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‘svá kona sem karlmaðr.’ Women in Old Norse Society

Women in Old Norse society were far from having equal rights with men. According both to Norwegian and Icelandic laws, daughters would inherit half as much as sons from their parents; if husband and wife had co-ownership, he would own two thirds of their property, she one third; and married women could only use a limited sum of money without her husband’s agreement; a woman could not, with the exception of widows, choose the man she wanted to marry. Many further examples could be mentioned. On the other hand, there is no doubt that women were liable for their actions in the same way as men. In Norway, where the fully free population was divided by law into different social groups with different legal rights, a man’s wife and a man’s daughter would have the same legal status as husband and father respectively, meaning that they would be entitled to the same compensation as the male members of the family were a crime committed against them. It is, however, obvious that men played the main role in public life, a role from which women, according to Icelandic laws, may have even been formally excluded. Women had a stronger position at home, or *innanstokks* ‘inside the threshold/house’. An interesting question is whether women’s position at home and in the family formed a basis from which women could influence public life to a greater degree than normally assumed.

There are many provisions in Old Norse laws in which it is stated that the same rules apply to both genders. The quotation in the title of this article, *svá kona sem karlmaðr*, is taken from medieval Norwegian laws. This and similar phrases are used to make clear that a certain paragraph of the law concerns both women and men. As shown by the examples below, the formula is used both to clarify that men and women have the same obligations and duties according to the law, that the punishment for a certain crime will be the same regardless of gender, and in some cases the formula also states that men and women have the same rights.

In the present article I will give examples of the use of the formula from different fields of the law and discuss the possible background for the specific formulation that leaves no doubt as to whether a provision refers to both genders. The awareness of the need for clarification demonstrates most likely that women’s legal rights and duties were a matter of discussion and perhaps an awareness of the fact that women’s rights had changed and that there were differences concerning women’s rights and position in society within the Old Norse area. Christianization is one factor that caused changes in society and the introduction of new laws that most likely led to a need for clarifying whether or not a provision referred to both genders, but there are also many other factors that could cause changes in women’s position

in society. Provisions that emphasize equal rights and duties for both genders, which is seen as an indication of an underlying uncertainty of how women should be treated, will be taken as a point of departure for a discussion of women's position in society in Old Norse times. Three fields will be focused upon, women's role in connection with baptism of children, the possibility for women to act as witnesses, and the possibility for women to take a case to court. The formula *svá kona sem karlmaðr* is not frequently used in all these fields, but there are reasons to believe that great changes took place within all these fields, at least in parts of the Old Norse area, in the period leading up to the time from which we have the written sources. These three fields are also some of those where differences between Icelandic and Norwegian laws concerning women's rights are striking, and these differences, and how they can possibly be explained, will be discussed at the end of the article.

Formulas stating equal rights or duties for men and women

Equal rights and duties for men and woman are, in Norwegian laws, often stated by the use of a formula, but can of course also be stated in other ways. In Icelandic laws from the Free State-period a formula stating that men and women should be treated in the same way can hardly be found. These laws are in fact more concerned about what women are not allowed to do.

Norwegian laws

In Norwegian laws, a variant of the formula is used to state that men and women have the same obligations to bring a newborn child to church and to become godparents: *Nv skal barn huert bera til hafnengia, sá karlmaðr oc su kona er gera ma guðsifjar uidd faður barns oc moðor...* 'Every child should be presented for baptism by a man and a woman who may become a spiritual relative of the child's father and mother...' (EB I, 2).¹

If emergency baptism was needed, it was a duty both for men and women to baptise a child: *En þessa skirn skal iamvel kona skira sem karlmaðr. ef eigi ma karlmanne na* 'And this baptism shall a woman as well as a man baptise if a man cannot be found' (EG 21); see also Archbishop's Paal's third Statute (NGL III, p. 289).

The duty to bring a child to church and become a godparent and the duty to baptise if necessary, is not only a duty for women, even though it is the aspect of duty that is emphasized in the law, but it can also be regarded as a right, since women, to a certain degree, are placed on equal terms with men in these paragraphs.

In Old Norse society, women, as well as men, would be held responsible for their own actions, and in some cases the formula *svá kona sem karlmaðr* is used to emphasize this, or that the punishment for the crime will be the same for a woman as for a man: *Allir men er ganga húsa á meðal. oc ero eigi þyrmsla men. oc ero heilir oc vilia eigi vinna. þá er sá secr mörcum .iii. svá carl sem cona* 'all people who go from house to house [begging] and are not descended from slaves,² and are healthy and will not work, such a person owes to pay a fine of three marks, man and woman alike' (EF X, 39). It must, however, be noted that even though the formula is used to emphasize that men and women should be treated in the same way, women are, especially when very serious crimes are concerned, treated more mildly than men. The punishment may

1 The references to the laws are to chapters unless page number is indicated.

2 The word *þyrmslamaðr* was used about freed slaves and their descendants for eight generations.

be the same, for example banishment, but his property will be confiscated while she will keep hers (see for example EF III, 4, 16), or she is permitted to be accompanied by her relatives to get out of the country, while he has to take care of himself (B 97).

The formula *svá kona sem karlmaðr* is used a few times to state that women have the same right as men to have their property at their disposal: ...*huerium manni skal vera frealst at gefa konum sem kærllum hinn tiunda blut fear sins allz þess er hann hefr at erfðum tekit i landi ok lausum eyri* '... for every person it is free to give, for women and men alike, one tenth of one's property of all that one have received as inheritance in land and movables'. (NGL I, p. 447-448). *Siðlfr scal hværr ráða fé síno meðan hann má sitia í öndvegi síno. svá cona sem carlmaðr* 'Every person shall have disposal of his own property as long as he may sit in his own seat of honour, woman and man alike' (EF IX, 20). Women's rights to have disposal of their own property is, according to these paragraphs, so unlimited that they might come into conflict with other paragraphs of the law, since there were normally restrictions on women's rights to use, give away, or sell their own property, especially land.

In Norwegian laws it is obvious that women as well as men can act as witnesses. As I will come back to, the principle is that women act as witnesses for a woman, and men for a man. But in some cases it is important to find enough witnesses, and in those cases a formula which emphasizes that both genders can act as witnesses are sometimes used. If a person is accused of sorcery, he can free himself if 12 witnesses, or more, are willing to swear with him, and they may be *karla eða konur* (EE I, 42).

In Norwegian documents from the Middle Ages, variants of a formula emphasizing equal rights and duties for both genders are also used in statutes for guilds. Good examples are found in the Statutes for the Óláfs guild in Gulathing (NGL V, p. 7-11).

The fact that women in certain fields are given equal status with men may be clearly expressed also without the use of the discussed formula or similar. Good examples of this in Norwegian laws are most of the paragraphs that contain regulations concerning witnesses. These provisions do not normally make use of the formula *svá kona sem karlmaðr*, but women and men are no doubt placed on equal terms.

Icelandic laws

In Icelandic laws from the Free State period there are, as well as in Norwegian laws, provisions in which it is stated that they are applicable for both genders. It is, for example, stated that *jafnt skulu konur gera tiund sem karllar* 'women have to pay tithe as well as men' (Grá III, p. 357). It is not easy to draw a sharp line between phrases that can be counted as formulas and phrases that cannot, and the phrase above, *jafnt skulu konur ... sem karlar* is a marginal case. However, in Icelandic laws the phrases that give expression to equal duties or rights for women and men have less of the form of a formula, with the same phrase used over and over again, than in Norwegian laws, and there are fewer such phrases to be found. Only after the union with Norway (1262-64) were formulas identical with those quoted above from Norwegian laws put to use in Icelandic legal language. What we find in Icelandic laws, and not in Norwegian law, are formulations which clearly exclude women from important

positions in legal procedure: they cannot be member of *kviðr*³ (*Grá* Ia, p 161; *Grá* II, p. 322), and they cannot take a case to court themselves but rather have to leave it to a man (*Grá* III, p. 450, 454, 449; *Grá* II, p. 364).

What conclusions can we draw from the material?

When we find formulas in the laws that emphasize that men and women should be treated alike it seems obvious to draw the conclusion that this society was concerned about women's rights and duties. To a certain degree this is probably right, however, it would be wrong to draw the conclusion that women are excluded when they are not mentioned. In some cases, it was likely taken for granted that a certain law applies to both genders and thus was not found necessary to mention. In Old Norse legal language, the word *maðr* is used for 'person/human being', and stands for both genders. Only in cases where the word *karlmaðr* is used, we can be sure that the paragraph refers to men alone, and to women alone if the word *maðr* is replaced by the word *kona*. Also if women are explicitly excluded from the right or obligation of doing something, we can be sure that the position in question can be filled only by men. Such cases are found in Icelandic laws.

The most obvious reason for mentioning that a provision of the law was applicable for both genders was probably that some people otherwise would feel uncertain and raise objections or questions. Especially in cases where new paragraphs were added to the law, for instance paragraphs concerning tithe, taxes to Rome, and baptism, the law would have needed to be specific. Provisions excluding women could be necessary for the same reason.

The fact that there are paragraphs concerning women's legal rights and duties in Old Norse laws that are not easy to harmonize, paragraphs that seem to favour women more than we might expect, paragraphs that exclude women, and paragraphs that states equal punishment for men and women but still treat women in a more human way than men in all likelihood reflect the suggestion that the position of women and their rights in society was a matter of discussion. The origin of the formula, *svá kona sem karlmaðr*, probably indicate that women's legal position in one or more areas at a certain point of time was discussed and the solution, namely equal status with men, crystallized into a formula. The language of Norwegian laws is slightly more formulaic than the language of Icelandic laws, and that may be the reason why formulas emphasizing equal rights and duties for man and women developed in Norwegian laws. The rise of a formula in Norwegian legal language may partly explain why this subject is so much more visible in Norwegian laws than in their Icelandic counterparts, but there are no doubt interesting differences between the laws of the two countries that are not connected to the superficial form of a certain paragraph but are rooted in different views on women's legal status.

Differences between Norwegian and Icelandic laws

Baptism was introduced by the international Church and we should therefore not expect great differences in the performance of the ceremony from one region to another. There seems, however, to be some differences between Norwegian and Icelandic laws in their description of

³ *Kviðr* is a special Icelandic institution consisting of a certain number of neighbouring farmers, five or in more serious cases nine, who in many cases had the same function as witnesses in Norwegian laws.

women's role in connection to baptism, and there are very interesting differences in how the laws in the two lands formulate the rules concerning emergency baptism, which under certain circumstances could be carried out by women. These differences may reveal different attitudes towards women.

Since witnesses in Icelandic laws in many cases were replaced by the special Icelandic institution of *kviðr* from which women were excluded, it is obvious that they played a much less important part in the legal process in Iceland than in Norway. The interesting question is why the Icelanders excluded women from the *kviðr*. This exclusion should be seen in connection with women's exclusion in Iceland from other important roles in the legal procedure, as for example their exclusion from taking a case to court. In this last field, the differences between Norway and Iceland are striking, perhaps more in theory than in practice. However, Norwegian women's right to conduct their own cases indicates that they had the possibility to play a more important part in public life than their sisters in Iceland.

The role of women in baptism

From provisions in Norwegian laws already quoted as examples of the use of the formula *svá kona sem karlmaðr* it is clear that Norwegian laws demand that both (at least) one man and one woman should bring a newborn child to church and become godparents. In Archbishop Paals third Statute (*NGL* III, p. 288), it is stated that this is the law of the international Christian Church. Icelandic laws do not mention female godparents at all. We should, however, take care and not draw the conclusion that female godparents were not needed in Iceland. If we read Icelandic laws carefully between the lines, we can find the female godparents even though they are not especially mentioned. Icelandic laws contain provisions stating how many persons bringing a child to church a farmer is obliged to house over night if needed. This number of persons is higher than the number of men who according to the law had to bring a child to church for baptism (see for example *Grá* II, p. 1-3). Here the female godparents in all likelihood are hidden. However, the fact that female godparents are not mentioned in Icelandic laws reveals a lack of interest in women and their rights and duties.

There is also another interesting difference between Norwegian and Icelandic laws concerning women's role in the baptism ceremony: In Icelandic laws there is a tendency to clearly express what women *cannot* do. While Norwegian laws state that women may baptise in cases of emergency, Icelandic laws tend to emphasize that a man, and not a woman, should carry out emergency baptism: *Ef barn er sva siúkt at við bana se hátt oc nair eigi prestz fundi. oc a þa karlmaðr olærðr at skira barn.* 'If the child is so sick that it may die and they cannot find a priest, then a layman has to baptise' (*Grá* II, p. 4). Icelandic laws emphasize that a man should baptise even though he does not know how to do it.⁴ In such cases it is right that a woman tells him how to carry out baptism in a lawful way (*Grá* II, p. 5). Only in extreme emergency women are allowed to baptise: *Þá scal kona scira barn ef hin mesta nauðsyn er á. oc er hvartki hia karl maðr ne sueinbarn þat er hon megi hendr þes a leggja at skira barn en barn se o dauðt at eíns* 'Only in extreme emergency shall a woman conduct a baptism, and only if no man and no boy child is present whose hand she could put on [the child] to baptise it, and the child is

4 All men and women and children over a certain age were obliged to know how to baptise according to both Norwegian and Icelandic laws.

almost dead' (*Grá* II, p. 5). The wording may differ from one manuscript of *Grágás* to another, but the scepticism against letting women baptise is much more clearly expressed in Icelandic laws than in the Norwegian.

The wording in some Norwegian laws shows in fact that both the man and the woman cooperated in carrying out the religious ceremony if both were present at an emergency baptism. The man made the cross on the child, but they baptised together: *þa skullu þau klæde af væfia. oc mæle karlmadr firir. en kona æftir. oc næmfna barn a nafn...* 'then they shall undress the child and the man shall speak first and the woman repeat and mention the child by name...' (EB III, 1). The use of the pronoun form *þau*, which refer to a man and a woman, or a group of people consisting of both genders, tells us that the women took part in the ceremony even if the wording is less clear than in the quotation above (see for example EE I, 2 and EE II, 2).

In all likelihood women acted as godparents and performed emergency baptism in both countries, and the different wording of the laws may perhaps give the impression that the differences were greater than they really were. However, the more negative tone against women in Icelandic laws seems to demonstrate a more negative attitude.

Women acting as witnesses

There are also interesting differences between Norwegian and Icelandic laws concerning the possibility of women to act as witnesses. In fact Icelandic laws do not have much to say about female witnesses, and it has been argued that Icelandic women in the Middle Ages could not act as witnesses at all. In his edition of the Icelandic laws from the Free State period, Vilhjálmur Finsen states with references to the law text that a woman could not be a *goði*, she could not be a judge or member of *kviðr* (*Grá* III, p. 360). He is more uncertain whether she could be a witness or not, but he doubts it. This doubt has later been repeated by many scholars (see Mundal 1994). It is not very likely that Icelandic women were barred from acting as witnesses. The reason why they are not mentioned is probably a combination of this being self-evident and a lack of interest in cases regarding women – the same reason why female godparents are not mentioned. However, the fact that women were excluded from the *kviðr*, the function of which overlapped with the function of witnesses, indicates that something was going on in Icelandic society with the aim of reducing women's influence in public life. The rise of the institution of the *kviðr* would in any case reduce the importance of witnesses. If this had at an earlier point of time been a field in which women could play a part in the legal system, their possibility to do so would be reduced after the establishment of the *kviðr*.

In Norway witnesses played a great part in the legal system, and women were in no way excluded from being a witness. There were different types of witnesses: People who were present where agreements of any kind were made and later were obliged to be witnesses about what the two parties had agreed upon; people who had knowledge about how certain things had been in the past – for example who had owned a farm or where border marks had been placed – and could act as witness to this; people who by accident became witnesses to a crime and could testify what had happened. There is no doubt that women could act as witnesses in all these cases according to Norwegian laws (see Mundal 1994). There is, however, a fourth type of witness in Norwegian laws that is especially interesting in this connection because there was considerable overlap between the function of these witnesses and the function of

the members of a *kviðr*. These witnesses were people who were asked to swear together with a man or a woman that they believed that he or she was not guilty of a crime. The principle in Norwegian laws was that if a woman was accused of a crime, the witnesses who had to swear together with her were women, and if a man was accused of a crime his witnesses were men. This principle is very clearly expressed in an amendment to the law given by King Hákon V Magnússon in 1313 (*NGL* III, p. 100, 103).

Women were normally not obliged to travel to the thing to give their testimony there. Testimonies from witnesses were normally heard at home as part of the preparatory proceedings, and if a woman's testimony was needed at the thing, two men could hear her testimony at home and bring it to the thing (see fragment of EG in *NGL* IV, p. 7), but she could obviously choose to go to the thing herself if she wanted. In any case, whether she chose to go to the thing or not, the fact that Norwegian women could act as witnesses on equal terms with men indicates that they played a more important part in public life than their sisters in Iceland.

Women's possibility to take a case to court

Icelandic women could not take a case to court, they could, however be what Icelandic laws call *sakaraðili*, which means that they had the right and the duty to get the legal process started. If a man was *sakaraðili* he would also have the right to take the case to court, but an Icelandic woman had to leave the conduct of the case to a man. She could not be *sakaráveri*, the person who took the case to court. Her duty as a *sakaraðili* would be to find a man to represent her. Women would be *sakaraðili* in cases where they themselves had been offended. If a woman was kissed against her own will or raped (*Grá* Ib, p. 47), she would be *sakaraðili*, and so would a woman older than twenty years if someone had composed a *mansöngur* (love poem) to her (*Grá* Ib, p. 47). If the woman did not want to have the case taken to court the right to start the legal process would pass on to her guardian. A woman would also be *sakaraðili* if she had a case against her own husband, for example, if he would not pay out her goods after a divorce (*Grá* II, p. 200). A woman would always have the right to make a settlement in her own cases, but her settlement could be turned down by her guardian.

In Norway women would be *sakaraðili* in similar cases to those mentioned above from Icelandic sources. In Norwegian laws the woman is not called *sakaraðili*, it is said that she *á sök* 'owns the case', a phrase that is also found in Icelandic laws. There is, however, an interesting difference between Icelandic and Norwegian laws: Norwegian laws mention women as the person who *á sök* in more cases, and in more severe cases, than Icelandic laws. According to the Older Gulathing's law (EG, 151), the widow was the person who was responsible for calling together an assembly (*þing*) on the spot where her husband had just been killed, and she was to decide whether a judgement could be passed there and then or whether the case should be transferred to an ordinary court. The role the widow is playing in a murder case according to this paragraph is extremely interesting. The idea seems to be that the killing of a husband had the greatest consequences for the widow, and therefore she, and not the closest male relative of the deceased, was regarded to be the *sakaraðili*. The closest male relative, the heir, would be responsible for calling together an assembly on the spot of the killing only if there were no widow.

According to Icelandic sources, women had earlier had the right to be *sakaraðili* in a murder case. In *Eyrbyggja saga*, chapter 38, it is told in connection with the killing of Arnkell goði that

there were only women to be *sakarðili*, and the saga continues: *Ok var fyrir því eigi svá mikill at gorr um vígit, sem ván myndi þykkja um svá gofgan mann.* 'And therefore the law suit was not followed with such vigour as one should have expected after such a chieftain.' Because of this it was decided that women and boys younger than 16 years of age should never be *sakarðili* in a murder case, the saga says. Whether this story is true or not is difficult to say, but at least this explanation is consistent with later Icelandic laws. Especially in Iceland where no executive power existed, anyone who took a case to court would be dependent on support from family and mighty chieftains in society. It might have been difficult for women to find a man to take a murder case to court since they most likely would not be able to repay the strong support they needed. In chapters 26-27 of the same saga it is told about a killing of a man a few years previous to the killing of Arnkell. Here it is described how the widow, who acts as *sakarðili*, had to travel from farm to farm, and between her own relatives and the relatives of her dead husband, to try to find someone to take the murder case to court, and they were all reluctant to help her.

While it is stated in Icelandic laws that women could not take a case to court, there is no such statement to be found in Norwegian laws. On the contrary, there are paragraphs that indicate that they could. In the Older Gulathing's law (EG, 47) it is said that a woman should be sued in the same way as a man, but a single woman had the right to transfer both *sókn* and *vörn* to a man. *Sókn* is the Old Norse word which is used about the conduct of a case. *Vörn* is the word used about the defence. It is obvious that if a woman could leave the conduct of the case and the defence to a man, then she had from the outset both the right to conduct the case and to defend herself. It has, however, been a matter of discussion whether *sókn* in cases like this in Norwegian laws really means the 'conduct of a case' or 'the right to have a case taken to court' (i.e. to be a *sakarðili*). When the legal historian Knut Robberstad in 1937 translated the Older Gulathing's law (*Gulatingsslovi*) he translated in a way which shows that he took *sókn* and *vörn* to mean 'the right to have a case taken to court' and 'the right to defence'. However, later he changes his mind and says: 'Ei kvinne som står åleine, kan føre sine saksmål sjølv, men ho har rett til å taka ein fullmektig til sakførsla.' (A woman who stands alone can conduct her own cases, but she has the right to authorize an agent to the conduct of the case) (Robberstad 1969). A similar provision is also found in the Older Bjarkeyrett (B, 99). Here too it is underlined that it is a woman who stands alone who has the right to transfer the conduct of her case to a man she herself chooses. The context within which to understand these provisions is probably that most women would have a husband or a close male relative to conduct their cases, but the law had to say something about what a woman who stood alone should do if she did not want to conduct her own case herself.

In the Older Bjarkeyrett (B, 96), there is another provision which shows that women are supposed to take an active part in the lawsuit. It is stated that a woman who is raped should sue the rapist together with her relatives. Further examples showing that women have the right to take a case to court can be found in the Older Borgarthing's law (EB II, 9). Here it is described how a woman has to act to make her former husband pay out her goods after a divorce. It is clear from these provisions that the woman has both the right to call together an assembly (in this case *heraðsþing*) and to sue her former husband herself.

There is, however, no doubt that the husband, or the closest heir, was supposed to take care of a woman's lawsuit, and it is possible that Norwegian women would transfer the conduct

of their cases to a man in so many cases that the difference between the conditions in Iceland and in Norway in reality was not big, but in principle, women in Norway had a much more active role to play in legal procedure.

Laws and practice

In some areas both Norwegian and Icelandic laws permitted deviations from the normal rules. Such areas were for example division of inheritance between daughters and sons and distribution of co-ownership between husband and wife. In the early Old Norse period, daughters did not inherit if they had brothers, instead they got dowry when they married. Later when daughters got the right to inheritance in the 12th century, the dowry was regarded as advancement of inheritance and should not exceed a daughter's part of the inheritance that was half as large as a son's inheritance.⁵ Some paragraphs in Icelandic laws seem, however, to indicate that Icelandic women would keep their dowry even though it was larger than their normal share of the inheritance as long as they did not get more than the sons (*Grá* II, p. 85). In Iceland, without an executive power, it was very important to build strong alliances, and it is possible that fathers sometimes would use large dowries to attract powerful sons in law, thereby the daughters would profit financially. The husband had the right of disposal of both his own and his wife's property, but many newly married women would probably own nearly as much – or even more – than their husbands. Later on in their marriage, the husband would normally strengthen his financial position because his income would be higher. During the 12th century it became common that husband and wife had co-ownership of property, and of the property they had acquired during their marriage, he would normally be the owner of $\frac{2}{3}$ and she of $\frac{1}{3}$. However, deviations from the normal rules of the law were permitted, and some wives were better off.

In *Laxdæla saga*, chapter 34, it is mentioned that in the contract of marriage between Guðrún Ósvifrsdóttir and Þorvaldr Halldórsson it was decided that she should have the right of disposal of all their property, and she should be the owner of half their possessions regardless of how long their marriage lasted. The author of the saga, which was written around the middle of the 13th century, must have regarded it possible that such arrangements sometimes were made, but it is impossible to know how often such things happened or whether such deviations from the norm were more common in one country than in the other.

When comparing women's position in Iceland and Norway there is one interesting difference which should be mentioned that could to some degree compensate for the very limited role Icelandic women seem to have had in the legal system as described in the law. This difference is the greater possibility in Iceland to make decisions *fyrir lög fram* 'outside the law', which means that they did not have to follow the law if all involved parties agreed. The Icelandic possibility to make private arrangements that did not follow the letter of the law would in some cases improve the rights of individual women.

In spite of the fact that Icelandic women could not take cases to court, it seems that they had the possibility to play important roles in the legal system. Many conflicts were never brought

⁵ The daughters were in fact better off than it seems at first glance. A girl was entitled to half as large an inheritance as her brother; but when she married her husband would have to transfer property to her of the same value as her dowry, while her brother, when he married, had to transfer to his wife property of the same value as her dowry.

to court but solved through negotiation between the two parties. A normal procedure in such cases seems to have been that the two parties found one or more arbitrary judge(s) of whom they both approved and promised to accept their judgement. In Icelandic sources there are examples of women acting as arbitrary judges. The most remarkable is the story about Steinvör Sighvatsdóttir in *Sturlunga saga* chapter 315 (*Þórðar saga kakala*). At the battle at Orlygstaðir in 1238 Sighvatr Sturluson had been killed together with four of his sons, Sturla, Markús, Kolbeinn and Þórðr krokr. Sighvatr's son Tumi escaped from the battle, and his son Þórðr kakali was in Norway at the time. When Þórðr kakali returned from Norway he turned to the husband of his sister Steinvör for help. Steinvör goaded her husband to support her brother and threatened to take up weapons herself and collect men to follow him if her husband would not do so. Later, when the bishop in Skálholt addressed Þórðr and his brother Tumi to see whether it was possible to come to an agreement, Steinvör obviously continued to support her brothers, and the saga reports: *Sömdust þá settir með því móti að biskup og Steinvör skyldu um gera. En það er þau yrðu eigi á sátt það skyldi gera Steinvör ein* 'A settlement was then reached in that way that the bishop and Steinvör should decide by arbitration judgement, and what they could not agree upon Steinvör should decide alone' (*Sturlunga saga* II, p.475-76). As a member of the Sturlunga family Steinvör no doubt had a high position in society. It is, however, remarkable that the woman's words carried more weight than the words of the bishop. This is an example that makes it problematic to draw the conclusion that women were more or less excluded from the legal system in Iceland. *Sturlunga saga* is in fact a good historical source, written by a close relative of Steinvör and her brothers, and this story about a woman who acted as an arbitrary judge demonstrates clearly that women's position in the legal system in real life may have been better than that suggested by the laws. This striking difference between the letter of the law and other sources calls for an explanation based on special conditions in the Icelandic society.

How to explain the exclusion of women from legal positions in Icelandic laws

As already mentioned it is tempting to draw the conclusion from *Eyrbyggja saga* that it was harder for women than for men to get enough support for legal action in Iceland, where people had to seek and defend their rights with sword in hand. This could partly explain why women were excluded from some roles in the legal procedure. There are, however, other factors to consider.

In new settlements there are normally a great majority of men, and that seems also to have been the case in the Middle Ages. This means that in the first generations after immigration started, women were in all likelihood very much in the minority, and the shortage of women in the Icelandic society in this period must have had some influence on women's life and their status in society. The Old Norse philologist Carol Clover has suggested that the shortage of women in the new Icelandic settlement resulted in a better position for them in society (Clover 1988). She is no doubt right that in a society where there were many more men than women it would be easy for low status women to marry above their station, and a great number of individual women would be able to improve their status considerably through marriage. However, the fact that many individual women were able to improve their status because of the shortage of women does not mean that women as a group improved their status

as compared to the status of men. Even though the position of Old Norse women was good compared to women's position in many other cultures, women were inferior to men before the settlement of Iceland started, and being the great minority in society is normally not a good position for any group for gaining more influence. In my opinion, the period of settlement was rather a period in which Icelandic women had to withdraw to their central area, the life *innanstokks*.

In addition to being a minority, research on human genes has revealed that more than half (up to 70%) of the foremothers of the Icelanders came from the western islands, many from Ireland (see Agnar Helgason 2001). A large number of them were in all likelihood slaves. The Irish slave foremothers are under-communicated in Icelandic sources – unless they turned out to be Irish princesses, such as Melkorka in *Laxdæla saga*. Even though Irish slave women, and other women from the west, came to Iceland over several generations, it seems clear that in the first generations of the settlement in Iceland, there were at any time a high percentage of low status women belonging to a foreign culture, many of which must have had a poor knowledge of the Old Norse language – at least in the beginning – and with no knowledge of Icelandic laws. The existence of Irish slave women would of course not have had consequences for the Old Norse legal system, since slaves in most respects were outside the law. There is, however, reason to believe that many slave women who lived together with Icelandic men were given freedom, and would in fact have had the position of a *húsfriú*. Icelandic laws contain a decision with no parallels in other Old Norse laws that indicates that marriage between slave women and free men were not unusual: *Rétt er at maðr kaupre til eigin kono ser ambatt xii avrom firir loffram* 'It is legitimate that a man buy for 12 *aurar* a slave woman to become his wife outside the jurisdiction of the law' (*Grá II*, p. 190). What we are talking about here is a legal marriage that would make the children entitled to inherit, and the need for such an exception from the normal in Icelandic laws, shows that the shortage of women was so great that many men who wanted to marry were unable to find a wife from their own social group.

If the situation in Iceland in the settlement period was that many married women did not have the background that made them suited to play a role in the legal system, it is understandable that scepticism about giving women in general any role to play in legal procedures would develop. Both the background in a foreign culture and the low social status would be considered a problem. The foreign background would mean a lack of knowledge about taking a case to court, and the possibility that a neighbouring woman (widow) who ran a farm was born a slave woman, could possibly be the reason why women were not wanted in the *kviðr*. In Norwegian laws it is sometimes stated as a principle that people who testify against someone, conduct a case against someone, or accuse someone of a crime, should not be of a considerably higher or lower social status than the person they opposed. Even though the fully free society in Iceland, as opposed to Norway, was not divided into social groups by the law, honour and the social status of a person was not less important.

However, if the foreign culture and low status background of many women in the settlement period is one of the main reasons behind the changes that took place in Iceland in women's disfavour, it is reasonable that women who had the right background, such as Steinvor, at the same time could play very important roles if cases were solved *fyrir lof fram* or in areas less regulated by law.

Conclusions

The comparison between Norwegian and Icelandic laws has revealed great differences between the two lands in women's possibilities to take part in legal procedure and play roles in public life. The exclusion of women in Iceland from roles that were open for them in Norway was not necessarily motivated by a general scepticism against women's competence and skill and a more negative view of women. It can be argued that the limited participation of Icelandic women in public life had a more practical background and was motivated by special Icelandic conditions. It is, however, possible that the exclusion of women from important roles in the legal procedure, which from the beginning was a practical solution, over time would lead to the development of more negative attitudes towards women. It is also difficult to explain all the differences between Norwegian and Icelandic laws concerning women's rights and duties as practical solutions. The differences concerning the role of women in baptism is not easy to explain. It is of course possible that the Church – or the men of the Church – developed more negative attitudes towards women in one region than in another, and that Iceland, for one reason or another, became such a region. It could also be that the negative attitude towards women in the provisions of Icelandic law about baptism, reflect the development, which had taken place in the settlement period, of a more negative attitude towards women's participation in public life caused by the high number of women from a foreign culture and probably of low social status.

The differences between Norwegian and Icelandic laws concerning women's rights and duties in society may be difficult to explain, but they are there, and it is important to be aware of them to get a fuller picture of women in Old Norse culture.

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