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Table

Legal texts are aimed at maintaining order and defining what is legal in a given society. In the Middle Ages they often take the form of descriptions of situations and cases representing the conditions for the application of various rules. This combination of the normative and descriptive aspects of legal texts results in their importance as sources not only for legal, but also, more generally, for social and cultural history.
The importance of legal texts as historical sources is even greater when they represent the first – and for a while the only – texts to be written in the vernacular, as is the case for medieval Scandinavian legal texts. For this reason, an investigation of the earliest legal texts can highlight some aspects of life and society in Scandinavia at that time.

1. The Corpus and its Tradition

1.1. The *Äldre Västgötalag*

The *Äldre Västgötalag* is the oldest preserved Swedish legal text. This provincial law for Västgötaland, Dalsland and North-Western Småland was written down in the first half of the thirteenth century, probably by Eskil Magnusson (1175-1227), *laghmaþer* in Västgötaland between 1217 and 1227 (JÖRGENSEN 2002: 991).
The *Äldre Västgötalag* has come down to us in two manuscripts; only fragments of the older of these, **Holm B 193** of the Royal Library in Stockholm, are preserved. The most important record of the text is, therefore, represented by the younger of the two manuscripts, **Cod. Holm B 59** (the Royal Library, Stockholm). This manuscript, which was certainly produced after 1280, is a miscellaneous codex for private use which also contains, among other texts, the scribe Lykedinus' annotations on the more recent version of the provincial law of Västgötaland, the so-called *Yngre Västgötalag*.
Cod. Holm B 59 is the manuscript used by Collin and Schlyter in their 1827 edition of the text, which is the basis for this study.

1.2 The *Östgötalag*

The *Östgötalag* is the collection of the regulations of the Swedish province of Östgötaland (which also includes Småland and the island of Åland). It was composed in the second half of the thirteenth century – probably around 1290 – by the *laghmaþer* Bengt

Magnusson, who took the *Äldre Västgötalag* as a model (JÖRGENSEN 2002: 991 and CARLQUIST 2002: 810).
The text is preserved in full in two manuscripts of the Royal Library in Stockholm: **Cod. Holm B 50** (dating from around 1350) and **Cod. Holm B 197** (from the end of the sixteenth century). In addition to these two complete copies of the text, fragments of the *Östgötalag* are preserved in a series of vellum and paper manuscripts: **Cod. AM 1056 4o** of the Arnamagnean Institute in Copenhagen, **Cod. Holm B 24** of the Royal Library in Stockholm, **Cod. Ups. B 22** of Uppsala University Library (CARLQUIST 2002: 810), and **nr 145** of the Riksarkiv in Stockholm (OLSON 1911: XVI). Fragments of the *Östgötalag* are also to be found on ten parchment leaves, dating back to the first half of the fourteenth century, which were discovered in the Kammarakiv, where they were used as the cover of the *Tionde Register aff Albo Kinnewals och Norwidinge Häreder Anno 1601*; these are now preserved in the Royal Library in Stockholm (OLSON 1911: X).

1.3 The *Uplandslag*

According to a document found together with the text in **Cod. Ups. B 12** (Uppsala University Library), the writing of the *Uplandslag* was promoted by King Birger Magnusson himself who, on January 2nd 1296, ratified it. This law had, therefore, a more official character than any other Swedish provincial law, and was also important outside Uppland. The text was compiled by Birger Persson, Saint Bridgid's father and *laghmaþer* of Tiundaland, and by twelve collaborators, and was then presented to the king who approved it before it came into force.
The *Uplandslag* is preserved in full in five medieval manuscripts. Schlyter's edition is based on **Cod. Ups. B 12** of the University Library in Uppsala. This fourteenth-century1 manuscript also contains a copy of the document with which King Birger Magnusson ratified the law. Another complete version of the *Uplandslag* is to be found in **Cod. Holm B 199** of the Royal Library in Stockholm, and, according to Henning, this is the nearest to the archetype (HENNING 1967: XV). **Cod. Holm. B 52** is probably a copy of **Cod. Holm B 199** (HENNING 1967: V). Two further witnesses of the *Uplandslag* are **Cod. Ups. B 45 (Cod. Ängsö)** and **Cod. Esplunda**.
The *Uplandslag*'s inheritance law (*Ærfþæ balkær*) is also preserved at the end of **Cod. Ups. B 49**, which is the only medieval manuscript containing the *Hälsingelag* (HENNING 1967: V).

2. Women in Swedish Legal Texts

Writing about Scandinavian medieval legal texts and women, Gabriela Bjarne Larsson distinguishes between the direct and the indirect information about the condition of women that we can acquire from legal texts. Direct information is contained in the provisions on marriage (*Gipta balkær*) and inheritance law (*Ærfþa balkær*), which deal mainly with women and their rights and duties, while other parts of legal texts only give indirect information, which needs to be correctly interpreted (BJARNE LARSSON 1992: 64).
As a consequence of their very nature, laws on marriage and inheritance frequently deal with women. Nevertheless, no difference in the approach to gender can be detected between these and other laws: legal texts contain regulations written by men and addressed to men, and women are mentioned in relation to men. Let us consider, for example, the first two regulations contained in the *Giptar bolker* in the *Äldre Västgötalag*:

> 1. Konongær vil sær kono biþia. Ær þæt vtæn konongrikiz. Þa skal mæn sinæ latæ faræ. ok ærændi sit vrakæ ok sæst takæ. þa skal konongær brudfærþ gen gæræ. þa skal konongær gen fara ok giua tolf mærkær gulz allær tvæ byæ at væþium sætiæ.
> 2. Bondæ son vil sær kono biþiæ. han skal hin skyldæstæ at hittæ. ok bön sinæ byriæ. han fæstnæþær stæmnu leggæ a hænni skal til sæ sighiæ næmnæ iord æn til ær. ok alt þæt giuæ vill. þrear markær skal lagha vingæf. uaræ þaghar siri sæst ær skilt ok handum saman takit. þa ær tilgævær allær intær. æn vingævær eigh fyr æn þer komæ bæþi a en bulstær ok vndir ena bleo. §. 1. Af fæstæ ruf a biscopær. III. Markær (COLLIN-SCHLYTER 1827: 32).

If the king wants to get married to a woman outside his kingdom, he will send messengers to her home to reach an agreement on the engagement. Then he will meet the bride halfway. If a farmer's son wants to marry a woman, he will ask his closest relatives to ask for her hand. He will also list his properties and all the goods he is going to give to the bride and to her family. Independently of the social status of the people involved, marriage appears to be mainly a man's thing: it is the bridegroom, the

man, who chooses his wife-to-be and decides to marry her. In this respect, no substantial difference can be found between these regulations and those of criminal or property law. These latter laws contain fewer references to cases and situations involving women, simply because women were less likely to be implicated in a crime or in some kind of property dispute. The very absence of reference to women in a regulation can be considered as a source of information – *ex negativo* – about the role and condition of women in Sweden at the time the legal texts were written.
For this reason, I will not distinguish in this study between direct and indirect sources, but rather will collect and analyse every piece of information about women which can be found in the three legal texts forming the corpus, and will try to classify them according to the four major areas of medieval Scandinavian jurisprudence: family and private, property, inheritance and criminal law.

2.1 Women in Family and Private Law

The family is the natural environment for medieval woman: within its boundaries she enjoys the so-called 'right of the keys' (Germ. *Schlüsselrecht* or *Schlüsselgewalt*), which is often hinted at in Swedish legal texts. The necessary condition for the enjoyment of this particular right is to be a wife and mother.
Marriage is, in this respect, the starting point of a woman's adult life. Swedish wedding traditions of the time are described in quite a detailed way in medieval legal texts. In the *Uplandslag* the description of wedding traditions begins by stating that women must not be taken by force: «MAþær skal kunu biþiæ, ok æi mæþ waldi takæ. han skal hænnær ok næstu frændær hittæ. ok þære goþ wiliæ letæ.» (COLLIN-SCHLYTER 1834: 103). As mentioned above, when a man – regardless of his social status – wants to marry a woman, he has to find her father or closest relative and ask for her hand, mentioning what he is willing to give to her as morning gift and to her family as compensation for the transfer of her guardianship (*mund*).2 If no father is present to give his consent to the wedding, other possible relatives will be asked for their consent: in order, the mother, the brother and the sister, provided she is married, since no unmarried woman can marry off a girl.3 This consideration is particularly significant because it is the expression of a society in which women can or cannot act only according to their marital status, which, in some way, becomes the very foundation of their juridical personality.
Parental consent is unavoidable. If a woman gets married without having obtained her father's consent, she will be deprived of her inheritance unless both her parents – who, in this case, appear to be equal – agree to forgive her. If they are in disagreement over this decision, twelve men will deliver a verdict:

> hwilikin mö man takær. mot faþurs wiliæ ællr moþor. æn þer liwæ. hwat hun takær han til aþalmanz ællr löskæ læghis. þa wæri miskunnæ konæ faþurs ok moþor. ok ænxi annærs frændæ. ællr giptæ manz will faþir ok moþer forlatæ henna sak sinæ. þa taki hun fullæn ærfþæ lot. Nu delis þær um. hwat hænni war þæt forlatit ællr æi. þa skulu þæt tolff mæn witæ (COLLIN-SCHLYTER 1834: 104).

If a woman cannot get married against her parents' will, on the other hand neither her father nor her closest relative can marry her off without her consent:

> Fæstir man kono. ær wiþær faþir ællær frændær þer næstu. ær æi kona siælff a fæstningæ stæmpnu. ællr ær æi til wiz komin. ællr aldærs. aghi wald meþ frændum sinum ne gen sighiæ. ok þæn man fæst faffþi. andrum. böte þre markær til þræskiptis. Nu ær konæ siælff a fæstningæ stæmpnu. skilis þy enæst þeræ fæstning. at biskupær will. han a skoþæ þæ forfall sum þeræ mællum ær (COLLIN-SCHLYTER 1834: 105).

If a man gets engaged to a woman in the presence of her father or closest relative, but without her being present at the engagement or knowing of it, she will be able to refuse him. As a compensation for the broken engagement, the man will be given three marks. The same applies if the girl is under age. If, on the contrary, the woman is present at the engagement, the engagement cannot be broken except with the bishop's permission.
If the engagement has not taken place in the presence of the girl's family, both parties have the right to change their minds and break the engagement. If the man decides not to marry his fiancée, he will lose both the engagement fee (*fæstnæþæ*) and the presents (*förningæ*), and pay a fine of three marks. If it is the woman's decision to break the engagement, she will have to return all the presents she received, and the engagement fee, and pay the same fine (COLLIN-SCHLYTER 1834: 105).
No third party consent is required if a widow wants to get married, since no one but she can decide about her marriage: «ænkiæ aghær siælff giptu sinni raþæ» (COLLIN-SCHLYTER 1834: 106).
Once a man has married a woman, he is obliged to honour her as his wife and to give her a morning gift, which remains hers forever, unless she commits adultery (COLLIN-SCHLYTER 1834: 108).
Within the marriage and as parents, wives seem to have a certain degree of power to make decisions. When a child is born it is

both parents' task – and not only the father's – to choose his or her godparents and to bring them to the church for the ceremony: «Varþær barn til kirkiu boret och beþiz cristnu. þa scal faþir ok moðer fa guðfæþur oc guðmoþor oc salt oc vatn.» (COLLIN-SCHLYTER 1837: 3).
Similarly, a farmer and his wife must give charity to the Church at Christmas, Easter, All Saints' Day, Candlemas and on the Saint's Day festival: «þet ær iulæ dagh. ok paschæ. helghunæmæssæ ok kirckmæssæ. ok æn kyndilmæssæ. þæssæ fæm daghær æru hans rætir offær daghær aff bondum. ok husfrum.» (COLLIN-SCHLYTER 1834: 40).
This sort of *Schlüsselrecht* of the married woman is also evident in a passage of the *Uplandslag* dealing with theft and house search:

> Nu will man ranzakæ .j. garþ annærs æptir goz sinu. Þiuffstolno. ok ær æi bonden hemæ. ok ær þo husffru hans hemæ. hawi swa wald ranzakæ sum þa bonde hemæ wari. kan þæn bonde o giptær wæræ ok hawær fore sik brytiæ ællr deghin. broþor. ællr barn. wæri lagh samu(COLLIN-SCHLYTER 1834: 173).

If someone suspects that a farmer has stolen something from him and wants to search the farmer's house to gather evidence for his claim, he will be able to carry out the search even though the farmer is out and only his wife (or brother, son or daughter) is there. This search will be as valid at court as it would have been if the farmer himself had been at home.
Men and women are also equal as parents, and children have to help and sustain them when they grow old or fall ill: «Nu kan man ællr kono. aldær ællr sott hændæ. þa a þæn barn hans föþæ ok uppi haldæ til döþræ daghæ.» (COLLIN-SCHLYTER 1834: 200).
Children should usually be conceived within marriage. If this is not the case and a couple conceive a child without being married, the man can take the woman as his legitimate wife (*hustru*). The child will be a legitimate son or daughter (*adalkunu barn*). If a woman claims a man is her baby's father, but he doesn't want to acknowledge paternity, the case will be brought in front of the court, and six of the couple's neighbours will have to investigate and decide who is telling the truth:

> Nu dul faþir barn. ok konæ hanum barn witir. þa skal konæ sik tolff mæn fa. ok þæn sum barnit witis andræ tolff. ok swa til þinx faræ. þær a hwart þeræ en man næmpnæ. þe twe næmpnin sæx mæn. þe sæx aghu þær mæþ grannum ok nagrannum ranzakæ. Hwat um þæt mal ær sannæst. gangi siþæn þe sæx til þeræ tolff. ær þe hældær wiliæ. Gangær þer til þeræ tolff ær kono fylghiæ. þa aghu þer man til barnæ faþurs witæ. taki þa barn lighris bot. ok þre markær fæþærni sitt. ok þre markær fore at han barn dulde. þe sæx markær skulu wæræ kiöpgildær. þöm taki barnit aghær .j. hwarti karl ællr konungær. Gangær man wiþ barni. þa böte lighris bot. ok þre markær fore fæþærni sitt. Nu wæriæ þær atærtan þæn fore ær barn witis. þa ær þælt barn faþur lost þa a biskups lænsman þem fore biskup komæ. þa lati biskupær þæt mal ranzakæ. hwat þær ær sant um. ok standi þæt ma. a biskups dome. hwat þe skulu utlændis gangæ ællr æi(COLLIN-SCHLYTER 1834: 119).

If they decide in favour of the woman, the father will have to acknowledge the paternity of the child, paying a rape fine (*lighris bot*) and giving the child three marks as his inheritance plus another three marks as a compensation for the fact that at first he repudiated the baby. If, on the contrary, these six men decide in favour of the man, the child will be considered fatherless, and the mother will be brought in front of the bishop who will have to ascertain if she must leave the country or not.

2.2 Women in Inheritance Law

Strictly connected to family law is inheritance law. This particular field of legislation is well documented in the earliest Swedish legal texts, where a long series of cases is presented to describe all the different nuances of contemporary inheritance law. The general basic principle for all these regulations seems to be that men come first in the line of succession, and women only later. So, if, for example, a father dies leaving a son, this son will be his heir. According to the *Äldre Västgötalag*, daughters inherit only if there are no male offspring. The same rule applies not only to sons and daughters, but also to all other degrees of kinship:

> Svn ær faþurs arvi. Ær eig svn. þa ær dottær. Ær eig dottær. þa ær faþir. Ær eig faþir þa ær moþer. þa ær broþer. Ær eig broþer. þa er systir. Ær eig systir. þa æru sunærbörn. Ær eig sunerborn þa ær dottor börn. Ær eig dottor börn. þa æru broþor börn. Ær eig broþorbörn. þa æru systör börn. Ær eig systor börn. þa ærfaþurfaþir. Ær moþor moþær ok faþur broþær. þa takar moþor moþer. ok faþur broþor gangær fra (COLLIN-SCHLYTER 1827: 24).

In the *Uplandslag* this regulation seems to have been modified in favour of female offspring, since it is said that when a man dies leaving a son and a daughter his inheritance will be divided into three parts: the son will take two parts and the daughter one.4
A mother can inherit from her only son. If she also has one or more daughters, they will all inherit in equal parts, provided the girls have the same father as the deceased (COLLIN-SCHLYTER 1827: 24). It is interesting to note that if both parents are alive but are separated, only the father will inherit from the son (COLLIN-SCHLYTER 1827: 31).
If a man dies leaving a wife and children of different marriages, his widow has the right to take her dowry (the part which has not yet been spent), before the children of the previous marriages divide the father's goods (COLLIN-SCHLYTER 1827: 26).
Outside the marriage, a woman's right to inherit from her partner is often a consequence of her being his child's mother. This is, for example, the case when a farmer dies and the woman he was living with on the farm claims to be pregnant: she can remain on the farm until it is clear if she really is pregnant. If she is, she will receive her inheritance once the baby has been born and baptized:

> Sitær konæ I bo dör bonde kallæff havandæ. varæ. hon skal i bo sittia tyugu ukur. þa skal a seæ æn hun ær havandæ. þa skal bo skiptæ skal hun a bolæ sittiæ. til fardaghæ næstu. Ær bonde döþer firi fardagha. þa hun af faræ. havir hun sat þa nyute þes far hun barn far cristændom. þa huir hun ærv hægnæt (COLLIN-SCHLYTER 1827: 26).

2.3 Women in Property Law

In medieval Sweden property for a woman is very often synonymous with inheritance and morning gift. Living and acting mainly within the family sphere, a woman does not in fact have many other opportunities to come into the possession of goods and wealth. This does not mean that a woman can completely dispose of all the property she inherits:

> Siþan ær hion tu komæ saman takkær annat þerræ arf. förer. i bo læx til brytstokss. far iki giald firi þæt sum liuær a þæt svm arf tok. þæt sum a födis æghu þæt bæþi. § 1. Stoþ hors i skoghum gangæ all. þy fyl. sum af föþæs æghv þer baþi. § 2. Tækær maþær bo at arvi. ma eigh brity firi væræ ællær drghiæ skulu. baþi hion avaxt aghæ. Zy biþær maþær fær kono þærræ ær til arff stander. þy gipstær bondæ þæm manni. dottor sinæ ær til arff standær. at þer viliæ baþi afvæxt æghæ (COLLIN-SCHLYTER 1827: 29).

When either a husband or a wife receives an inheritance, this becomes part of the couple's common property. In particular, the spouse who has inherited will take all the animals and living beings, while offspring of these animals (*þæt sum a födis*) will belong to both of them. If the get pregnant, all the foals which are born belong to both the spouses. If the inheritance consists of a farm, the couple will enjoy its fruits together. This is the reason why many men marry a woman who is expecting an inheritance, and many fathers marry off their daughters to men who will inherit, because they will both enjoy the fruits of this wealth.
Even though they act mainly in the domestic environment, women are also mentioned in relation to property transactions such as the purchase of land and goods. In a paragraph dealing with land purchase, the author of the *Uplandslag* states, for example, that it is possible for a woman to sell any family property, if her children are in need. This regulation applies not only if the husband has abandoned his spouse, but also if he is temporarily away from home, for example on a pilgrimage:

> Nu kan man löpæ fran kono sinni. ællr konæ fra manni sinum. ællr man farr pilægrims færþ. þa þorffæ börn föþo wiþ ok þæt sum hemæ sitær. þa hawi þæn wald at sæliæ hwat han will .j. lösörum. ællr .j. eghum. standi þæt swa fast ok fullt sum konæn giör. sum þæt bonden giör .j. þæssu mali. ok gangi twe loti a bondæns lot. ok þriþiungin a husfrunnær. e mæn hiönelaghit ær. þa haldær siængæ kiöpit samæn. hwat þe hældær lyutæ sælæ ællr kiöpæ (COLLIN-SCHLYTER 1834: 185).

A sale by a woman in these circumstances is not contestable and is fully legal, as if it had been made by a man. One third of the proceeds will go to the wife and two thirds to the husband. The final sentence of this passage («e mæn hiönelaghit ær. þa haldær siængæ kiöpit samæn. hwat þe hældær lyutæ sælæ ællr kiöpæ») could be considered as a general statement on what we would call today the 'property regime within the marriage'. In stating that all purchases completed during the marriage are valid for the whole duration of the nuptial union, it suggests that spouses have a sort of community of assets in which each of them can alienate or enlarge the common property.

This doesn't mean that the personal property of the spouses is completely assimilated as common property. In a regulation about the exchange of land and estates, the inheritances from the father and the mother are clearly distinguished:

> Nu skiptir man wiþ witwilling. ællr owormaghæ. þa mughu þer æncti skipti giöræ. utæn næstu frændær raþ. ællr moþor. ællr faþurs. skiptir faþir owormaghæ möþærni. ællær owormaghæ fæþærni. ællr andri frændær. skipta barnæ goz ok owormaghæ þa skipti til bætræ ok æi til wærræ. ær æi swa skipt. þa hawi han ok wald til sins atærgangæ. þa han wærþær moghande man (COLLIN-SCHLYTER 1834: 188).

Properties belonging to legally disqualified people (such as the mentally ill) or to non-adult children cannot be exchanged without parental (both father and mother are explicitly mentioned!) consent. If a father or a mother switches the land his or her child has inherited from the other parent, this exchange must be made for the child's good. If this is not the case, the transaction will be revoked once the child reaches his or her majority. The very fact that women are described in the function of guardians of minors and mentally impaired people – although this is in contrast to other passages in the corpus where they belong to these category of legally disqualified people5 – signifies the privileged position that women seem to acquire as a consequence of their being wives and mothers. It is as if being a parent came before being a woman and parental authority could – at least partially – nullify gender-determined limitations.
This hypothesis is also supported by those passages referring to the possibility of a woman giving her daughter a dowry. See, for example, the *Östgötalag*: «Nu giuær moþir omynd af omynd sinne i lösörum.» (COLLIN-SCHLYTER 1830: 102).
The family is, however, not the only environment in which women are active: they can, for example, be hired by a farmer to work in his fields. In this case they will be treated the same as male workers. See, for example, the regulation on the interruption of the employment relationship between a farmer and his workers which is contained in the *Uplandslag*: «Nu six um leghu ruff leghir bonde man ællr konu.» (COLLIN-SCHLYTER 1834: 228).

2.4 Women in Criminal Law

In the fields of Swedish jurisprudence mentioned above, gender difference was evident, but it was never as striking as in criminal law. Here men and women are mainly treated according to a double standard, which, on the one hand, is aimed at protecting women, especially in their role as mothers, but, on the other hand, tends to exclude – or at least to circumscribe to a few special cases – the capacity of women to be involved in criminal procedures.
This protective attitude towards women is particularly evident in a series of regulations strongly condemning violence against women and crimes such as rape:

> Þættæ ær þæt fiærþæ. takær man kunu mæþ wald. synis a syn. antwiggiæ a hænni. ællr a hanum. þe han giorþi henni. ællr hun hanum. ællr ær þæt swa. nær by ællr wægh. at höræ ma op ok a kallæn. warþær þæt laghlikæ skiærskotæt. þa a þæt hundæris næmpd witæ. hwat þær ær sant um. Takær man kunu mæþ wald. ok wærþær þær takin. ællr fangin a færski giærning. ok witnæ han tolff mæn þær til. þa a han undir swærþ dömæs. § 1. Takær man kunu mæþ wald dræpær konæ han .i. þy. ok swa witnæ tollf mæn. liggi o gildær. § 2. Takær man kunu mæþ wald. rymir aff land mæþ hænni. wærþær han laghlikæ wnnin til walz giærning. þa a han aldrigh friþ fa fyrr. æn kononnæ giptæ man. biþær fore hanum (COLLIN-SCHLYTER 1834: 91).

Whoever is found guilty of rape will be put to the sword. A woman who, while being raped, kills her attacker, will not be punished, if it is decided by twelve men that she killed in self-defence. If the rapist is able to escape abroad, he will not have peace until someone acting on the victim's behalf asks for mercy for him.
The murder of a pregnant woman is also extremely detestable:

> Nu six þön konæ mæþ barni wæræ. sum dræpin war. hawi þa barns ærfwingi þæn næsti wizorþ. at witæ þæt mæþ sæx mannum. ok sæx konum. at hun mæþ barni war. þa hun dræpin at warþ. ok bötes þæt mæþ atærtan markum. þa þræskiptæs. taki en lot malsegande. annæn kunungær. þriþiæ. hundærit (COLLIN-SCHLYTER 1834: 141).

If a woman is killed and it transpires that she was pregnant, the baby's closest relative and heir has the right to prove this circumstance in court. If six men and six women can confirm that the victim was expecting a baby, extra compensation of eighteen marks – in addition to the eighty marks due for the woman's killing – will be awarded and divided between the plaintiff,

the king and the local community.
Pregnancy and motherhood do not simply represent aggravating circumstances in cases of homicide, but they also constitute the very foundation of a widow's right to accuse her husband's murderer: «Hauir kona barn .i. knæ. þa skal hun banæ næmpnæ.» (COLLIN-SCHLYTER 1827: 11).
In case of crimes committed by a woman against her own children, motherhood becomes an aggravating circumstance. So, in the case of infanticide (of an already baptized child) committed by the child's own parents, the father is tortured on the wheel (*stæghla*), while the mother is stoned to death (*stenka*): «Nu myrþi man ælla kona barn sit siþan þæt ær kristit. þa skal han stæghla ok hana stenka lata æn þæt uarþær yppinbart.» (COLLIN-SCHLYTER 1830: 39).
In different circumstances, women are not considered punishable for the crimes they commit. In the *Äldre Västgötalag* female murderers are not responsible for their crime: while the responsibility for their actions is taken by their closest relative: «Drapær kona man. þa skal mælæ. a man. þen skyldæstæ. han skal botum varþæ ællær friþ flyia.» (COLLIN-SCHLYTER 1827: 13).6
This particular regulation can be clarified on the basis of some other passages in the other legal texts. In the *Uplandslag* women are made equal to minors and other legally disqualified people in being punished on the spot instead of being banned (COLLIN-SCHLYTER 1834: 92), while in the *Östgötalag* it is clearly stated that, since women cannot testify in court, they can breach no oath: «Nu ma egh eþzsöre bryta. þy at hun ma egh bilthuga uara.» (COLLIN-SCHLYTER 1830: 36).
This inability to testify also appears elsewhere in the legal texts we have analysed: women cannot be summoned to court as witnesses, unless a witness on a specifically feminine topic is required. These feminine topics include birth, damages caused to or by cattle, adultery and infanticide:

> J þæmmæ malum ma konæ swæriæ ok witni bæræ. þæt ær þæt fyrstæ. æn hun ær þa inni barn föþis. hwat þæt hældær föþis dött. ællr quict. annæt ær þæt. fæ giör fæ. ællr fæ giör manni. swa ok æn man giwær kono sinni sak. a þingi fore hor. swa æn han witir hænni barnæ morþ(COLLIN-SCHLYTER 1834: 272).

No woman is allowed to be a witness in a case of murder: «Nu ma egh kunu til halzsbænd uitna.» (COLLIN-SCHLYTER 1830: 55).
The attitude of the earliest Swedish legal texts towards the murder of women appears quite contradictory. While, on the one hand, this crime is inserted into the list of irredeemable actions (*orbotæ mal*) (COLLIN-SCHLYTER 1827: 23), on the other hand, the wergild paid for a woman is half as high as that which is due when a man is killed (COLLIN-SCHLYTER 1834: 158).
In some circumstances and for some crimes, men and women are considered to be equal and are punished as such. These crimes include servants killing their masters (COLLIN-SCHLYTER 1834: 147) and spouses killing their spouses (COLLIN-SCHLYTER 1834: 145).
The medieval perception of gender specificity is evident not only in the different treatment reserved for women, but also in some passages focusing on special 'feminine crimes': an analysis of these can contribute to the general understanding of women's role and condition in Sweden at the time. As an example, we learn that magic and witchcraft were considered exclusively feminine practices, as witnessed by the presence of a regulation dealing with murder by means of magic: «Bær konæ forgiærningær manni wærþær bar ok a takin. þa skal hanæ takæ ok .j. fiætur sættiæ. ok swa til æinx föræ.» (COLLIN-SCHLYTER 1834: 149). This quotation clearly highlights that only the case of women (*konæ*) killing with magic is foreseen in the *Uplandslag*.
Women are also considered very likely to have recourse to another peculiar way of killing: poison. A few regulations in the corpus refer to a woman poisoning her husband (COLLIN-SCHLYTER 1827: 22) or the step-children (COLLIN-SCHLYTER 1827: 29), while no passage associates poison with men.
Another crime ascribed only to women is the unauthorized use of someone else's cattle:

> Nu six um feær nyt. Molkær konæ far. ællr get manz. wærþær bar ok a takin. ær til twæggiæ mannæ witni. þa böte þre öræ. Molkær ko manz. wærþær bar ok a takin. ær til twæggiæ mannæ witni. böte þre markær (COLLIN-SCHLYTER 1834: 254).

If a woman milks a man's sheep or goat and is caught *in flagrante delicto* by two men who can witness to her act, she will pay a fine of three cents. If she milks someone's cow and is caught red-handed, the fine will be of three marks. The explicit reference to women in this regulation can probably be explained by the organization of daily activities on a farm, where milking activities were usually carried out by women, rather than by men.

Conclusion: Which woman and which rights?

The analysis of three of the earliest Swedish legal texts has highlighted various aspects of the condition of women at the time these texts were written down. Far from claiming to be absolute and comprehensive, this study allows us to draw some conclusions and sketch the role of women in medieval Sweden.
The most striking aspect of this sketch is certainly represented by the discrepancy between the treatment of women in family, private, inheritance and property law on the one hand and criminal law on the other.
Within the domestic walls women are considered to be, if not equal, at least comparable to men in their right to inherit and in their capacity to act and take decisions as far as children, household and common property are concerned. In this respect, the traditional Germanic marriage with guardianship (Germ. *Muntehe*), which is hinted at in the terminology employed throughout the corpus (*mund*), seems to have lost its original meaning. Guardianship of women does not find any true application within the domestic environment, where, on the contrary, women enjoy a high degree of freedom of action, in particular in their role as parents and guardians of their children.
The foundation for this freedom of action is mainly to be found in motherhood, as if a woman's legal capability were not intrinsic to her as an individual, but depended on her social function as a wife and mother.
The incompleteness of women's legal capability especially comes to the fore in criminal law. Here women are either grouped together with minors and the insane and considered not to be able to stand trial for their crimes or to swear and testify in court, or they are punished according to a standard different from that used for men. As a consequence of the contemporary perception of women as incapable or not fully capable people, this 'feminine penal code' is usually milder and more protective than the standard, 'male' one. In this way, even when women are considered personally responsible for their actions, they are punished on the spot, whereas men are banned. Only in one particular case, that is infanticide, women are punished more severely than men, with their fundamental – almost sacred – role as mothers representing an aggravating circumstance.
Once again gender specificity is positively identified with motherhood: as mothers and potential mothers, women are sacred and, as such, must be protected (see for example the harsh punishments for rape and the murder of a pregnant woman). On the other hand, as individuals women do not enjoy full civil rights and are considered less valuable than men (half the wergild in the case of murder and intentionally inflicted injuries).
This oscillation between an extreme respect for a woman's biological function and the negation of her individual capability to act outside the domestic and familial sphere is certainly the most evident characteristic of the medieval Swedish attitude towards women. Further indications of the role and function of women can, moreover, be inferred from those articles and regulations describing situations whose protagonists are only males or only females.

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Notes

? 1 According to HENNING (1967: I) Schlyter's date (COLLIN-SCHLYTER 1934: I) should be postponed by about 50 years, and the manuscript could not have been written before 1350.

? 2 The term *mund* is used in Swedish legal texts to indicate the amount of money paid by the bridegroom for the guardianship of the girl, rather than the guardianship itself. See, for example, *Äldre Västgötalag*: "En bonde gyptir dotur sinæ mæþ mund ok mæþ mælæ. skal vitæ mæþ tvænni tylptum. en þem skil. a. at hun var sva gyft. sum lægh sigiæ ok þy æghu. barn ærf at lægmæli." (COLLIN-SCHLYTER 1827: 26). The alliterative pair *mund ok mælæ* refers here both to this sum of money and to the nuptial words pronounced by the bridegroom at the moment of the bride's transfer to his house and stands for a legally and traditionally perfect wedding.

? 3 The list of the girl's relatives who can be consulted if she is an orphan continues and includes grandparents, uncles and aunts and cousins. If the degree of kinship is the same, priority is always given to the male relative, rather than to the female one (COLLIN-SCHLYTER 1834: 103).

? 4 If there are two or more daughters and a son, the latter will take half of his father's inheritance and the remaining half will be divided among his sisters, regardless of how many of them there are (COLLIN-SCHLYTER 1834: 115).

? 5 See for example a passage of the *Uplandslag* where it is stated that women and legally disqualified (*owormaghi*) people cannot be banned and must be punished on the spot: «Giör konæ ællr owormaghi. þylikæ giærning bötin mæþ laghæ botum. æi ma konæ ællr owormaghi friþ flyæ.» (COLLIN-SCHLYTER 1834: 92).

? 6 See also «Nu ma egh kunu þing stæmna. þa skal hænna mals manne stæmna æn han ær innan landzs ok lagh saghu. ær han egh sua: þa skal stæmna andrum hænna skyldum frænda.» (COLLIN-SCHLYTER 1830: 175).

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