marrow in a bone (*Gg* 1b:39–40, 145; 2:168, 351–2). We may wonder how many women had the weapons, experience and sufficient physical strength to warrant the gender symmetry on this issue.

<sup>27</sup> See *Gg* 1a:218–27, 1b:239–40, and 2:63–72. On the kinship structure, see Hastrup 1985, 70–104.

<sup>28</sup> If none of these were alive, five more distant relatives took their place, but these included only people born in legitimate marriages.

<sup>29</sup> I have supplied the numbers from 1 to 14. In this group the privileging of the man is found in cases when the child died immediately after birth. If it lived long enough to have taken food it could inherit (and thus pass the inheritance on to father, brother, and mother in sequence; found after case no. 1). If the child was born after its own father's death, however, but lived long enough to take food, its heirs – brother and mother – could not inherit (case no. 4).

<sup>30</sup> In *S* case no. 14, the third reference to *maðr*, is removed from the other cases and placed later (77).

of course, both genders were implied in “child” and “children”. Thus, although not identified specifically as either men or women as in the list of heirs, the list of non-heirs nevertheless suggests gender symmetry.<sup>31</sup>

Of more interest is an analysis of couples responsible for producing these non-heirs. Here the law demonstrated a concern for gender symmetry that perhaps revealed more about legal rationality than about social practice.<sup>32</sup> Eight of the fourteen cases contained references to both parents.<sup>33</sup> The troublesome problem of reproduction between free and unfree necessitated three categories. Thus, barred from inheritance were offspring of a male slave and a free woman, even if the latter liberated the slave in order to marry him (nos. 5 and 7). In reverse, the child of a slave woman could not inherit if it had quickened in her womb before she had been freed (no. 6), in which case it must be assumed that the father was the free owner of the slave. These rules, not surprisingly, suggest greater freedom for men than for women in coping with the reproductive consequences of sexual relations with slaves.

Two situations were given in male and female versions. Case no. 12 sketched the situation of a divorced man who, although ordered to live *einlát* (alone) for a while, remarried without the bishop’s permission, and the following category (no. 13) reversed the genders. In both situations the male and female offender suffered the smaller outlawry of three years, and the children from the new marriages were not allowed to inherit.<sup>34</sup> Both these situations seem plausible.

Cases nos. 8 and 9 likewise present gendered mirror cases. A child conceived by a wife who had received a sentence of *skóggangr* (full outlawry) and her blameless husband could not inherit, and the same condition prevailed if a man, suffering under the penalty of *skóggangr*, conceived a child with his unpunished wife.<sup>35</sup> We shall return to the probability of these cases, but for the moment it suffices to state the obvious, that as soon as

<sup>31</sup> Only case no. 2, referring to a *maðr* so incompetent that he was not able to place a *trýjusqðull* (an ordinary trough-shaped saddle) on a horse correctly, seemed aimed at a male, especially since the following category (no. 3) excluded the child from inheritance if the insane person had married against the advice of his guardian. Women were always required to marry on their guardians’ advice, thus eliminating the need for this rule in their case.

<sup>32</sup> Of the fourteen cases, only two (nos. 2 and 14) did not refer to the previous generation responsible for the production of the non-inheriting offspring. Of the remaining twelve, the first referred only to the mother (in case she was not married with *mundr*, her offspring could not inherit). In nos. 3 and 4 *maðr* referred to the father. In no. 10, not only would biology suggest that the reference is to a man when it is stated that a *barn* of an eighty-year old *maðr* was prohibited from inheriting, but it is confirmed by the addition that the old man was not allowed to pay more than twelve *aurar* in *mundr* without his heirs’ permission.

<sup>33</sup> Referring to a *maðr* conceived on *verðgangr*, case no. 11 seems to imply that both parents had been begging.

<sup>34</sup> See Finsen’s glossary to *einlát*; *Gg* 3:600–1.

<sup>35</sup> On *skóggangr*, see Hastrup 1985, 136–45; Ingvarsson 1970, 96–155.

lawmakers had suggested that women might kill, they were forced to conclude that they were to suffer punishment the same as males.

We recall that the first part of this argument was not found in the existing version of *K* but only in *S*, but it is not necessary to conclude that the writer of *K* must have known the idea from elsewhere in order to include this case, since logic will suffice to explain its appearance. If *S* used logic when he envisioned that women might kill, systematic thinking permeates the entire paragraph in *K*, as the writer created fourteen categories of non-heirs to correspond to the fourteen steps of heirs. To reach this number was not easy, however, because the list of heirs was based on simple biological sex, but the list of non-heirs had to combine sex and gender, as illustrated most vividly in the two gendered mirror cases we have examined. Although simplicity and economy might have reduced three other pairs to one each (nos. 2 and 3; 5 and 7; 11 and 14), these cases were kept separate to enable the writer to arrive at the desired number of fourteen non-heirs in order to create a parallel to the fourteen heirs. Rather than reflecting Icelandic society, the list shows a legal mind at work, both in overall structure and in minor details.<sup>36</sup>

Let us return to the offspring produced or engendered by an outlawed wife or husband. Such a child was known as *bæsingr* (child from the cow stall) and *vargdropi* (wolf's cub) respectively. These terms ring old and authentic. It is entirely plausible that an outlawed man would visit his farm secretly and impregnate his wife. It is harder to imagine, however, that many married women would receive a sentence of *skóggangr*, or full outlawry, the law's stiffest penalty, and, then, become pregnant. Imposed for crimes in which men dominated, such as *legorð*, homicide, attacks and severe injuries, arson, and verbal assaults, *skóggangr* conceivably might be enjoined on women who had stolen or performed magic, crimes for which this severe sentence also was demanded. Assuming it happened, the sentence would be harder on a woman than a man, especially if she were or became pregnant. In addition to losing his property, the *skógarmaðr* was excluded from society and forced to take shelter in the *skógr* (forest). He was *óæll* (not to be sustained), *óferjandi* (not to be ferried), and *óráðandi qll bjargráð* (not to receive any kind of help; *Gg* 1a:12, 96; 2:13, 198, 359; 3:11), and, assuming he managed to get out of the country despite these restrictions, he was not allowed to return (*eiga eigi útkvæmt*; *Gg* 1a:122). He could be killed with impunity in

<sup>36</sup> It is of interest to compare the version of this passage in *K* with the corresponding passage in *S*. As mentioned, case no. 14 is not mentioned together with the others but is given a special paragraph several pages later. In other words, the parallelism between heirs and non-heirs is not as clear as in *K*. Furthermore, the cases involving the outlawed wife and husband respectively (nos. 8 and 9) are reversed and the more likely case of the outlawed husband listed before the outlawed wife, suggesting perhaps that the writer did not think the latter a likely occurrence.

Iceland and by Icelanders abroad (*Gg* 1a:83, 96, 121, 185; 2:397), and when he died he could not be buried in a churchyard (*Gg* 1a:12; 2:13; 3:11). That a woman would not be able to bring a pregnancy to term under such conditions, was recognized by lawmakers as they stipulated that an outlawed pregnant woman was not to be killed after the child had quickened in her womb (*Gg* 1a:170–1; 2:336). Furthermore, people were not prohibited from helping her and, although an outlawed person normally could be killed with impunity, a parturient woman was considered inviolate until she left her bed (*Gg* 1b:59, 245; 2:195).

The problem of gender equality in law and particularly in criminal cases is further complicated by the question whether women in the native tradition – perhaps with the exception of widows without fathers and sons – possessed a juridical personality. Not a single case of an outlawed woman can be found in the sagas, and when (a few) women committed crimes, their husbands, not they, were prosecuted.<sup>37</sup> In other words, in the practical world of the narratives women were not considered as individuals and were not deemed capable of assuming legal responsibility for their actions. In contrast, the emphasis on female consent and on equal punishment for crimes regardless of gender, also in cases where women's visibility was low, may be seen as part of churchmen's attempt to turn women into individuals responsible for their own deeds.

## Gender asymmetry

### 1 Adverse treatment

Despite churchmen's attempts to strengthen native notions of gender equality by introducing it into areas where it did not exist previously, it is not surprising that Icelandic society does not exhibit perfect gender symmetry. In the broad area covered by the term "personal freedom" in modern parlance the two genders were not treated equally according to *Grágás*. We have already noticed that on the crucial subject of *festning*, the betrothal preceding marriage – more important for the woman than the man – four close male relatives were placed in charge of the arrangement. Only if they were not alive, did the mother decide. More important, the bride herself was not asked and her presence was not even necessary. The *festning* became

<sup>37</sup> See, for example, Gunnarr's handling of his wife Hallgerðr's responsibility for theft and arson in *Njáls saga* (ÍF 12.48–51:122–33) and Þorkr's handling of the wound inflicted by his wife Þórdís on Eyjólfur (*Eyrbyggja saga*, ÍF 4.13:24 and *Gisli saga*, ÍF 6.37:116). On the other hand, the widow Katla, guilty of having performed magic, was stoned to death after her son had been hanged (*Eyrbyggja saga*, ÍF 4.20:54). In contrast, a few women without male relatives neither in their own nor in their children's generation functioned almost completely as men; see Auðr in *Laxdæla saga* and Sigrfljóð in *Fóstbræðra saga*.

legal through handshakes between the bride's guardian and her future husband in the presence of witnesses (*Gg* 1b:29–35; 2:155–63).

Furthermore, once married, the wife's life was severely circumscribed. Although divorce was both possible and sanctioned by the Icelandic Church, the woman was not allowed to leave her husband's domicile without his permission. The law designated men who accompanied a woman out of the district or facilitated her trip by boat as *kvennafylgjur*.<sup>38</sup> Such men, including the ship's captain, were punished with outlawry for three years (*Gg* 1b:50; 2:153, 179). If a wife nonetheless managed to escape, the husband could invite her to return if he wanted, but thereafter the law enjoined him to prohibit anyone from lodging her. This announcement was made either at the place where she had spent the night or at the Althing, and perpetrators were punished with sentences of outlawry for three years (*Gg* 1b:55; 2:186).

Although, as we have seen, married women owned property, their rights to perform financial transactions were also severely limited.<sup>39</sup> The husband administered the couple's combined assets. The wife was allowed to purchase one half *eyrir*, or three ells worth of woolen cloth, at most each year. If she spent more, the husband could cancel the purchase but keep the merchandise. If he sent her to the *þing* in order to settle a debt, her *handsal* (handshake) should be legally binding, as was also the case if he sent her to a ship to make purchases for their common need. Although granting authority in specific cases, this rule suggests, nevertheless, that the handshake, legally binding among men, was not normally performed by women. A wife, furthermore, was not allowed to alienate any of her husband's property, and, if she let another man use his horse, the husband could prosecute (*Gg* 1b:45–6; 2:173–4, 207).<sup>40</sup> Unmarried women were also under financial restrictions, as suggested by the rule that a woman could not sell land, a *goðorð*, or a ship without her guardian's permission (*Gg* 1b:45; 2:174, 419–20).<sup>41</sup>

The right to chose a domicile and the concomitant obligation to work became effective at the age of sixteen for men and at twenty for women (*Gg* 1a:129; 2:265). While an unmarried woman thus could decide these important issues for herself, a working wife was obliged to let her husband find a position for her. Only his failure gave her the right to act on her own, and she remained committed for the contractual year (*Gg* 1a:129; 2:264–5). If a working man could not find work for himself at the farm where his wife was

<sup>38</sup> Cl-V translates the term as “female attendants” (350). This is undoubtedly wrong. It is true that the mythical *fylgjur* were conceived in female form, but in this case the law referred to men willing to travel with a woman who wanted to leave her husband. This was dangerous business, and female attendants would not have been sufficient to provide the necessary protection. See Finsen 1850, 207.

<sup>39</sup> On women's property rights, see Maurer 1908.

<sup>40</sup> The last statement is found only in *Staðarhólsbók*.

<sup>41</sup> The last text added regulations in case she broke this rule.

employed, he could take her away and find positions for both elsewhere. She would not be thereby punished for leaving before the yearly contract expired (*Gg* 1a:131–2; 2:268). A large part of workers' salary consisted of food and lodging, and as a curiosity we notice that if a workman was forced to leave his employment because of criminal conduct and his wife chose to accompany him, the expense the employer would have had for her upkeep could be collected by the husband (*Gg* 1a:135).<sup>42</sup>

The burden of unwanted pregnancies weighed more heavily on women than on men. In a country as poor as Iceland, the identification of the father was crucial because it enabled the woman's relatives to sue him, force him to pay fines, accept paternity, and thus obligate him to assume the child's upbringing until sixteen (*Gg* 1a:48, 242; 1b:7; 2:178, 111). When an unmarried woman became pregnant, therefore, and when the *aðili* in the *legorð* case queried her as to her accomplice, she was obliged to answer. If she refused, he was to return with five neighbors and to torture (*pína*) her – without inflicting wounds or blue marks – until the name of her impregnator was revealed, thereby enabling the subsequent paternity suit (*Gg* 1b:58; 2:182).

## 2 Preferential treatment

To complete the spectrum of asymmetrical gender relations in Icelandic law, we need to look at two problems where women's status as females caused them to be treated preferentially. That the first is found within the area covered by church law is not surprising, especially since it dealt with a subject encountered only after the acceptance of Christianity. Enjoining extensive fasting for all adults between the ages of twelve and seventy, churchmen exempted pregnant women from the time the foetus had quickened. Nursing mothers were further excused from the first Lenten fast after delivery, but although they were allowed to nurse for two additional years, abstinence in the later Lenten periods was to be observed (*Gg* 1a:35; 2:44; 3:40).

We recall that the poor laws, although of pre-Christian origins, were elaborated under Christian influence. Falling within this area, a second regulation privileging women may have its origin in churchmen's concern for poor women. The debt for life itself owed by each person to his or her parents and especially to the woman, was acknowledged in Icelandic law by the stipulation that each *maðr* was responsible for maintaining his mother if

<sup>42</sup> Again demonstrating concern for symmetry, law makers made the rule operate in reverse in the unlikely case that the woman was forced to leave because she had committed crimes and her husband chose to follow her. Although the employer still could be asked to pay the *vetr vistar*, it is not specified to whom it should be given.

she needed it. In case he were able to do more, he was also responsible for his father, followed by other dependents in a sequence duplicating the inheritance succession (*Gg* 1b:3; 2:103; 3:416).<sup>43</sup> If any of these relations were forced to beg because of his negligence, he could be fined. If he did not have the means to maintain his mother, he was nonetheless obligated to go into debt in order to support her. This privileging of the mother is further underscored by the statement that if the father needed maintenance and the mother did not, their child was to incur debt for the father, but if the parents' fortunes changed and the mother needed help, the father must be abandoned and the mother taken on. Although the mother was merely the fifth in line to inherit from her offspring (following son, daughter, father, and brother), her reproductive efforts were eventually rewarded, as the law secured her maintenance by her children if she became destitute. Although the law makes it sound as if this rule applied only to men, women themselves also carried this responsibility for their mothers. This is evident from the statement that a *maðr* was responsible for his freed man unless this person had a son or a daughter able to care for him (*Gg* 1b:17; 2:126).

The privileging of the mother was unique to *Grágás*. According to *Jónsbók* the obligation of *framfærsla* (maintenance) was directed equally at a person's "father and mother" (*Jb* 100). The import of the earlier rule on Icelandic society is suggested by the observation that donations to churches of *ómagi kvenngildir* were far more numerous than *ómagi karlgildir* (the endowments to sustain a poor woman and a poor man respectively).<sup>44</sup> Although the terms do not necessarily imply a gendered use of the donations, the fact that it took less to donate a *kvenngildir* than a *karlgildir* (a ratio of 144 to 196) may help explain the popularity of the former. The inculcation of the old law to look after needy mothers may have made the obligation so habitual that it was no longer formally included in law and people continued to respond to the need of women in their bequests to churches.

## Conclusion

Our analysis of Icelandic law has exonerated Arnkell's sisters. As women they were legally excluded from prosecuting their brother's murder and thereby unable to prevent the culprits from escaping punishment. The author of *Eyrbyggja saga* tried to explain this disturbing and puzzling fact by postulating an ancient period of gender symmetry on the issue of prosecution for homicides. Although women were admitted as principals in a few cases dealing with personal issues pertaining to themselves or their daughters,

<sup>43</sup> After father followed children, siblings, distant heirs, people he had agreed to maintain in return for becoming their heir (through the process known as *arfsal*), and his freed men.

<sup>44</sup> See entry *ómagi* in the various DI volumes.

their only option was to let these cases be handled by male representatives since they were barred from active participation in juridical functions. While young boys were expected to outgrow the physical weakness and mental immaturity of youth at the age of twelve or sixteen, young girls – doubtless as capable riders and as mature as boys – never came to be considered assembly-fit. By this exclusion women were effectively barred from participating in the political and juridical functions of their society. The saga author's speculation on gender symmetry on homicides in the past may have been inspired by certain features favoring women in other areas within the native tradition and perhaps further prompted by the constant hammering by contemporary churchmen on the principle of gender symmetry. Traditional property regulations provided a modicum of economic equality for women, allowing them to inherit and receive fines. Since primogeniture did not develop in Iceland, women retained the element of economic equality. On this traditional concept churchmen grafted their own broader ideal of gender symmetry, as they worked for female consent in marriage, women's responsibility for tithing, and increased rules for social welfare.

### Works cited

- Arnórsson, E. (1951), "Niðgjöld-Manngjöld". *Tímarit lögfræðinga*, pp. 173–210.
- Cl-V = Cleasby, Richard and Gudbrand Vigfusson (1957), *An Icelandic-English Dictionary*. Second ed. Rpt. (1975), Oxford, Clarendon Press.
- Clover, Carol J. (1986), "Maiden Warriors and Other Sons". *Journal of English and Germanic Philology* 85, pp. 35–49.
- (1993), "Regardless of Sex: Notes on Sex and Gender in Old Norse Law and Literature". *Speculum* 68, pp. 363–87.
- Dennis, Andrew, Peter Foote, Richard Perkins (trans.) (1980), *Laws of Early Iceland: Grágás I*. Winnipeg, University of Manitoba.
- DI = Íslenzkt fornbréfasafn: Diplomatarium Islandicum (1857–1972). 16 vols. Copenhagen, Møller.
- Fell, Christine (1984), *Women in Anglo-Saxon England and the Impact of 1066*. Bloomington, Indiana University Press.
- Finsen, Vilhjálmur (1849), "Fremstillingen af den islandske Familieret efter Grágás". *Annaler for nordisk Oldkyndighed og Historie*, pp. 150–321.
- (1850), "Fremstillingen af den islandske Familieret efter Grágás". *Annaler for nordisk Oldkyndighed og Historie*, pp. 121–272.
- FSN = Guðni Jónsson (ed.) (1954), *Fornaldar sögur Norðurlanda*. 4 vols. Rpt (1981), Reykjavík, Íslendingasagnaútgáfan.
- Gg 1a, 1b = Finsen, Vilhjálmur (ed.) (1852), *Grágás: Islændernes Lovbog i Fristatens Tid*. Copenhagen, Gyldendal. Rpt. (1974), *Grágás: Konungsbók*. Odense, Odense University Press.
- Gg 2 = Finsen, Vilhjálmur (ed.) (1879), *Grágás efter det Arnamagnæanske Haandskrift Nr. 334 fol., Staðarhólsbók*. Copenhagen, Gyldendal. Rpt. (1974), *Grágás Staðarhólsbók*. Odense, Odense University Press.

- Gg 3 = Finsen, Vilhjálmur (ed.) (1883), *Grágás. Stykker . . .* Copenhagen, Gylden-  
dal. Rpt. (1974), *Grágás: Skálholtsbók*. Odense, Odense University Press.
- Grönbech, Vilhelm (1931), *The Culture of the Teutons*. 4 vols. Transl. W. Worster.  
London, Oxford University Press.
- Hastrup, Kirsten (1985), *Culture and History in Medieval Iceland*. Oxford, Clarendon  
Press.
- ÍF = Íslenzk fornrit. (1930–91). 34 vols. Reykjavík, Hið Íslenzka Fornritafélag.
- Ingvarsson, Lúðvík (1970), *Refsingar á Íslandi á þjóðveldistímanum*. Reykjavík,  
Menningarsjóður.
- Jarnsíða*, in R. Keyser, P.A. Munch (eds.) (1846–95), *Norges gamle Love*. 5 vols.  
Christiania [Oslo], Gröndahl. 1, pp. 259–300; 5, pp. 13–15; Gg 3, pp. 467–73.
- Jb* = Ólafur Halldórsson (ed.) (1904), *Jónsbók*. Rpt. (1970), Odense, Odense Uni-  
versity Press.
- Jochens, Jenny (1986), “Consent in Marriage: Old Norse Law, Life, and Literature”.  
*Scandinavian Studies* 58, pp. 142–76.
- (1993), “‘Með Jákvæði Hennar Sjálfrar’: Consent as Signifier in the Old Norse  
World”. Angeliki Laiou (ed.), *Consent and Coercion to Sex and Marriage in  
Ancient and Medieval Societies*. Washington, DC, pp. 271–89.
- Jóhannesson, Jón (1974), *A History of the Old Icelandic Commonwealth*. Trans.  
Haraldur Bessason. Winnipeg, University of Manitoba Press.
- Jón Jóhannesson, see Jóhannesson, Jón.
- Klinck, Anne L. (1982), “Anglo-Saxon Women and the Law”. *Journal of Medieval  
History* 8, pp. 107–21.
- KLMN = Kulturhistorisk Leksikon for Nordisk Middelalder (1957–78). 22. vols.  
Copenhagen, Rosenkilde & Bagger.
- Lerner, Gerda (1986), *The Creation of Patriarchy*. New York, Oxford University  
Press.
- Lúðvík Ingvarsson, see Ingvarsson, Lúðvík.
- Maurer, Konrad (1908), “Zum altnordischen Eherecht”, in *Über Altnordische Kir-  
chenverfassung und Eherecht*. Leipzig, Deichert. *Vorlesungen über Altnordische  
Rechtsgeschichte*. Vol. 2, pp. 601–38.
- Miller, William Ian (1990), *Bloodtaking and Peacemaking: Feud, Law, and Society in  
Saga Iceland*. Chicago, University of Chicago Press.
- NGL* = *Norges gamle Love* (1846–95). 5 vols. Eds. R. Keyser, P. A. Munch. Christi-  
ania [Oslo], Gröndahl.
- Ortner, Sherry B. and Harriet Whitehead (eds.) (1981), *Sexual Meanings: The  
Cultural Construction of Gender and Sexuality*. Cambridge, Cambridge University  
Press.
- Phillipotts, Bertha Surtees (1913), *Kindred and Clan in the Middle Ages and After*.  
Cambridge, Cambridge University Press. Rpt. (1974). New York, Octagon Books.
- Scott, Joan Wallach (1988), *Gender and the Politics of History*. New York, Columbia  
University Press.
- St* = Jón Jóhannesson et als. (eds.) (1946), *Sturlunga saga*. Reykjavík, H. F. Leiftur.
- Stein-Wilkeshuis, Martina (1982), “The Right to Welfare in Medieval Iceland”.  
*Journal of Medieval History* 8, pp. 343–52.