INHERITANCE AND GIFTS IN SOME MEDIEVAL LAWS

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ABBREVIATIONS

(The "sections" referred to below are books, or chapters, in Scandinavian medieval codes)

Ä — The section on inheritance
ASun — The Latin paraphrase of the Scanian law by Andreas Suneson
BjR — The early Norwegian municipal law (called Bjarkøyret)
CJ — Codex Justinianus
D — daughter
Dr — The section on manslaughter
DGL — Denmark's old provincial laws (Landskabslove)
DL — The Swedish provincial law of Dalarne
E — The "ethsöre" laws, i.e. the section on grave crimes
EsjL — The Danish provincial law of Själland by King Erik
FrostL — The old Norwegian law of Frostating
G — The section on marriage
Gri — Leges Grimvaldi
GulL — The old Norwegian law of Gulating
HL — The Swedish provincial law of Hälsingland
Inst — Justiniani Institutiones
JL — The Danish provincial law of Jylland
KrLL — The Swedish national law of King Kristoffer
M — mark (monetary unit)
MELL — The Swedish national law of Magnus Eriksson
MEStL — The Swedish municipal law of Magnus Eriksson
MGH — Monumenta Germaniae Historica
NBL — The Norwegian municipal law of Magnus Lagabøte
NLL — The Norwegian national law of Magnus Lagabøte
ÖgL — The Swedish provincial law of Östergötland
pr — *principium*
R — The section on legal procedure
Ro — Edictus Rothari
S — son
SdmL — The Swedish provincial law of Södermanland
SkL — The Scanian law
SSGL — Collection of Sweden's ancient laws (Samling af Sveriges Gamla Lagar—Corpus Iuris Sveo-Gotorum Antiqui)
s.v. — *sub verbum*
UpL — The Swedish provincial law of Upland
V — The section on accidental cases
VgL I — The earlier Swedish provincial law of Västergötland
VgL II — The later Swedish provincial law of Västergötland
VmL — The Swedish provincial law of Västmanland
VsjL — The Danish provincial law of Själland by King Valdemar
v — *versus*
W — Wife

Verses 456–61 of the medieval Swedish Chronicle of Erik read as follows:[1]

> Then gave Birger Jarl the law,
> that since has stood many days
> that sister shall inherit with brother
> a third both from father and mother
> like any other *skyldeman* (heir)
> then shall she inherit as permanently as he . . .

This is the first mention of Birger Jarl as the author of the new law of inheritance. One would have expected that the Östgöta Law (ÖgL), which is not otherwise sparing in its references to Birger as a lawmaker, would have had something to say about him as the author or instigator of this decisive change in the old Swedish system of inheritance. But this is not the case. The ÖgL is content with describing the old inheritance system as *gamblu laghum þa egh atte systir ærua mæþ bröþrum* (old provisions whereby the sister could not inherit with the brother)[2] in contrast to the *nyiu laghum* (new provisions), according to which *först ær son ok sa dottir faþurs arue son tua lyti ok dottir þriþiung*[3] (first the son and then the daughter are the father's heirs; the son inherits two thirds and the daughter one third). For the sake of clarity, it should also be noted here that "*lagh*"[4] (law) should be regarded as plural in old Swedish, and that consequently the phrases "*i gamblu laghum*" and "*i nyiu laghum*" are best translated as "the old provisions" and "the new provisions" regarding inheritance, and not as "the old law" and "the new law".

The ÖgL's silence regarding Birger's role as lawmaker immediately gives rise to suspicion, since in other cases where Birger was involved the ÖgL did not hesitate to point out his legislative

[1] The author's translation.
[2] ÖgL Ä 2.
[3] ÖgL Ä 1.
[4] Samling av Sveriges Gamla Lagar (SSGL), Ordbok s.v. *Lagh* n.pl. and SSGL 2 314 s.v. *Lagh* n.pl.

contributions. His legislative efforts were concentrated in particular in those areas that were significant for the position of the state as the supreme custodian of the law, i.e. specifically in the fields of public law, criminal law and procedure.[4a] With regard to the system of inheritance, however, we are in the area of private law, and reasons for intervention similar to those concerning public law obviously do not exist. Thus, one might be inclined to view the connection of Birger Jarl's name with the system of inheritance as parallel to the designation of a biblical translation as the Bible of Gustav Vasa or King James. All that is intended is a designation of the historical epoch.

First of all, it should be noted that the Chronicle of Erik dates from the period 1320–35,[5] and should, therefore, be placed chronologically about 60 years after Birger's death. The new system of inheritance must have originated considerably before this time, perhaps as early as the beginning of the 1250s;[6] thereby placing the writing of the chronicle some 70 to 85 years after the event it is designed to describe. For this reason alone, one has cause to suspect the existence of certain propagandistic emendations similar to those which the later chronicles have been shown to contain.[7]

There is no doubt that behind the inheritance provisions and in particular the inheritance provisions for women lie ancient conceptions of events, which go back to sagas and myths where history does not reach and where, in other words, exact information is not to be found. To mention a few examples, we need only select from the Swedish legal history the Blenda legend, which explains the custom in Värend that women, in spite of Birger's inheritance law, always inherited equally with men, and thus assumed a privileged position vis-à-vis the other women in the country.[8]

[4a] ÖgL Edsöresbalken (E) 17, Dråpsbalken (Dr) 3: 3, 14 pr. 14: 6, Vådamålsbalken (V) 6: 5, Ä 11, Rättegångsbalken (R) 3: 2 and the information in the Chronicle of Erik about the peace statutes. Cf. Gösta Åqvist, *Frieden und Eidschwur, Studien zum mittelalterlichen germanischen Recht,* Stockholm 1968, pp. 153 and 160.

[5] Ingvar Andersson, *Erikskrönikans författare,* p. 138; Ingvar Andersson, *Källstudier till Sveriges historia 1230–1436,* p. 17; Sten Carlsson and Jerker Rosén, *Svensk historia* I, p. 107.

[6] Å. Holmbäck, *Ätten och arvet enligt Sveriges medeltidslagar,* 1919, pp. 98 ff.

[7] See, *inter alia,* E. Lönnroth, "Medeltidskrönikornas värld" in *En annan uppfattning.* About the Chronicle of Erik, particularly pp. 72 ff.

[8] For more on this subject, see G. Hafström, "Hatt och huva" in *Sv.J.T.* 1958, pp. 277 ff., and by the same author, *Den svenska familjerättens his-*

A diametrically opposite example is provided by the Sachsenspiegel I: 18 § 1, according to which women in Saxony lost their right of inheritance by taking up with intruding Swabians.[9]

Both of these cases involve a kind of collective benefit (a certain inheritance privilege) or collective punishment (a certain inheritance discrimination) which befell women in a certain part of the country as a result of certain behaviour that was judged commendable or reprehensible, as the case might be. What consideration should be given to legends of this kind cannot be a subject of investigation here; we can only state that conceptions of this type have, in certain instances, been significant as a foundation for the female position in the law of inheritance. Regardless of the value to be attributed to sagas, legends or myths of the above-mentioned kind, one cannot escape the fact that behind them lie local customs which—even if they deviate from the general norms in a legal system—have had to be justified in a rational way, thereby leading to the application of obviously imaginative ideas.

The development of the representative principle and the female law of inheritance in the Scandinavian countries is, however, such an interesting and unsettled area that it warrants a thorough examination, in particular with reference to corresponding areas of the law in other countries. It hardly seems likely, however, that one could examine these areas without simultaneously taking into consideration the different kinds of economic benefits connected with a woman's entry into matrimony, which could be different in different legal systems but whose main purpose may be regarded as assuring her an economic status that is more or less independent of her husband. In this case we are dealing with such legal institutions as *domestic succession* ("hemföljd"), *morning gift* ("morgongåva"), *dowry* ("dos"), and similar legal events that take effect simultaneously with or in close connection with the act of marriage, where the law of inheritance may and should be regarded as one link in a chain. The difference is, of course, that the development of the law of inheritance for women does

toria, 6th ed. 1969, pp. 108 f., as well as the Royal Ordinance of June 26, 1772.

[9] Here we are also dealing with a legend the contents of which can best be studied in brief in G. Rotermund, *Der Sachsenspiegel (Landrecht)*, p. 26 note 13. The question concerns mainly collective punishment. An example of the opposite, collective reward, is *Saxo Grammaticus'* statement that Sven Tjuguskägg gave Denmark's women the right of inheritance, the sister half in relation to the brother. On this, see Holmbäck, *op. cit.*, p. 100.

not formally have anything to do with the act of marriage, particularly not until the date is chosen for taking the vows. It does seem difficult, however, to disregard completely the development of the law of inheritance in relation to the other legal institutions of an economic nature which are connected with a woman's marriage.

When speaking of the *female right of inheritance,* I mean *a right of inheritance that operates simultaneously with that of the man* so that the daughter inherits along with the son, not those cases where the daughter inherits because there is no son. It is the emergence of this right which will be the subject of discussion here. Attention will also be paid to events concerning the law of inheritance that appear to take place simultaneously with the emergence of this type of female right of inheritance. To this category belongs the right of entrance—or the principle of representation, to use the expression most common on the Continent.

The principle of representation does not actually have a necessary connection with the female right of inheritance, but it is evident upon closer historical study that these two institutions often appear simultaneously, and that in particular the principle of representation on the male side is a phenomenon which competes with the female right of inheritance.

One fact which has been given far too little attention in Scandinavian writing is the connection between the law of inheritance as an institution of private law and the public-law rules on inheritance that are reflected in the right to succeed to the throne, the right to take over a feudal district upon the death of the lord, and similar Continental phenomena. Since doctrines of feudal law have not always had the same relevance in Sweden and Norway as on the Continent, it is natural that this connection went unnoticed. On the other hand, it is also evident that, if Continental traditions influenced our private law of inheritance, these traditions must also have indirectly exerted influence on countries where the feudal points of view were not as apparent as on the Continent and countries where these elements represented an integrated part of the social structure.

It is natural to assume that the private-law system of inheritance was normative for the public law systems of inheritance. However, this is not entirely certain. There is reason to believe that influence may have been exerted in both directions. Particularly within the higher social strata, where life was in closer accord with the customs of the public-law sector, the ideas of

public law were influential; and these ideas may later have spread to other segments of the population, owing primarily to the fact that members of the upper class assumed positions as judges and administrators in various areas.[1]

Scandinavian legal materials offer certain starting points in determining the approximate period when women along with men obtained the right of inheritance in Scandinavia. They are spread over a relatively long period of time, thereby making an approximate time designation appropriate. However, it should always be borne in mind that a certain time lag occurs if inheritance provisions are based on local customs.

The Norwegian provincial laws, together with Icelandic legislation, appear in Grágás at a very early period chronologically. The period of time of the Gulating Law (GulL) and Grágás can be identified as the 12th century. We need not discuss here where in the century these legal provisions should be placed.

The Frostating Law (FrostL) and the Danish provincial laws are usually considered to have been recorded in the 13th century. It was during the earlier part of the century, not later than 1241, that the Jyske Law (JL) was enacted.

The recording in writing of the Swedish provincial laws followed at the end of the 13th century. There is a slight uncertainty concerning the older Västgöta Law (VgL I), which one is inclined to view as an older legal system that probably, however, was recorded relatively late. Some scholars are inclined to regard the Västgöta Law as in existence during the time of Eskil "lawman" (*legifer*), i.e. Justice of a province, at the beginning of the century.[2]

A large part of Swedish provincial laws were not recorded, however, until the beginning of the 14th century;[3] the 1320s in particular are considered to be the high point in the recording of such laws. Thereafter, legal unity was achieved as a result of Magnus Eriksson's national code (MELL) from the 1340s and his municipal code (MEStL) from the following decade.

There is far greater certainty as to the date of codification of the law in force for an entire kingdom. We know that the unification of Norwegian law occurred as a result of Magnus

[1] See, *inter alia,* S. R. D. K. Olivecrona, *Om makars giftorätt i bo,* 4th ed. Uppsala 1878, p. 92.

[2] Thus Gerhard Hafström, *De svenska rättskällornas historia,* 5th ed. 1969, p. 38; also Hafström, *Land och lag,* 3rd ed. Stockholm, p. 26.

[3] Cf. the table on pp. 76–77.

Hakonsson Lagabøte's national law (NLL) from the 1270s and of the municipal law (NBL) from the same decade. The Swedish codification of national and municipal law first occurred, as mentioned above, in the middle of the 14th century, while a similar development did not take place in Denmark until later. However, the Jyske Law (JL) seems to have fulfilled the kingdom's need for legislation supplementing the Danish king's decrees and edicts.

Material thus exists covering 200–250 years, extending from the beginning of the 12th century to the middle of the 14th. With respect to the present study, it is primarily the earlier part of this period which is in point, in particular from the time of the oldest legal sources at the beginning of the 12th century to about the middle of the 13th century. It is primarily the contents of these legal sources regarding the principle of representation and the female right of inheritance that require study. The changes in these legal institutions that are of interest here can be placed in this period.

With respect to the daughter's right of inheritance, the Norwegian provincial laws, i.e. GulL[4] and FrostL[5], as well as Grágás,[6] and among the Swedish provincial laws, the older Västgöta Law (VgL I)[7] and the Dala Law (DL),[8] took the older position, according to which daughters were excluded from the inheritance when sons existed. It is noteworthy, however, that according to GulL[9] and FrostL,[1] a male heir inherited from his newly-deceased grandfather an amount equal to that due to his father's sister (if his father was already dead and had a sister). In other words, a principle of representation had begun to develop, although only *expressis verbis* for a specially mentioned case. This was followed, however, in both GulL[2] and FrostL[3] by a number of cases in which different members of the family were called to inheritance.

Grágás does not seem to contain a similar provision, while VgL I or, to be precise, the manuscript in which VgL I is found

[4] GulL 103.
[5] FrostL VIII: 1.
[6] Grágás Arfa-þáttr 118.
[7] VgL Ä 1.
[8] DL Giftermålsbalken (G) 11.
[9] GulL 103.
[1] FrostL VIII: 2.
[2] GulL 104–105.
[3] FrostL VIII: 3–15.

(the so-called B 59), contains the following text, which is cited according to Ekholm.[4]

> Nu ær man aff mannæ alff vt komen. oc annar aff kono alff. / taki þæn tua løte aff manni com. oc hin þridiugh. ær man aff / kono alff vt komen. oc konæ aff mannæ alff. þa takær sua mykit / konæ sum madþær. ær man aff manni vt komen. oc konæ af konæ // aff kono. þa takær han fyuræ løte. oc hun fæmtungh. Nu ær konæ / aff kono alff vt komen. oc annur aff mannæ alff. taki hun tua / løte aff manæ alff vt kom. oc hin þrydiungh. sua skulu allir arf / skiptæ. huat þer æru hæller flere ællær færi. iæm skyldir sin .i. / mællin. taki sua huart sin .i. mællin huart vid annæt sum nu // ær saght. oc skipti æptir mantali. Nu gangi aldrigh arff .i. / kollæ skipti. vtæn þer æru sin .i. mællin v skyuldir. oc þem / dødþæ iæm skyuldir. tha taki sua mykit en sum flere. huat þæt ær / hællær konæ ællær madþær. Nu takæ tuer delæ vm arff. kallær /annar sik nærmer væræ at ærwæ. þa taki þæn þeræ sum nærmer ær // at tali .i. ættær træno. æru allir þer sum ærwæ .a. mannæ alff // vt komner þa taki man tua løte. oc konæ þridiungh. oc æru allir / þer sum ærwæ af kono vt komner. taki samælund. oc i allum ærfþum. / þa gangi konæ til arfs. oc taki sin laghæ loth. ær igh sun fadþir / ællær brodþer. taki arwi vingiæff.

> If one man was born on the male side and another on the female side; then the one who was born on the male side takes two thirds, and the other takes one third. If a man was born on the female side and a woman on the male side, then the woman shares equally with the man. If a man was born on the male side and a daughter to a woman on the female side, then he takes four fifths and she takes one fifth. If one woman was born on the female side and another on the male side, then the one who was born on the male side takes two thirds, and the other takes one third. All estates shall be distributed in this manner. Regardless of whether they are more closely or more remotely related to each other, everyone inherits in conjunction with another according to that which is now declared, and the distribution will take place according to the number. And an estate shall never be distributed between broods, unless they are unrelated to each other and all equally close to the deceased, in which case one takes equally with several, regardless of whether it is a man or a woman. If two people are disputing an inheritance and one claims to be more closely related, the one who is closer in number on the family tree shall take the inheritance. If all those who are inheriting are on the male side, then the man takes two thirds and the woman one third; and if all those who are inheriting are on the female side, they inherit in the same way. And in all inheritance, the woman goes to the

[4] H. J. Ekholm, *Vidhemsprästens och johannitermunkens anteckningar i Codex Holmiensis B 59*, Helsinki 1915, Appendix p. 1.

legacy and takes her lawful share. If there is no son, father or brother, the heir takes a "friendship gift" (vängåva).

This text follows the text of the older Västgöta Law, which is divided into sections and evidently contains amendments to the original provisions therein. In other words, the manuscript reflects the changes in the law of inheritance that took place in Västergötland during the 13th century.

The date of manuscript B 59 has been the subject of considerable discussion, none of which has led to any definite conclusion.[5] Even if I agree with Wessén that part of B 59, the so-called B 59 *a*, was written in the 1280s, there are many scholars who consider it to contain substantially older law and who would in any case place one part of it, namely that part which is divided into sections, at the beginning of the 13th century, thereby assigning it to the period of Eskil.[6] I do not propose to take a more definite position on this matter, and no further comments on the discussion in question will be made here.

However, the most interesting and essential elements in the quotation above are some expressions which show that a revision took place of the legal clauses in the original sections. The expressions "born on the male side" ("*aff mannæ alff vt komen*") and "born on the female side" ("*aff kono alff*") mean that a person can be born on the male or female side. In the case of male half-siblings, the one born on the male side takes a double share in contrast to the one born on the female side. The same rule holds true for women. And if a man is born on the female side and a woman on the male side, consequently they take equal shares.

This principle is approved of in the amendment to the VgL I, which is usually referred to as Birger Jarl's law of inheritance. The principle was expressed later in the text of the sections in VgL II Ä 1.

Considerably more peculiar and difficult to explain is that form of the principle of representation which appears in the expression "if a man was born on the male side and a daughter to a women on the female side, then he takes four fifths and she

[5] H. S. Collin and C. J. Schlyter, Samling av Sveriges Gamla Lagar (SSGL) 1, Praefatio-Företal II–III. Corpus Codicum Suecicorum Medii Ævi ... edidit Elias Wessén, Hafniae 1950, Inledning-Introduction XVII. See also the discussion by Carl Strandberg, *Zur Frage des Veräusserungsverbotes im kirchlichen und weltlichen Recht des Mittelalters,* Lund 1967, pp. 17–26, and Åqvist, *op. cit.*, pp. 151–66.

[6] See Collin–Schlyter, SSGL 1, *Praefatio-Företal* II, in which B 59 appears as a later transcription of an older original. Also Gerhard Hafström, *Land och lag*, p. 26.

takes one fifth" (*"ær man aff manni vt komen oc konæ af konæ aff kono. Þa takær han fyuræ løte. oc hun fæmtungh"*). The shaky endings in *af konæ* and *aff kono* should not cause any worry, since this seems to be a situation in which the accusative case has been forced into the position of the dative.[7] In regard to the previously mentioned phrase "a man on the male side" (*"man aff manni"*), it is also possible, however, to see the granddaughter in the female line in the expression "a woman on the female side" (*"konæ af konæ aff kono"*). According to this kind of representative principle in inheritance, it would follow that the granddaughter would receive a one-fifth share of that which the half-uncle on the maternal side had acquired. In other words, a kind of reduced principle of representation was operative here.

It does not appear easy to explain this state of affairs. Had there been two brothers who were full siblings with one sister, who was survived by one daughter, it would have been possible by using the rules of Longobard law as a model to give the brothers a double share compared with the sister's descendant, thereby giving them together four fifths and the sister's descendant one fifth.[8] As the formulation now stands, this case holds true for only *one* son who is the descendant on the male side where the granddaughter is the descendant on the female side (in which case, brother and sister are half-siblings). This circumstance may possibly have qualified the only son for a double share of the inheritance, while the granddaughter, as a result of the emerging but not yet fully realized principle of representation, had to content herself with one fifth of the inheritance.

One alternative to this way of looking at things is to add to the son's two-thirds share of the property one third of that part which would have gone to the sister, thereby leaving him with $2/3 + 1/3 \times 1/3$ or $7/9$ and the granddaughter with $2/9$ or 22.22 per cent. This is somewhat more than the above-mentioned $1/5$ (20%).

Such a case is found in the law of Justinian. In connection with the transition to the cognate way of looking at things, which took place through *SC. Orfitianum* in A.D. 178, a possibility was created for children of daughters to inherit, but with a limited right. Such a limitation occurred only in a case in which the granddaughter received $2/3$ of the part which went to the mother,

[7] Elias Wessén, *Svensk språkhistoria I, Ljudlära och formlära,* Stockholm 1951, p. 101.

[8] *Edictus Rothari* (Ro) 154 compared with *Grimvaldi leges* (Gri) 5.

that is, $2/3 \times 1/3$ or $2/9$, while the remaining third went to the other siblings, thereby giving the maternal uncle of the granddaughter $7/9$. Provisions of this nature were found in Codex Theodosianus 5, 1, 4, as well as in other legislation.[9]

In one respect this way of looking at things is less satisfactory. It presupposes, however, a change in the basis of computations from ninths to tenths. Even if the difference is relatively unimportant from a purely mathematical point of view, it is difficult to deny that a discrepancy exists. The explanation may perhaps be found in the fact that at the time people used fractions that were as simple as possible, and that it was thus easier to work with one fifth than two ninths.

On the other hand, this explanation seems to be the only possible one. But this means that the law of Justinian was already known and in effect in certain inheritance questions when Birger Jarl's law of inheritance was in use in Västergötland. The combination of the female right of inheritance and the representative principle in inheritance (even for women) appears here, so far as is known, for the first time in Swedish law.

The first Scandinavian laws which accord the sister a right of inheritance along with the surviving brother seem to be the Danish provincial laws. This is the case with the Scanian Law (SkL),[1] Valdemar's Själland Law (VsjL) (EsjL)[2] and, naturally, the Jyske Lov (JL).[3] Since all of these laws can be placed in the first part of the 13th century, it is natural that scholars have been inclined to regard them as the model for Birger Jarl's law of inheritance. This position is strengthened by the fact that Birger's son Valdemar married the Danish princess Sofia, the daughter of Erik Plogpenning, in the middle of the 13th century.[4]

It is evident that this must be attributed some significance. However, it has not been explained why the sister's right of inheritance when the brother was living came to Denmark and then gained acceptance both in Norway and Sweden. And this is what is important.

[9] See CJ 6, 55, 9; Inst. 3, 1, 15; Lex Romana Burgundionum 10: 2–4, 22, 9. Cf. Max Kaser, *Das römische Privatrecht* II, p. 357.

[1] Danmarks gamle landskabslove med kirkelovene (DGL), udgivet af Det danske Sprog- og Literaturselskab ved Johs. Brøndum-Nielsen, Copenhagen 1920, Scanian Law 22, SSGL 9, I, 21, Anders Sunesen's Latin paraphrase (ASun) 4.

[2] DGL VsjL Ældre redaktion text 1, Kap I, EsjL I: 4.

[3] DGL Jyske Lov text 1, I: 5.

[4] Holmbäck, *op. cit.*, p. 98.

Since the Danish laws have a fully developed right of inheritance for daughters, even when there are sons, it is natural that the right of representation should also be found there. A similar right for grandchildren was also written into these laws.[5]

It has been mentioned above that the Norwegian provincial laws did not have a developed female right of inheritance when sons survived. When Magnus Hakonsson Lagabøte proclaimed his national law (NLL) and municipal law (NBL)[6] in the 1270s, developments had progressed so far that in Norway people were ready to accept the sister's one-half joint right of inheritance as against the brother,[7] in addition to the right of representation which had already been enacted for the surviving grandson when the only daughter participated in the distribution. For this reason, the enactment is to be found in GulL and FrostL. From an objective point of view, this leads to the strange situation whereby, if one son and one daughter survive, then according to NLL and NBL the daughter receives one third, but if the son is dead and leaves a grandson, then the daughter receives half of the inheritance. However, the right of representation for the son still seems only to be available as against the daughter when one person exists on each side. An extension by analogy may have taken place here. However, the laws are silent on this matter.

It should be noted that the Norwegian municipal law takes the same approach as the national law regarding the proportions between the male and female share of the inheritance, i.e. the male heir receives a double share as against the female. This is different from the Swedish municipal law, which gives the male and female heirs the same share. The Norwegian municipal law is about eighty years older than the Swedish, and this fact may, of course, have played a part. Perhaps there was also German influence on the formation of the law of inheritance in Swedish towns, since the German influence in Sweden was stronger.

The Danish laws for municipalities are found in separate editions for each town, thereby preventing the achievement of uniformity. It would have been significant if it had been possible to detect a deviation from the rule in force in the Danish provincial laws regarding a man's double share as against a woman. Such a

[5] SkL 33, ASun 14, VsjL I: 7, EsjL I: 9 and 15, JL I: 4.

[6] For more on this subject, see A. Taranger, *Udsigt over den norske rets historie,* Christiania 1898, I, pp. 49 and 51, as well as K. Maurer, *Udsigt over de nordgermanske retskilders historie,* Christiania 1878, pp. 43 and 48.

[7] NLL V: 7, NBL V: 7.

deviation does not seem to have existed. The inheritance system concerning the rights of the son and daughter is the same in the laws reported by Schlyter in SSGL 9 under Scanian municipal laws as it is in the provincial laws. With respect to the concept of *Biærke ræt,* notes 10 and 11 (concerning the areas of application of the laws)[8] may be regarded as normative for the formation of these municipal laws.

The law enacted for the city of Lund dates back to 1326,[9] but since an identical right of inheritance for son and daughter has not been created there is no reason to believe that such an inheritance system would have been found in earlier municipal laws. Thus, it is also clear that the inheritance system of Swedish municipal law stands alone in Scandinavia, either because it represents a codification enacted later than those of the other Scandinavian countries or because German influence can be detected here.

Chronologically we may thus set up the following order for the extension of the female right of inheritance throughout Scandinavia. Since the Danish provincial laws contain this right and the SkL and the Själland laws are considered to date from the beginning of the 13th century, this right must have taken hold in Denmark during the 12th century. In Norway this event may be placed in the second half of the 13th century, as FrostL contains the older system and Magnus Hakonsson's national and municipal laws the new one. The same situation exists in Sweden, where the legal material does not specify the exact period but where the statement in the Chronicle of Erik on Birger Jarl's contribution in this area should be regarded as a determination of the period. With respect to Iceland, it may be noted that the *Hákonarbók,* which can be traced back to the same decade as NLL and NBL,[1] still has the older inheritance system as a result of its close connection with FrostL and GulL.[2]

Yet there is reason to wonder whether Denmark is the country of origin of this type of female right of inheritance, or if models exist elsewhere. Earlier provisions of the Longobard Law have

[8] SSGL 9, p. 399—*biærke ræt ther i lund ær.* Note 10—*hælsingborgh.—malmö.* Note 11—*oc j alla stadha ther köpstadhe logh haldis j danmark.* etc.

[9] SSGL 9, p. CXVIII, Holmbäck and Wessén, *Svenska landskapslagar,* 4th series, p. XL.

[1] Maurer, *Udsigt over de nordgermanske retskilders historie,* p. 89, Amira-Eckhardt, *Germanisches Recht* I, p. 122.

[2] Maurer, *ibid.,* p. 40.

already been cited on this matter.[3] As a first example, Edictus Rothari 154 sets forth rules for the computation of the proportion of inheritance between legitimate and natural sons, whereby each of the legitimate sons inherits twice as much as all of the natural sons together.[4]

In this connection, Leges Grimvaldi 5 should be noted, in which daughters are placed in parity with illegitimate sons in regard to inheritance[5] and the representative principle is introduced. Ro 158–160 should also be noted in regard to certain provisions concerning application of the law. Agreement with Scandinavian law is not complete here, but undeniably there are certain principal characteristics common to both the inheritance system of Longobard law and the new system of inheritance that arose in Scandinavian law during the 12th and 13th centuries.

The different parts of the Longobard law which are in point here represent different periods. That part which is described as Edictus Rothari is dated 643,[6] while the Grimvaldi laws date back to the year 668.[7] The considerable interval between Longo-

[3] *Supra*, p. 47.

[4] Ro 154: *De filius legetimus et naturalis. Si quis dereliquerit filium legitimum unum (quod est fulboran) et filius naturalis unum aut plures, filius legitimus tollat duas portiones de patris substantia, naturalis tertiam. Si duo fuerint legitimi, habeant naturales quintam partem, quanticumque fuerant; si tres fuerent legitimi, habeant naturales septimam partem; si quattuor fuerent legetimi, habeant naturales nonam partem; si quinque fuerent legitimi, habeant naturales undecimam partem; si sex fuerent legitimi, habeant naturalis tertiam decimam partem; si septem fuerint legitimi, habeant naturales quintam decimam partem; si autem plures fuerint, per hoc numero diuidant patris substantia.*

[5] Gri. 5: *De successione nepotum, qui post mortem patris in sinu aui remanserit. Si quis habuerit filios legitimos unum aut plures, et contigerit unum ex filiis uiuente patre mori, et reliquerit filios legitimos unum aut plures, et contigerit auo mori: talem partem percipiat de substantia aui sui, una cum patruis suis, qualem pater eorum inter fratribus suis percepturus erat, si uiuus fuisset. Similiter et si filias legitimas unam aut plures, aut filii naturales unum aut plures fuerint, habeant legem suam, sicut in hoc edictum legitur. Quia inhumanum et impium nobis uidetur, ut pro tali causa exhereditentur filii ab hereditatem patris sui pro eo, quod pater eorum in sinu aui mortuos est; sed ex omnibus, ut supra, aequalem cum patruis suis in locum patris post mortem aui percipiant portionem. Similiter et si legitimi non fuerint, et naturales inuentus fuerit unum aut plures, habeat legem suam, id est tertiam partem ex omnibus.*

[6] Support herefor can be found in a statement in Ro 388: *Et hoc addimus ac decernimus, ut causae, que fenitae sunt, non renoluantur. Quae autem non sunt fenitae et a presente uigesima secunda diae mensis huius nouembris indictione secunda incoatæ aut commotæ fuerint, per hoc edictum incidantur et finiantur.*

See also Brunner, *Deutsche Rechtsgeschichte* II, p. 530, and Amira and Eckhardt, *Germanisches Recht* I, p. 70.

[7] Brunner, *op. cit.*, p. 533, and Amira and Eckhardt, *op. cit.*, p. 70.

bard law and Scandinavian law alone leads one to suspect that a connection between them does not exist. If a connection had existed, this would have meant that, for example, the Gutnic law would have in every cases shown characteristics as advanced as those of the Longobard. This does not seem to be true, however, in spite of the statements made by Holmbäck,[8] among others.

Instead it may be strongly questioned whether the different legal systems were not developing in the same direction, owing primarily to the influence of Christianity. In this manner, the same stage may have been reached at different times, but without any actual influence having taken place. Such a way of looking at things is more natural, since it is always hazardous to try to discover connections between groups of people when the interval of time separating them is great. On the other hand, it is natural to find a social element in different laws; such is the case, to a great extent, with the laws of the Longobards. There is special reason to point to the provisions in Gri. 5—*Quia inhumanum et impium nobis videtur,*—.The approach therein may well be joined with the Roman *aequitas* point of view. These arguments may naturally, with at least the same validity, hold true in regard to other people, even though these may have accepted them at a completely different and later time, owing to the later acceptance of Chistianity.

In spite of the great age of these provisions, they are not the oldest. Older ones regarding the law of representation are found in *Decretio Childeberti Secundo,*[9] of A.D. 596, and thus date from the time of the Franks. In the Justinian *Novella 118,* of A.D. 543, we have perhaps the original source of the principle of representation.

It has been mentioned above that with regard to the female right of inheritance[1] it is not possible to disregard other legal events of an economic nature which may occur upon entering into marriage. Above all, measures of this type may influence the distribution of the inheritance and may actually change

[8] Holmbäck, *op. cit.*, p. 229.

[9] Monumenta Germania Historica (MGH), Legum sectio II, Capitularia regum francorum tom. I: 15 Childibert secundo decretio 1: *Ita, Deo propitiante, Antonaco Kalendas Marcias anno vicesimo regni nostri convenit, ut nepotes ex filio vel ex filia ad aviaticas res cum avunculos vel amitas sic venirent, tamquam si pater aut mater vivi fuissent. De illis tamen nepotis istud placuit observare qui de filio vel filia nascuntur, non qui de fratre.*

[1] See above, p. 41.

the proportions in a decisive manner. The provisions of Norman law as set forth in *Les très ancien coutumiers de Normandie* clarify these events somewhat, particularly through the subsequent influence they had on Anglo-Saxon law (especially as it appears as *common law* in *Glanvill* and *Bracton*).

Roman law contained provisions intended to guarantee the wife an economically secure position in the event of her husband's death. They constituted the foundation for the Roman law of matrimonial property. Its principal part consisted of provisions on *dos* ("dowry")—the property which the father had to give to the future husband upon entry into marriage. Thus it very nearly had the character of "domestic succession" (*hemföljd*), and a legal obligation existed for the one who exercised *patria potestas* to make sure that this responsibility was fulfilled. The size of the "dowry" (*dos*) does not appear, however, in the Justinian legislation, thereby giving us reason to believe that it shifted from case to case, and was dependent on the circumstances of the contracting parties or the woman's parents at the time of marriage.[2]

In the beginning, spouses could not legally give each other gifts of an economic nature, except prior to the marriage. Thus, they had the character of "prenuptial gifts" (*donatio ante nuptias*), although usually in the form of a gift from the husband to the wife. This is generally called the "morning gift" (*morgongåva*) in Scandinavian law, but it was according to that law given only after the marriage had been contracted. Justinian allowed, however, gifts between legitimate spouses after the entry into marriage, and these then took on the character and designation of "postnuptial gifts" (*donatio propter nuptias*). Kaser has pointed out that this institution was unknown to the Romans in the beginning, and seems to have entered into their law through the influence of the law of Oriental peoples, in ways which have not yet been completely established.[3]

Legal norms did not exist in this area, but gifts of this type would appear to have acquired the character of custom. Community property did not exist in Roman law, and no traces of it seem to appear in Oriental law either. This is probably due to the wife's complete dependence on the husband, which did not

[2] See the provisions in Justinian law on *dos* in CJ 5, 11 and 12. On *dos* see Sohm–Mitteis–Wenger, *Institutionen des römischen Rechts*, 17th ed., pp 515 ff., and Max Kaser, *Das römische Privatrecht* II, pp. 127 ff.

[3] Kaser, *op. cit.*, p. 135. Cf. S.R.D.K. Olivecrona, *Om makars giftorätt i b* I, pp. 17 and 18 and note 3 at p. 18.

allow her to have property. Only upon the death of the husband[4] or the dissolution of the marriage[5] did this change; at that point she was given the right of disposition over the "dowry" (*dos*), which she had brought with her to the joint estate, and the purpose of which was to give her a more secure economic position in case she found herself alone.

A more extensive treatment of these gifts within the field of Roman law will not be undertaken here. They are discussed only in so far as similar institutions recur in a somewhat different form and with somewhat different designations in Norman and Anglo-Saxon law.

In determining the chronological order of the legal sources in point here, it may be stated, on the basis of the knowledge which we have of Glanvill and Bracton, that Glanvill's work originated in the 12th century, while Bracton's can be placed in the 13th. In his edition on *Les très ancien coutumiers de Normandie,* Tardif has placed the first part of *Coutumiers* at the end of the year 1199 or during the first months of 1200.[6] The second part should be dated immediately after the year 1230.[7] Normandy belonged to the English kingdom during the period 1066–1204; therefore, *Coutumiers* appeared partly before and partly after the date when the connection with England was broken. There is reason to state that in many respects there existed a close connection between these legal systems. *Coutumiers* is, however, a systematically ordered law book, while the works of Glanvill and Bracton have the character of commentaries and studies on the *common law* in force in England at those times.

First of all it should be pointed out that the Roman designation "dowry" (*dos*) has two meanings in Glanvill. The first occurs at VII: 1,[8] where *dos secundum leges romanas* means *id quod cum muliere datur viro quod vulgariter dicitur maritagium.* The second occurs at VI: 1, where *dos* is explained as *id quod aliquis liber homo dat sponsæ suæ ad ostium ecclesiæ tempore desponsationis suæ.* In the latter case *dos* corresponds most

[4] CJ 5, 18, 11.
[5] CJ 5, 17, 8.
[6] *Coutumiers de Normandie, Textes critiques,* par Ernest-Joseph Tardif, Première Partie, Les très ancien Coutumiers de Normandie, p. LXXII.
[7] *Coutumiers,* etc., p. LXXVII.
[8] Glanvill, *De Legibus et Consuetudinibus Regni Angliae,* edited by George E. Woodbine, New Haven 1932. Edition in Latin and English by G. D. G. Hall, Tractatus de legibus et consuetudinibus regni Angliae qui Glanvilla vocatur; The treatise on the laws and customs of the realm of England commonly called Glanvill, London 1965.

closely to what is designated in Roman law as "prenuptial gifts" (*donatio ante (propter) nuptias*). The order in which these topics are taken up in Glanvill makes it apparent that it is *dos* in the last-mentioned sense which is the most important from the Anglo-Saxon point of view.

There may be several reasons for this. One of the more important causes, however, seems to be the feudal systems which existed in England at that time and which, in real-estate cases placed important restrictions on free conveyance. Regarding real estate, it may thus be assumed that in a great many cases a person was holding rights of use and enjoyment of different degrees, or, if we so prefer, with a very limited type of ownership. The line of demarcation between the two seems to amount to a question of terminology.

It is true that Glanvill says *Dos duobus modis dicitur* in the first meaning of VII: 1 and later speaks of legal acts which take place when the husband presents a gift to his wife; these correspond most closely to the Swedish "morning gift" (*morgongåva*), although, according to Glanvill, this occurs *ad ostium ecclesiae* in connection with the act of marriage (*tempore desponsationis suae*) in contrast to the postnuptial "morning gift". But he later deals with the second kind of *dos* only under the designation *maritagium,* in spite of the fact that in VII: 1 he noted that *in alia acceptione accipitur dos secundum leges romanas.* In this manner there takes place a complete reversal of the whole terminology, in terms of the doctrines accepted by Roman legal opinion. Perhaps this change was given assistance by Norman law, in which *dos,* signifying the gift which the bridegroom gives the bride at the door of the church, has the designation *dotalicium,*[9] while the bride's gift to the bridegroom is designated *maritagium.*[1]

Glanvill throws light on the upward limit of *dos ad ostium ecclesiae* in VI: 1. Such a gift to the wife may either be specified —*dos nominata*—or unspecified—*dos non nominata.* If it is not specified, it is called *rationabilis dos,* and represents a third of all the bridgegroom's unbound possessions upon entry into marriage. If the gift is specified and represents more than a third of his possession, it must then be reduced to a third. On the other hand, the specified gift may well be less than a third.

This gift is intended to constitute an economic basis for the

[9] *Coutumiers* ... Statuta et consuetudnines Normannie cap. LXXIX.
[1] *Ibidem* cap. LXXX.

wife in case her husband dies before her. During the marriage, however, she has no right of disposition over the gift; this right is, instead, exercised by the husband. Only upon his death does her right of disposition come into force.

These provisions coincide closely with the Norman law in *Statuta et Consuetudines cap. LXXIX De dotibus.*[2]

We shall not deal below with those provisions of Anglo-Saxon law that are designed to adapt the right of disposition over real property to the prevailing feudal system. In general it may be stated that, with regard to real estate, it was rather a question of the right of use and enjoyment than of a proprietary right. In each individual case, the dividing line between the two kinds of rights was so indistinct that proprietary rights and rights of inheritance to real estate came to follow rules which diverge greatly from those that we have become accustomed to apply.[3]

In the first place, it seems to be of importance that the manor —*capitale mesuagium*—was left undivided for the benefit of an heir or the wife. As a rule, we see interests at work here that were dictated by the head of the county, so that thereby the points of view of public law were taken into consideration.[4]

Dotalicium is the Norman designation for the Anglo-Saxon "dowry" (*dos*), or the husband's gift to the wife upon marriage. Disputes over gifts of personal property in these areas were settled in an ecclesiastical court, while disputes concerning real property were settled by the King.[5] From this we can see the strong hold of the Church on the institutions of marriage, as well as the strong feudal anchorage of the law of property.

[2] 1. *Mulier, mortuo marito suo, petit dotalicium suum, quandoque ab hereditate mariti sui, quandoque ab extraneo. Nec potest petere nisi terciam partem tenementi de quo maritus suus erat saisitus, quando contraxit cum ea in facie ecclesie. Tamen, si non erat de aliquo saisitus, immo pater suus viveret et teneret hereditatem, si presens fuerit quando heres suus duxit mulierem illam, et in maritagium consenserit et illud procuraverit, debet habere mulier in dotalicio terciam partem partis, que contingebat maritum suum, vel que et poterat accidere, mortuo suo antecessore. 2. Si autem dotata fuerit de certo quod non excedat terciam partem hereditatis mariti sui, debet eo esse contenta.*

[3] Compare herewith Pollock and Maitland, *History of English Law*, 2nd ed. II, pp. 2–5.

[4] Glanvill VI: 17: *Excipitur capitale mesuagium quod dari non potest in dotem, nec dividetur, sed integrum remanebit. ... Praeterea si fuerint duo maneria vel plura dividenda, non dividetur capitale manerium, sed integrum cum capitale mesuagio heredi remanebit, ita quod de alio manerio vel aliis maneriis ipsi mulieri satisfiat. ...*

[5] Statuta ... cap. LXXIX 11: *Et questiones de mobili dato in dotalicium pertinet ad forum ecclesiasticum; de immobile vero ad solum Regem.*

It has already been pointed out[6] that the original meaning of "dowry" (*dos*) was the future wife's gift of certain property to the husband, which was to serve as her support if the husband died before her. "Dowry" (*dos*), according to Roman law, was indispensable to the creation of a legitimate marriage. In this manner, marriage was distinguished from concubinage,[7] which was common in Rome during the post-classical period. This interpretation of the meaning of "dowry" (*dos*) was adopted by canon law, and it must, therefore, be considered that "dowry" (*dos*) or "domestic succession" (*hemföljd*) was a prerequisite for a legal marriage according to canon law.[8] The absence of provisions on the size of the "dowry" (*dos*) allowed, however, for the possibility of a "dowry" with only symbolic significance.

Dos secundum leges romanas or *maritagium* is thus the gift which is presented to the bridegroom by the bride's consenting relative or relatives or the bride herself. Glanvill says nothing about how much shall or should be given in the *maritagium* for the daughter, and the issue seems to have been left undecided, perhaps because it involved a question of *maritagium liberum* or *maritagium servitio obnoxium.*[9]

Otherwise, the rule considered to be in force was stated in VII: 3: *Si vero filium habuerit quis heredem et praeterea filiam habuerit vel filias, filius ipse succedit in totum.* But exceptions existed which become apparent in a somewhat later provision: *quia generaliter verum est quod mulier numquam cum masculo partem capit in aliqua hereditate, nisi forte aliquid speciale fiat in aliqua civitate, et hoc per longam consuetudinem eiusdem civitatis.*[1]

[6] *Supra*, p. 54.

[7] Olivecrona, *op. cit.*, p. 26, as in notes, asserts that the difference between legitimate marriage and concubinage seems to have been rather slight an interpretation which seems to be shared by later research. Thus compare Kaser, *op. cit.*, p. 126, as well as the provisions in Cod. Theodosianus according to which the concubine and her children could be entitled to a twelfth of the man's remaining possessions and to a fourth if he did not have any children in his legitimate marriage.

[8] c. 4, C. XXX, qu. 5: *Qualis debeat esse uxor, que habenda est secundum legem. Virgo casta, et desponsata in uirginitate, et dotata legitime, et a parentibus tradita sponso,* ... c. 6, C. XXX, qu. 5: *Nullum sine dote fiat coniugium; iuxta possibilitatem fiat dos* ...

According to canon law a matrimonial gift has, even upon abduction a restoring and rehabilitating effect, as appears in c. 8, C. XXXVI, qu. 2

[9] Glanvill VII: 18. See also the discussion in Th. Plucknett, *A Concise History of the Common Law*, pp. 546 ff., as well as Pollock and Maitland *History of English Law* II, pp. 15 ff.

[1] This later statement gives reason to assume that in England the female

In the Norman *Coutumiers de Normandie,* however, provisions exist which give an indication of the maximum that might be given as *maritagium.*[2] Questions between the daughter or sister and other heirs are at issue here. If, however, a sister is not married but becomes old enough to marry, then delicate issues may arise between herself and the other heirs. These issues were anticipated in cap. LXXX, 4,[3] and this indicates that a genuine right to *maritagium* exists, which the heirs are obliged to satisfy. A sister always has the right to one third of the possessions, regardless of the number of brothers; but even if there are several sisters, they do not have a right to more than one third together, irrespective of whether one or several brothers exist.

From the above-mentioned quotation, it becomes apparent that a genuine right of the marriageable woman to the *maritagium* exists, according to Norman law, even as against brothers. In other words, this is a right that is closely related to the right of inheritance, particularly in view of the fact that the size of the right is specified by the quantity regulations in LXXX, 4.

If a wife dies without children, the *maritagium* reverts to the donor or his heirs.[4] In this case, the intended purpose or function

right of inheritance may have developed in the cities as a result of customary law. This could also mean that it would not be necessary to search for influence from the Hanseatics. Since Glanvill wrote his work towards the end of the 1180s and speaks therein of long-established customs, this cannot refer to the development in, for example, Lübeck, which can hardly have been founded before the middle of the 12th century. In this connection, approximately thirty years cannot be regarded as *longa consuetudo.* It is also to be noted here that Glanvill does not speak of foreign cities, thus hardly giving reason to consider them. During Glanvill's time, English cities existed in which the female right of inheritance was observed as a result of long-established customs.

[2] Cap. LXXX, 2: *Si autem aliquis dat in maritagium terram filie, vel sorori, vel consanguinee, non potest venire contra factum suum; sed heredes sui revocabunt post mortem donatoris quicquid datum est ultra terciam partem hereditatis de qua debet maritari; et hoc si unica sit filia vel soror. Ibidem 3: Si autem plures sint, illi maritate nec heredibus suis remanebit nisi portio tercie partis, que eam contingit, quia omnes sorores non possunt habere nisi terciam partem simul inter se dividendam.*

[3] *Quando vero soror venit ad annos nubiles, si frater suus, vel consanguineus, cujus particeps est in hereditate, noluerit ei de matrimonio competenti providere, et inde queratur, vocato fratre suo ad curiam Regis, dabuntur ei inducie unius anni et diei. In quo spacio debet ei providere de viro, secundum conditionem suam et tenementum, et ipsam interim, secundum posse suum, procurare. Quod nisi fecerit, debet ex tunc justicia Regis supplere defectum illius et assignare mulieri terciam partem hereditatis, si sola est, vel partem suam tercie partis, si plures sint, et ita mulier potest nubere cui voluerit.*

[4] Glanvill, VII: 18. *Sin autem ex uxore sua numquam habuerit heredem, tunc statim post mortem uxoris ad donatorem vel ad eius heredes revertitur*

of the *maritagium* (to provide resources for the woman and her children) no longer exists.

In this connection, it should be noted that, according to older law, it was by no means a matter of course that the inheritance would be divided equally, quite simply because some property was by its nature indivisible, while other property was divisible. It was primarily real estate which was not divisible at all, since feudal law points of view were likely to prevail in that area. A large part of Glanvill's exposition in VII: 3 deals with precisely this subject. A corresponding examination of this subject is undertaken in Pollock and Maitland, *The History of English Law* II, pp. 260–313.

The other provisions in Glanvill VII: 3 will not be given any detailed consideration here. Attention will only be focused on certain circumstances which appear to be especially significant.

From the outset, it may thus be noted that the parentelic scheme is specifically given as the basis of the inheritance, but with exceptions for the head of the *parentela* in regard to second and third *parentelae.* The father and the grandfather and those in the same lineage are thus not mentioned among those who are called to the inheritance; whereas brothers and sisters, paternal uncles and aunts, and maternal uncles and aunts are mentioned. The exclusion of the father is peculiar, but this remained in effect in England until 1833.[5] In this respect, English law was different from Scottish and Norman.[6]

Whether real estate was divisible or not seems to have been primarily a question of geography. Certain areas in England show a higher degree of divisibility in regard to inheritance than others.[7] This is principally of importance when several sons exist as heirs.

However, this is not the only fact to be taken into consideration. If there are several sons, it must be decided whether the dead man was *miles* or *per feodum militare tenens* or *liber sokemannus.* If the dead man was *miles* or *per militam tenens,* then the whole inheritance goes to the first born. This may be regarded as a concession to feudal principles. The lord prefers to deal with one person instead of several, from the point of

maritagium. Compare Pollock and Maitland, *op. cit.,* II, p. 16, and note 2, 292 and 300.

[5] Pollock and Maitland, *op. cit.,* II, p. 295.

[6] *Ibidem* II, p. 295.

[7] *Ibidem* II, p. 270.

view of efficiency.[8] In this case, the decision on the divisibility or indivisibility of real estate is made by the lord.

But not even if the dead man was *liber sokemannus* will divisibility of the inheritance always be the rule. Glanvill states that the inheritance is to be divided among all the sons if it is *socagium-antiquitus divisum*.[9] This occurred by means of an equal division, with the exception, however, of the *capitalis mesuagio* —the manor—which went to the oldest son (or if there were no sons, to the oldest daughter), owing to the right of the first born.

Where no divisibility by age existed, the rule of primogeniture was applied and the oldest son inherited all of the real estate. However, in various places *consuetudo* was applicable, and it happened that heirs born later—*postnatus*—could succeed to the inheritance. In this situation, the practice seems to have been inconsistent, and it was equally inconsistent in the case of a division among several surviving daughters. In the latter case, the question whether the husband of the first-born daughter could perform *homagium* for the feudal lord seems to have been of importance.

The provisions contained in the *Coutumiers de Normandie* are in general the same. *Consuetudo* is also valid here, even *consuetudo* for each class.[1]

The equal division between sons must also be qualified here, depending upon whether the eldest son is *miles* or not. If the son is *miles,* he inherits the armour in its entirety, since it is not regarded as divisible.[2]

A corresponding complication cannot, of course, occur between sisters. There the division is equal, with the exception that *masnagium capitale* may go to the eldest sister.[3]

[8] Pollock and Maitland, *op. cit.*, II, p. 265.

[9] According to Woodbine's edition of 1932. According to the version in Pollock and Maitland, *op. cit.* II, p. 270, the word order is *socagium et id antiquitus divisum.* The corresponding statement in Bracton, which is found next to Glanvill's, is *hereditas partibilis—et ab antiquo divisa.*

[1] *Coutumiers,* ch. VIII: *De portione fratrum.*

1. *Portio inter fratres fiet juxta consuetudinem patrie, miles versus militem, burgensis versus burgensem, rusticus vero versus rusticum; ita tamen si consuetudo patrie non excludit.*

[2] *Coutumiers,* ch. VIII:

2. *Miles primogenitus feodum lorice integrum habebit, et non partietur; ceteri vero escaetas habebunt equaliter. Si vero escaete melius valebant quanto lorica, juxta valitudinem lorice et escaetarum fideliter partiuntur, ita quod miles primogenitus vel in lorica vel in escaetis suam eligat portionem, juxta valorem lorice.*

[3] *Coutumiers,* ch. IX *De portione sororum.*

1. *Omnia tenementa, si contingat descendere ad sorores, equaliter partientur,*

The really difficult problem during the 12th century seems to have been whether, and to what extent, the representative principle was valid. It is completely clear that Glanvill approves such a right when a man dies without leaving a son or daughter, and that he allows the possibility for their descendants to claim the father's (or the mother's) rights.[4] The difficulties arise only when the eldest son has died during his father's lifetime, and has left a son behind him. If the father had one or several additional sons, the question is one of the relationship between the grandson and his uncle or uncles.[5]

This problem has evidently occupied not only Glanvill but also other legal scholars.[6] Glanvill's own attitude towards the question depends on whether or not the son in question, who in turn is the father of a son, is *forisfamiliatus*. The term *forisfamiliatus* refers to a situation where a son has received land from his father, and has become independent, and furthermore has declared himself satisfied with what he has received, all during the father's lifetime. If the son is thereby *forisfamiliatus,* then the grandson may not demand more than the father's share of the remaining inheritance from the grandfather, even if the father could have demanded more.

The meaning of this seems to be that what the father received in land is regarded as an advance, so that the grandson can only demand his father's remaining share of the inheritance which the grandfather has left behind.

On the other hand, if the eldest son has performed *homagium* to the lord for the inheritance during the father's lifetime, then according to Glanvill there is no doubt that the son of the eldest son has to be preferred to his uncles, even if the father has died first.

However, Glanvill by no means conceals the fact that the issue is controversial and may become the subject of a dispute. Until the *homagium* is finally performed by one of the parties, Glanvill

(et tria predicta, que partiri non possunt), ita tamen quod soror primogenita habebit masnagium capitale, et de ea tenebunt alie sorores.

[4] VII: 3 *Cum quis autem moritur sine herede filio vel filia si habuerit nepotes vel neptes ex filio vel filia, tunc quidem indubitantur succedunt ipsi eodem modo quo determinatum est supra de filio et filiabus et sub eadem distinctione.*

[5] VII: 3: *Cum quis vero moritur habens filium postnatum et ex primogenito filio praemortuo nepotem, magna quidem dubitatio iuris solet esse uter illorum praeferendus sit alii in illa successione, scilicet utrum filius an nepos.*

[6] VII: 3: *Quidam enim dicere uolebant. Aliis uero uisum est.*

believes that possession is decisive—*quod melior est condicio possidentis.*

Objectively speaking, Glanvill's interpretation, mentioned above, of *forisfamiliatio*—that the son has received land from the father during the latter's lifetime, and has declared himself satisfied with it—is not different from the provisions of Swedish provincial law expressed in ÖgL Ä 10. According to those Swedish provisions, the sister shall return '*omynd*' and the brother '*urgäv*'[8] upon death, and thereafter the division of the inheritance takes place.

That a kind of *forisfamiliatio* institution was also to be found in Swedish provincial law is evident from ÖgL D 5, wherein the children do not share in the father's liability for fines (or the father in the son's), assuming that it was proven that the estate was divided before the crime was committed.[9]

Glanvill's work is difficult to date, but is considered to have been completed in the period 1188–89.[1] Shortly thereafter, the whole issue of the representative principle came to be seen in a completely different light owing to the death of Richard Coeur de Lion in 1199 and the dispute which broke out between his younger brother John and Arthur, who was the son of John's elder brother Geoffrey. Since the dispute was settled in John's favour and thus in conflict with the representative principle, the whole question of the representative principle remained in abeyance as long as John was alive. This *casus Regis* resulted, however, in criticism from the adherents of the doctrine of representation, as can be seen in *De portione nepotis* 1,[2] a glossary of *Coutumiers de Normandie,* chap. XII. That uncertainty on the appraisal of the representative principle was still great in the 13th century is evident in Bracton. In Fol. 64 *b*,[3] he states:

[8] ÖgL Ä 10: "Nu dör gamble karllin þa skal alla lyti atær bæra systir omynd ok broþir urgæf."

[9] ÖgL D 5: "Nu sighia barnin sik uara laghskipt uiþær faþur sin för æn han þa gærþ giorþe ... Nu æn þæt ær bondans son sum drap. ok kunungxs soknarin sighær egh han uara lutskiptan fran bondanum ..." (Now the children say that they were parties to a legal distribution of the estate with their father before he committed that crime ... If it is the peasant's son who committed murder, and the king's prosecutor says that he has not been party to a legal distribution with the peasant ...)

[1] Pollock and Maitland, *op. cit.*, I, p. 164.

[2] *Filius, licet postgenitus, heres propinquior est hereditatis patris sui quam nepotes, filii fratris sui primogeniti.* The following comment has been added hereto: *Sicut contingit de Johanne, rege anglico, et de multis aliis; et hoc est falsissimum judicium.*

[3] Bracton, *De Legibus et Consuetudinibus Angliae,* edited by George E.

Si autem frater antenatus in vita patris communis obierit, relicto herede de se, nepos vel neptis ex eo incipit esse in potestate avi et heres propinquior avo, propter ius proprietatis quod ei descendit, quamvis gradu remotior, et avunculus vel amita heres propinquus et non propinquior, quamvis gradu propinquior. But further on, in fol. 327 *b*,[4] the following is stated: *Si autem coniunctae sint personae et sit ius descendens utriusque de uno stirpite, sicut inter fratres antenatum et postnatum, avunculum et nepotem, ubi locum habebit computatio quis eorum sit heres propinquior, et cum propinquitate constiterit quamdiu casus regis duraverit numquam ad iudicium procedetur.*

The issues of the share in the estate and of the spouses' individual property have been regarded as special features of different legal systems. This is doubtless so, theoretically, but the question is whether this is such a decisive point in practice. Something similar could be said about the female right of inheritance and its development from nothing to half of the male's share and finally up to parity with the male's share, but this is a rather late phenomenon.

It may be questioned whether we have not had an inclination to regard the transfer of possessions by means of inheritance as a quite special and exclusive way of transferring property from the deceased to the heirs. The reason is probably that such a transfer takes place after a person's death, whereas in earlier times other legal rituals were used which took place during the lifetime of the family member. We have already touched upon the division of possessions within a family which took place through "hemföljd" (domestic succession), male as well as female, in the former case under the name of "urgäv", in Swedish provincial laws.[5] This had the character of past inheritance. In connection with the entry into marriage, the "morgongåva" ("morning gift") was of economic importance as a means by which the future husband could transfer a certain part of his property in order to guarantee the economic security of his wife after his death.

With respect to the spouses' division of the estate, Knut Olive-

Woodbine, vol. 2, p. 189. See also Brunner, *Das anglonormannische Erbfolgesystem*, p. 33, in *Abhandlungen zur Rechtsgeschichte* II, p. 24.

[4] *Ibidem*, vol. 4, p. 46.

[5] Specifically on the *hemföljd*, see Ebbe Kock, *Om hemföljd (förtida arv) i svensk rätt t. o. m. 1734 års lag.*

crona in his work *Om makars giftorätt i bo*[6] describes how the property relationship of the spouses developed in different countries, under the influence, in particular, of the Roman law of dowry. It is evident from his description that the right of the wife to share in the estate exists primarily in Danish and Swedish provincial laws, and in the laws of certain German states. In the latter, however, customs were unusually diversified, and a specific pattern is difficult to find.[7] The reception of Roman law here might have meant that the Roman system of dowry should have played a considerably greater role than one might otherwise believe.

Great diversity also existed in France, but the River Loire seems to represent a borderline between the Roman system of matrimonial property and the Germanic system of community property.[8] Strangely enough, medieval Spanish and Portuguese laws contain predominant features from the system of community property, which Olivecrona seems to attribute to "an inheritance from the time of the West Goths in Spain".[9]

Both in the German states and in France, it is apparent that feudal influence prevented the existence of community property for the wife.[1] On the other hand, it may be stated that the growing merchant class in the cities leaned heavily towards a social system in which property consisted primarily of personal property, articles of stock and liquid assets. These were important as objects of credit for commercial purposes.[2]

It is strange, however, that no such institution of community property exists either in Anglo-Saxon law or in the closely-related Norman law. Nor does it exist in medieval Icelandic law or, in principle, in medieval Norwegian law, except in cases determined by a special agreement or involving special circumstances, primarily those involving poor people.[3]

[6] S.R.D.K. Olivecrona, *Om makars giftorätt i bo* (On the matrimonial rights of spouses in the joint estate), 4th ed. Uppsala 1878.

[7] Jacob Grimm, *Deutsche Rechtsalterthümer*, Göttingen 1828, p. 450: "Kein theil des deutschen rechts hat eine solche mannigfaltigkeit der bestimmungen und gewohnheiten entwickelt, wie die lehre vom vermögen der ehgatten; fast jede landschaft und oft einzelne ämter und örter zeigen eigenthümliches, man vergleiche was bloss in Oberhessen hauptsächlich über diesen gegenstand im jahr 1572 gesammelt worden ist."

[8] Olivecrona, *op. cit.*, p. 90.

[9] *Ibidem*, p. 114.

[1] Regarding the German states, *ibidem*, p. 89; regarding France, *ibidem*, p. 93.

[2] *Ibidem*, pp. 79–80.

[3] NLL V: 4 *in fine*, Olivecrona, *op. cit.*, p. 176.

Special attention has been paid above to the provisions of the Norman and Anglo-Saxon legal systems on *dotalicium-maritagium*[4] and on *dos, quod aliquis liber homo dat sponsae suae ad ostium ecclesiae tempore desponsationis suae—dos, quod cum muliere datur viro quod vulgariter dicitur maritagium.*[5] One can use the Swedish designations here for these concepts for the sake of brevity: *morgongåva* (morning gift) and *hemföljd* (domestic succession). According to Norman law, an upper limit of one third was in effect for both *dotalicium* and *maritagium.* The limit on *dotalicium* was one third of the husband's assets upon entry into marriage. For *maritagium,* the limit was also one third of the assets where the daughter was alone; and where there were several unmarried daughters, they received one third of the whole together.

According to Anglo-Saxon common law, the non-specified *non nominata dos* ("morgongåva") was at most a third of the husband's assets upon entry into marriage, and had the designation *rationabilis dos.* If the gift was specified and exceeded a third, it was to be reduced to a third. No such limits existed for the *dos maritagium* ("hemföljd"), but it may well be asked whether the Norman law in this field did not have an influence on the Anglo-Saxon interpretation. One can also ask whether there was an influence exerted in the reverse direction. Thus, the same limit which is valid for the Norman *maritagium* should also be regarded as valid for the Anglo-Saxon concept.

One reservation with respect to Anglo-Saxon law ought to be made in this connection. *Maritagium* of this kind can be either *liberum* or *servicio obnoxium,* which to a certain degree complicates the issue. In the first case, *maritagium* was given in "domestic succession" without the obligation of performing any feudal services. In the second case, an obligation exists in the third generation for the recipient's heirs to perform *homagium* to the lord and thus begin performance of the feudal services. The rules on this point, which Glanvill sets out in VII: 18, will not be the object of more detailed examination in this essay.[6]

Apparently the one-third rule plays an important part here. But it means something more in this connection. Since the woman

[4] *Supra,* pp. 56–57.
[5] *Supra,* pp. 58–59.
[6] For a more detailed study, see Pollock and Maitland, *History of English Law* II, pp. 15–19, and Plucknett, *A Concise History of the Common Law,* pp. 546–57.

may receive, on the one hand, "hemföljd" (domestic succession) up to one third, and, on the other, "morgongåva" (morning gift), also up to one third, her position is considerably better than it would be under the inheritance rules, where she is limited to a one-half share as against the man. After the "morgongåva", the man retains two thirds of his property; while the woman has received the one third as her "morgongåva". Her "hemföljd" amounted to one third of her father's property.

Since marriage took place, as a rule, between families owning approximately the same amount of property, the husband's and the wife's economic positions were in general the same.[7] Of course, the husband exercised the right of administration, and could use the earnings on the wife's "morgongåva" and "hemföljd" for the common expenses of the estate; but upon his death, the wife became administrator together with any possible heirs.

Once a legal right to "morgongåva" and "hemföljd" existed, the step to a share in the estate and a right of inheritance for women was not a long one. This is particularly true when the "morgongåva" and "hemföljd" did not result in an immediate transfer. And when the law and custom prescribed that this should occur before or in immediate connection with the marriage, it may reasonably be assumed that this was still not the case in practice.[8] The "morgongåva" and "hemföljd" could then be simulated and remain as a claim for the wife, which was eventually realized in the form of a share in the common estate or as a claim on that part of the inheritance which should have resulted in the "hemföljd". Such a procedure is particularly relevant when the spouses are poor at the time of marriage and have nothing to bring to the estate other than their own labour. A

[7] NLL V: 2: "... nema giptingar maðr uili firra hana iamræðe. þa ma hon giptazt með skynsamra frenda sinna ráðe ef þeim lizt iamræðe eða bætr". (... where the lesser suitor chooses to deny her a marriage in conformity with her station in life, then she can marry with the advice of prudent relatives if they find that the match is even or better.)

[8] An example hereof seems to be found in VgL I Giftermålsbalken (G) 4 § 1: "huarn staþ hindradaxgæf. ær. þa ær þriþiungs. skipti a fæ þerræ ær eigh hindradax gæf givin. þa skal hvn up takæ. þriðiung ok. III. markær". (Wherever a "morgongåva" is given, then there is a right to a third [a share?] of their estate. If a "morning gift" is not given, then she shall take a third and three marks.) Compare the same law G 9 § 2: "Sva ær firigipt at skiliæ, þaghær þer kumæ baþi a en bulstær ok vnþir ena bleo. þa a hvn þriðiungh i bok. ok. III. markær at hindradax gæf. af hans lot." (So shall it be said in the wedding ceremony: As soon as they come together on a bed and under a sheet, then she owns a third of the marital estate and as a "morning gift" three marks from his share.)

share in the estate for the wife may have been regarded then as a substitute for the "morgongåva" that was withheld by the husband. In the same way a "hemföljd" that was withheld but for some reason was not implemented by a transfer may be considered as transformed into a claim on the parents, which in turn would manifest itself as a right of inheritance for the woman. This is all the more natural since an advance on the inheritance which the "hemföljd" represents would at the time of inheritance be returned, or in any case deducted.

The development in this direction can to a certain extent be seen in the Scandinavian laws, although these rules should not be pushed too hard. However, a precise limitation on the size of the "morgongåva" and "hemföljd" may constitute an incentive to the development mentioned here. The connection between the size of the estate and the contribution to it or to the wife's future support which the "morgongåva" and "hemföljd" are intended to constitute has then been broken, and from that moment one is justified in assuming that these contributions will take on a conventional and more or less traditional significance.

In the provisions of *Icelandic law,* as expressed in Grágás, it is evident that community property does not in principle exist, but may arise by agreement or through certain other circumstances. The preconditions seem, however, to be first an equality of the property relationships for both parties and the validity of the agreement as against the parties' heirs. However, the agreement is valid only as long as the witnesses are alive and, in addition, remember the contents of the agreement. If this was no longer the case, a legally-determined community of property began if the husband, after payment of "mundr", was still the owner of one mark or more. The same rule applied when the spouses had worked themselves up from poverty to prosperity. The legally determined relationship between the spouses regarding the division of property was then two thirds to the husband and one third to the wife.[9]

Aside from the provision that community property is valid when the spouses are relatively poor, the primary question seems to be that of whether the witnesses can clarify the interpretation of the marriage agreement, which in turn is related to the length

[9] Grágás Islaendernes lovbog i fristatens tid, udgivet efter det kongelige Bibliotaeks Haandskrift og oversat af Vilhjalmur Finsen, Tredie Del Oversaettelse I, Copenhagen 1870, art. 153. Om Ægtefolks Faellig.

of the marriage. This situation is also encountered in another legal context, primarily in *Norwegian* legislation. Considerably longer periods are involved there, however. Thus, GulL 53 puts a twenty-year limit on the existence of separate property rights.[1] One may perhaps conclude from the same section of the law that the man has the initiative in this matter. The wife cannot repudiate the right of joint ownership, if the husband requests that it enter into force,[2] and if he has, before the end of the twenty years, validated his wish that the individual right of separate ownership be available for property acquired during marriage.[3] A strong incentive seems to exist where he has not presented the "morgongåva" to his wife upon entry into marriage, which he should have done according to custom. It thus remains to be given and is regarded as a claim of the wife upon a certain part of the common estate.

In principle, then, each of the spouses had separate property rights to the possessions they brought individually to the estate. The right to joint property was dependent on special circumstances, usually agreements, but also poverty, longer periods of marriage, and the like. The gifts which were exchanged between the groom and the bride (or her consenting relative) are not defined as to size in any other way than that the poor man's "mundr", according to GulL 51, was 12 öras or 1 $^1/_2$ marks. That the provision is old can be seen from its terms: "vér scolom konor kaupa með mundi. Þess at barn se arfgengt. Þa scal maðr festa með kono Þeirri. XII. aura oreigi mund." (We should get wives for ourselves with a marriage gift, so that the children have the right to inherit. Then the man shall bestow upon the wife 12 öras, which is the poor man's marriage gift.) Also the "giof of morgon" ("morgongåva") was left undetermined by this section of the law. In principle, however, it seems that the gifts between the parties

[1] GulL 53: "Nu ero hiun tvau saman. xx.vetr. æða. xx.vetrum lengr. þa leggia log felag þeirra saman. ef eigi var fyrr lagt. þa a hon þriðiung i fe. en hann tva luti. En þo at þat være lagt oc er eigi lyst a .xx. vetrum. þa er sem ulagt se." (Now when two spouses have lived together 20 years or more, then according to the law, their property is held in common, if it had not been so before. Then she has a third of the property and he has two thirds. And even if the property should be common, but this is not publicly announced within 20 years, then it is not to be regarded as common.)

[2] "Eigi a kona at synia boanda sinum felax." (The wife may not deny her husband the right of ownership in common.)

[3] "En ef eigi er i sundr sagt fyrr en pau have verit .xx. vetr. saman. þa a hann alldrigi upreist a þvi male sidan." (But if it has not been thwarted before they have lived together 20 years, then he can never obtain a change in the matter.)

were required to be equivalent to each other ... "oc koma eyrir eyri i gegn" (and correspond öre by öre).[4] This was also true where a regulation existed allowing the bridegroom to supplement his *mundr* in the form of a "giof" (gift) or "gagngiallde" (return gift).[5]

A similar provision is found in FrostL, but with a somewhat different terminology. The bridegroom's "mundr"[6] is found here also, and the wife's dowry is clearly designated as "heimanfylgia".[7]

There are two different interpretations of the expression *þriðiungsauki,* a term which is not found in GulL. Fritzner states in both editions of his dictionary that the meaning of this expression is: "the third that belonged to the wife (from the common estate) of the property the spouses had acquired during their married life.[8] Hertzberg in his *Glossarium,* which appeared in 1895 shortly before the second edition of the last part of Fritzner's work (in which the word "þriðiungsauki" appeared), defines the word as: "the addition to the wife's dowry that the man should establish on the day of marriage, the size of which was set at half the dowry, which was the reason why the addition became a third of both together".[9] Robberstad seems to share Hertzberg's interpretation.[1] Erik Johnsson's dictionary of old Scandinavian languages (*Oldnordisk Ordbog*) defines "þriðiungsauki" as "Forøgelse for en Trediedeel" (increase of a third), which is not very clear.[2]

The most relevant interpretation of the expression, however, seems to be the one proposed by Fritzner, which concentrates on the increase in the estate that takes place during the marriage and allots the husband two thirds and the wife one third. This interpretation is supported by the reasons given for judicial separation of the estate in FrostL XI: 14, as well as by the fact

[4] GulL 54.
[5] GulL 54.
[6] FrostL XI: 14.
[7] FrostL XI: 2, 3, 4, 14.
[8] Johan Fritzner, *Ordbog over det gamle norske Sprog,* 1st ed. Christiania 1867, 2nd ed. Christiania 1886–1896. The words in parenthesis are added in the second edition.
[9] Norges gamle lover indtil 1387 Femte Bind ved Gustav Storm og Ebbe Hertzberg. According to the preface Hertzberg is responsible for the Glossary.
[1] Knut Robberstad, *Fyrelesingar um Rettssoga i millomalder og nytid* II, pp. 50 and 52. About the text see NGL 3: 138. About *þriðiungsauki* see NGL 5: 746 s.v. *þriðiungsauki.*
[2] Erik Jonsson, *Oldnordisk Ordbog ved det kongelige nordiske Oldskrift-Selskab,* Copenhagen 1863, p. 747.

that no parallel to this is found in the *Hákonarbók* because no institution of community property existed in Iceland.

The Norwegian national law of Magnus Lagabøte (NLL) retained the prior rules of the provincial laws establishing the institution of separate property for each of the spouses, but left a possibility for the creation of a community property relationship through an agreement or other circumstances. The principle of free agreement was further strengthened through King Haakon Magnusson's *Retterbod om Fællig mellem Ægtefolk* (undated, but assigned by Robberstad to the period 1299–1306).[3] In practice, the only thing that must be taken into consideration is whether one of the parties has minor children from a previous marriage. In that case, "fællig" may not be agreed to, unless "logmanne ok oðrum goðum monnum" (the lawman, i.e. the judge, and other good men) have stated that the children have not been deprived of their inheritance. If this requirement has been fulfilled, then the parties may agree to a so-called "hælmingsfelag", i.e. each of the parties has a right to half of the estate.

This interpretation of "þriðiungsauki" from Fritzner seems to be substantiated by the provisions in FrostL IX: 19, according to which the husband himself becomes the heir to "þriðiungsauki" upon the death of his wife. The provision in BjR 123 is in agreement with this. NBL V: 4 *in fine* also follows the same train of thought.[4] From this it is evident that "þriðiungsauki" almost takes on the character of a claim that can be used against other creditors. This fact also suggests that "þriðiungsauki" is a quantitative part of the increase in property that occurred during the marriage. Thus we are back again to a system of community property concerning the increase itself. The special provisions concerning exclusively "þriðiungsauki" in FrostL IX: 19 and XI: 14 support this interpretation. In these special provisions, "heimanfylgia" is not in every case coordinated with the "þriðiungsauki".

The provision in NLL V: 3[5] is in agreement with this regard-

[3] See Robberstad, *op. cit.* p. 52.

[4] NBL V: 4: "En af oræigar tvæir koma saman at landzlogum oc aukaz þæim fe. þa hafe þat tva luti er lengr livir. bæde i lande oc lausum oeyri ef uid utarfa er at skipta. en helmning ef uið born þaeirra er at skipta." (And if two poor spouses live together according to the law of the land and increase their resources, then the one that lives the longer receives two thirds at the distribution of the estate both in land and in currency, but half if children take part in the distribution.) Robberstad has a different opinion, *op. cit.*, p. 50. He seems to interpret "þriðjungsauke" as a counter-gift to "heimanfylgja", thereby increasing the latter by half.

[5] NLL V: 3: "En þat hiuna er meira lagðe til felags skal meira upp taka

less of whether one chooses to read *aflazt* or *aukaz* in note 14. The meaning must be the same, namely that the property has increased during marriage, and that the husband receives two thirds and the wife one third of this property. This principle may, of course, be related to the initial provision in NLL and NBL, which provides for an inheritance for the daughter along with the son, but only one half as much for the daughter.[6] Furthermore, it may be said that "heimanfylgia" must be adjusted if it exceeds the inheritance share.[7] Corresponding provisions are found in NBL V: 3 and 7.

The provision set forth above from NLL V: 3[8] is of great interest, inasmuch as it shows a transition from an individual right of ownership to a right of joint ownership in marriage, i.e. community property. Thus it deserves closer consideration.

In Taranger's translation into modern Norwegian,[9] the idea is worded in the following manner: "but, the spouse who has contributed most to the common estate (or his heir) shall take out the most; then the estate is divided into halves, even if it has decreased, But if it has increased, then the man (or his heir) shall take two thirds of the gain and the wife one third. It is not proper to question the man concerning the common estate."

The provision demonstrates a clear mixture of separate property and community property, but it is also ambiguous. If it is interpreted to mean that each of the spouses takes back what she or he has contributed, then it can hardly be said that the estate has decreased, since nothing is left over. If it has increased,

eða þers erfingiar. sidan se skipt i helminga þo at œyzt hafe. En ef aflazt hefir. þa skal kallmaðr eða hans erfingi taka.ij.luti afla en kona þriðiung. þurfu þau engan mann at þuisa felage at spyria." (But the spouse, or also his heir, who has contributed most to the common estate shall take out most; then the estate is divided into halves, even if it has decreased. But if it has increased, the man or his heir shall take two thirds of the increase, but the wife one third. One should not ask any man about such a community.)

[6] NLL V: 7 and NBL V: 7.

[7] NLL V: 7: "Eigi a faðer eða moðer at kuanga son sinn eða gipta dottor sina með meira fe heiman en slikt kome a lut þeirra er eptir eru ef þa uære erfðom skipt. nema þeir lofe er nester eru arfe. En ef meira gefr heiman þa iamfnizt er arf tœmezt æ meðan arfr uinzt til." (The father or mother shall not marry off a son or daughter with a larger dowry than the unmarried children could receive as a share of the estate if a distribution took place at that moment, without even the consent of the nearest heir. And if the dowry is larger, then it is to be evened out at the time of inheritance, as far as the estate will go.)

[8] See note 5 (114).

[9] Magnus Lagabøtes Landslov, translated by Absalon Taranger, Oslo 1915, p. 75.

it is the increase itself that is to be distributed, two thirds to the husband and one third to the wife (or their respective heirs).

However, this rule does not seem to have remained in the law of 1604. There it is prescribed that the estate shall be divided into two equal parts, one for the heirs of the surviving spouse and the other for the heirs of the deceased.[1] This rule was retained by the law of 1687.[2] But an element of Danish law is to be found in the law of 1687 in the form of the surviving spouse's right of inheritance of the "head" share and the "brother" share. The right to the latter is lost, however, if and when the surviving spouse remarries. If this occurs, the "brother" share is divided among the decedent's children, according to the Danish law of 1683.[3]

If the wife receives half of the estate, her dowry should be part of the community property. Otherwise, the wife's share of the property would be greater than the husband's. Such an ex-

[1] Kong Christian den fjerdes Norske Lovbog ... published by Fr. Hallager and Fr. Brandt 1855, IV. Arvebolk, "Om hælnings fællag", cap. III: "Kommer huszbond oc hustrue sammen, som haffuer gods oc pending, oc døer enten dennem vden liffs arffuinge: da skal al vitterlig gield betalis aff fœllitz boe, oc siden skifftis huis løszøre, som offuer bliffuer, lige i to parter, imellem den som igien leffuer, oc den dødis arffuinger: men odels gods falder frjt til rette odelsmend.—Affler huszbond eller hustrue barn sammen, oc døer enten dennem fra barn: da skifftis baade løst oc fast i to lige parter, imellem barnit, oc den som igien leffuer: huad det er fader eller moder ..." (If a man and woman get married who have property and money and subsequently one of them dies without leaving heirs, all known debts shall be paid from the common estate, and then any remaining money shall be divided into two equal parts between the surviving spouse and the heirs of the dead spouse, but "odelsgods" go free and clear to the "odelsman".—If a man and his wife have children together and then one of the spouses dies, regardless of whether it is the father or the mother, then both immovable and movable property is to be divided into two equal parts between the child (the farm) and the surviving spouse.)

[2] *Kong Christian den femtes norske lov af 15dᵉ April, 1687,* published with cross references by P. I. Paulsen, 1904, 5-2-19: "Haver Husbond og Hustrue Børn sammen, og enten af dem ved Døden afgaar, da ... skiftis ... i to lige Parter imellem den Efterlevendis og fællis Børn; Dog arver den Efterlevendis af de efterlatte Midler foruden sin egen Hovedlod en Broderlod; Men hvis enten af dem gifter sig igien, da skal den Broderlod, som den Efterlevendis saaledes bekom, igien komme til Børnene." (If a man and wife have children together and one of them dies, then everything is divided into two equal parts between the surviving spouse and the children they have together. However, the surviving spouse inherits from the funds left behind, in addition to her or his own primary share, a 'brother's share'. But in the event one of them remarries, then the 'brother's share' that the surviving spouse thereby obtained goes back to the children.)

[3] Kong Christian den femtes Danske lov of April 15, 1683, edited with references by V. A. Secher, 2nd ed. 1911, 5-2-19: same wording as in the previous note.

press provision does not exist, but the word order at the beginning of the 1604 law IV: 3 implies that this is the case.[4] Thus, freedom of contract exists in this area, but the conflict "fællag-hiemgaffue" indicates that "hiemgaffue" as such was wiped out by the occurrence of "fællag". This can be interpreted to mean that if a community of property had been created, any dowry given would become a part of it.

With respect hereto, it may also be that the husband's "tilgjof" became part of the community property. The continuation of the provision in IV: 3 makes this statement: "Ingen quinde bør at sønne sin huszbond fællag, naar hond vil legge deris pending til jæffnit."[5]

The *Danish* provincial laws present a completely different and considerably more complicated picture of the right of ownership in marriage. The institution of community property is put on such a high pedestal that it may be questioned whether one is actually dealing more with an ancestral form of community property than with a family or marital form of community property.

First of all, all Danish provincial laws lack provisions on gifts given upon entry into marriage. Parallels to "morgongåva" or "hemföljd" do not exist, but it is completely accepted for a son or daughter to withdraw from the community of property and thus take with him his inheritance share or its approximate equivalent, even during the father's lifetime.[6] In a corresponding fashion, one who marries into a family may transfer to this new family[7] what she or he brings to the community property. This can be done with personalty and living things, but never with inherited land. The latter is always and under all circumstances regarded as the owner's private property, and may never become a part of the community property.

One may now wonder what significance community property has according to these Danish provincial laws. It is evident that, if the spouses have no children, then each of them receives half of the estate, with an exception still being made for inherited

[4] Giffter mand sammen sine børn: da skal slige forord stande, som mand giør for sine børn: huad heller det er til fællag eller hiemgaffue. (If one marries one's children together [with those of one's wife] then the provision shall stand that one makes for one's children regardless of whether it is community property or a dowry.)

[5] Same interpretation, Olivecrona, *op. cit.*, p. 176 note 2.

[6] SkL 17-ASun 10, 45, SkL 19-ASun 11, VsjL I: 1, 5, 19, and 52, EsjL I: 7 and 13, JL I: 15 and 16.

[7] SkL 7-ASun 4, VsjL I: 7, 14, 27, 34, EsjL I: 10, 11, 28, JL I: 11 and 12.

land.[8] If, on the other hand, they do have children (which may be assumed to be the normal and most common case), then a completely different situation arises. Upon the death of one of the parents, the surviving parent only receives the usual "head" share, computed in accordance with the son's share, i.e. twice as much as the daughter. Thus, the surviving parent does not have any specially favoured position, other than that the surviving mother receives the same share as the son, or, in other words, the same right as the father when he survives.[9]

It may be questioned whether this is community property or inheritance. According to Danish law, however, the surviving spouse would not have a right of inheritance corresponding to the husband's right. Instead the survivor's share would be regarded as a share of the estate, although its size would depend on how large the children's share was, i.e. on the number of children and their sexes. As a manifestation of community property in the estate, this situation is less than satisfactory and shows that the widow's position in Denmark was not particularly favoured. Perhaps this is the reason for the decree of Kolding of 1558, in art. 52 of which Christian III states that, upon the death of a peasant, the wife, may "enjoy" half of the land bought during the marriage, estate and cattle and all personal property regardless of whether she has children by her husband or not. It is not clear, however, whether the expression "enjoy" means a right to a share in the estate and thus a right of ownership, or only a right of use and enjoyment.

It is evident from the analysis above that the Danish provincial laws lacked express provisions on gifts occurring before or in connection with marriage. In a letter from the Anderskog monastery on "morgen gaffue" among the nobility (*Om morgengaffue iblant adelen*), dated October 18, 1577, Fredrik II prohibited the nobility from giving more than 2 000 dalers as a "morgongåva", unless the consent and approval of the heirs was obtained. The reason given is that the improper practice of giving large "morgongåva" was also spreading to those who were less well off. It is not precluded that the weak economic position of the wife in marriage may have contributed to the custom of giving

[8] SkL 1-ASun 1, SkL 7 – ASun 4, SkL 25 – ASun 1, VsjL I: 1, 14, 44, EsjL I: 1, 3, JL I: 6.

[9] SkL 6, 22, 23 – ASun 4, Erik Glippings Dalbyske Forordning 3, VsjL I: 47, 53, EsjL I: 4, 7, 12, JL I: 5, 6. Kroman and Iuul, *Danmarks gamle Love paa nutidsdansk* III, pp. XXIV ff.

her a relatively large "morgongåva" in order to put her into a more economically secure position in the event of the husband's death.

The wife's position was improved by Christian V's law of 1683, according to which the surviving spouse received a principal share in addition to the principal share due in accordance with earlier law.[1] If, however, the wife keeps her "fästegåva" or "morgongåva" (which is deducted from the share of the husband's heirs), then she must abstain from the "brother" share that is also due to her.[2] This provision shows the connection that exists between a share in the estate and the gift which the future wife has received from her husband.

A more extensive discussion of the provisions in Danish law will not be undertaken here. Such a discussion exists in Iuul.[3] Iuul further treats the central issue of the principal share[4] in Danish law, and the connected issue of the right to bequeath property to the Church[5] and to dispose of such property upon entry into a monastery.[6] It is noteworthy to point out that Iuul places Birger Jarl's law of inheritance precisely in the year 1260,[7] without, however, stating any sources for this.

In an appendix to the present essay, Table 1, there is a synopsis of the principal provisions of *Swedish* provincial law regarding gifts to a consenting relative of the wife as "vängåva" (friendship gift) or "fästningsgåva" (engagement gift), regarding gifts by the husband to the wife as "morgongåva", regarding gifts by the wife's parents as "hemföljd", and regarding inheritance shares for men and women. In each case, this table uses the oldest manuscript, which as a rule is the same as the source of the text used by Schlyter. The dates used by Schlyter for the manuscripts have also been followed here. The table provides a basis for analysis, but it should be pointed out that it by no means claims to be complete. Its purpose is only to indicate the main characteristics of the development that can be seen in this material.

Thus, it may be noted that all the laws, except SdmL and DL, mention gifts to the consenting relative; all without exception

[1] DL 5-2-19.
[2] DL 5-2-15.
[3] Stig Iuul, *Fællig og Hovedlod. Studier over Formueforholdet mellem Ægtefæller i Tiden før Christian V's danske Lov,* Copenhagen 1940.
[4] *Ibid.,* pp. 62 ff.
[5] *Ibid.,* pp. 66 ff.
[6] *Ibid.,* pp. 67 ff.
[7] *Ibid.,* p. 113.

Table 1.

	Oldest Manuscript	To the Consenting Relative	*Morgongåva*
VgL I	From the 1280s	3 M (G 2) *1* *vängåva*	3 M (G 4) *1*
Vgl II	From the middle of the fourteenth century	3 M (G 3) *3* e contrario	3 M (G 3) *3* e contrario
ÖgL	From the middle of the fourteenth century	*vängåva* (G 10) undetermined amount	Undetermined amount (G 10)
UpL	From the year 1300	*fästningsgåva* (Ä 1) undetermined amount	Undetermined amount (Ä 4) return gift of the wife
SdmL A	Not long after 1327		Undetermined amount (G 3 § 2)
VmL	From the first half of the fourteenth century	*fästningsgåva* (Ä 1 pr) undetermined amount	Undetermined amount (Ä 4)
DL	Shortly after 1318		Max. 3 M (G 6)
HL	From the middle of the fourteenth century	*fästningsgåva* (Ä 1 § 1) undetermined amount	Undetermined amount (Ä 4) return gift of the wife

D = daughter, hfjd = hemföljd, M = mark (money unit) S = son.
Numbers in italics refer to points discussed in the text below.

mention "morgongåva"; all have rules for "hemföljd"; all indicate the share in the estate; and all, except VgL I and DL, mention the inheritance shares of the son and daughter.

Regarding points 1 and 2 in the table: The sum of three marks each, mentioned in VgL I, G 2 and 4, for the "vängåva" and the "morgongåva" is the amount that is valid for free persons. In regard to emancipated persons or serfs, the demands

Share in the Estate	*Hemföljd*	Share in the Inheritance
W: 1/3 + 3 M *2* (Ä 18, G 4 § 1)	Undetermined amount (Ä 5 *pr.*)	Daughter if there is no son *6* (Ä 1) *Addendum:* son 2/3, daughter 1/3 (B 59 a 45 v.)
W: 1/3 + 3 M *4* (Ä 26: 2)	Undetermined amount (Ä 7)	S: 2/3, D: 1/3 (Ä 1)
W: 1/3 + hfjd *5* + possible present in return (G 15)	Undetermined amount; when more than 3 M present in return (G 3)	S: 2/3, D: 1/3 (Ä 1)
W: 1/3 (Ä 3, 7 pr)	Max. of the inheritance share (Ä 8)	S: 2/3; D: 1/3 *7* (Ä 11)
W: 1/3 + hfjd (G 3 § 3) 5 § 3	Max of the inheritance share (G 5 § 1)	S: 2/3, D: 1/3 (Ä 1 § 1)
W: 1/3 (Ä 3, 8 pr, 8 § 3)	Max. of the inheritance share (Ä 9 § 1)	S: 2/3, D: 1/3 *7* (Ä 11 pr)
W: 1/3 (Ä 11 § 5)	Undetermined amount (G 5)	Daughter if there is no son or son's children (G 11 pr)*6*
W: 1/3 (Ä 7, 9 § 1)	Max. of the inheritance share (Ä 8 § 2)	S: 2/3, D: 1/3 *7* (Ä 11)

are reduced, both with respect to the "vängåva" and the "morgongåva", as is evident from G 4. In order to be entitled to a third of the estate, the woman must, however, receive a "morgongåva". As elsewhere in Scandinavian laws, the poor (who cannot give gifts of this kind, which are assumed in a marriage between free persons) receive instead a share in the estate, one half to each. This is evident from the provisions concerning the situation where an emancipated person receives a female serf, or a serf receives a female serf, contained in G 4 §§ 2 and 3. It is

evident from G 4 § 1, that if a "morgongåva" might not occur, the wife is given a future right in the estate instead.

Regarding 3 and 4: The provisions in VgL II are in general the same as in VgL I; however, it is not specifically stated here that the "morgongåva" shall be three marks, which is nonetheless indirectly evident from the provision in G 3—*ok eig þrea marker með* (and not three marks in addition)—and in Ä 26—*konæ taker þriþiungh i bo ok þre marker af hans lot* (the wife takes a third of the marital estate, and of the man's share three marks). For emancipated persons and serfs the demands are reduced both with regard to the "vängåva" and the "morgongåva", in the same way as in VgL I. If an emancipated person marries a female serf, then the latter marries into half of the estate. If a "vängåva" is given, then she marries into a third of the estate, but the "morgongåva" does not issue.

These gifts and the economic consequences of their presence or absence are events to which the provincial laws attach certain consequences for the marriage, as is evident from these provisions. The presence or absence of the "vängåva" is obviously of fundamental importance in determining whether the women shall receive a third or a half of the man's estate and, furthermore, whether her "morgongåva" can be considered to remain appropriated or not. The "higher" or more elegant form of marriage also seems to assume the existence here of a right to a third of the estate for the wife. If the normal "morgongåva" is three marks, then the computation by thirds is clearly more advantageous in those cases where one third of the estate plus three marks makes more than one half of the estate. This occurs when the estate is equal to or less than 18 marks. That 18 marks had a very high value is evident from the fact that in ÖgL's provisions on "hemföljd" at G 3, a woman who brought with her (in the form of "hemföljd") a sixth of an *attung* of a populated village or land worth three marks was entitled to a certain gift in return. The consequence of this provision was that the woman received private property both in the form of the "hemföljd" that she had brought with her to the estate and in the form of the return gift which she received from the man as compensation for the "hemföljd".

Regarding point 5 in the table: ÖgL G 15: "þa skal hon omynd sina först af oskiptu bo taka. Ok uiþær mund sina æn hænne fulghte sua mykyl eghn sum skilt ær." (Then shall she first take her domestic succession from the undivided estate and then her

gift in return, if as great an amount of land has followed her as is declared.)

There is thus reason to believe that only in extreme cases did an estate reach or exceed the 18 mark limit, and that such cases involved wealthy, not common, men.

That a normal "morning gift" did not exceed three marks is shown by the provision in DL G 6, where a maximum of three marks is set.[8]

It is only in the Westgöta laws and in DL that the size of the "morgongåva" is stated or hinted at. In the other provincial laws no mention is made of the size of the gift. The same holds true for "hemföljd", which is undetermined in amount in VgL I and DL; but in the other laws there is a maximum established as to what the beneficiary of the "hemföljd" can count on from the inheritance share.

Regarding point 6 in the table: It can hardly be a coincidence that the amount of the "hemföljd" is left undetermined in precisely those provincial laws that take the older point of view on inheritance, which allows the son to take precedence over the daughter. VgL II introduced legislation attributed to Birger Jarl, which maximized the "hemföljd". It is true that in the main manuscript of VgL I, the so-called B 59, there is an addendum which demonstrates that this document was modernized to entitle the daughter to inherit with the son.[9] But this addendum did not, of course, lead to a change in the original text.

The system of inheritance in DL now appears as the more archaic, since the daughter is only given the right of inheritance after the son's children. However, this is also the case according to VgL I. From the contrast between the inheritance system in VgL I and DL, a conflict may be deduced between a preference for the daughter and a preference for the paternal grandson. This amounts to a conflict between the right of inheritance for women and the representative principle for grandchildren, a conflict which, according to the above-cited addendum to VgL I in B 59, was decided in such a way that in certain cases the maternal granddaughter received a right to one fifth and the paternal uncle to four fifths.

Regarding point 7 in the table: The accepted interpretation

[8] "Giæfwir man hustru sinni morghungiæf givi til þriggia marka." (If a man gives his wife a "morgongåva", he may give up to the value of three marks.)

[9] *Supra*, p. 45.

of Birger Jarl's law of inheritance is that the daughter received half of the brother's inheritance share. This was usually expressed in the laws in such a way that the brother received two thirds and the sister one third. In this connection, it may be appropriate to focus attention on the word order of certain parts of UpL, VmL, and HL, Ä 11. In UpL Ä 11 it is stated: "ær baþi æptir son ok dotter. þa takær systir þriþiung wiþ broþor". (If there exists both a son and daughter, the sister takes a third together with the brother.) In VmL Ä 11: "ær baþe sun oc dottir til. þa takær syster þriþiong wiþ broþor sin". (If there is both a son and a daughter, the sister receives a third in relation to the brother.) In HL Ä 11: "ær baþi æfptir syster ok broþer. þa takr syster þriþiung wiþ broþer sin. æ huru mang syskin æru. þa taki æ syster þriþiung wiþ broþer". (If both a sister and a brother are left, then the sister takes a third in relation to the brother. However many siblings there are, the sister always takes a third in relation to the brother.) It is not declared here that the brother takes two thirds and the sister one third, only that the sister takes one third together with the brother. Should the situation be, as Schlyter intimates, that "wiþ" means "in relationship to",[1] then this might signify that the sister only receives a fourth of the brother's share in certain cases. This would mean, then, that Birger Jarl's law of inheritance was not accepted in its traditional form in the provinces of Svea.

No opinion will be expressed on this issue here. Our only intention has been to focus attention on an unclear point which should be studied more closely.[2]

There is also reason to examine more closely the issue in UpL Ä 3 (the law of Uppland), which St Erik gave in the name of the Father, the Son and the Holy Ghost; a valuable designation of the historical period may be found here. It cannot, of course, be proved that St Erik gave such a law;[3] but if he did, then this legislation would be placed approximately in the same period as Glanvill's presentation of the *common law* in England. Bearing in mind the connections which are believed to have existed with

[1] SSGL 2 Glossarium, see the words *viþ, viþer*.

[2] It should be noted that both NLL and NBL in V:7 contain express provisions that the son shall take two shares and the daughter one third. On the other hand, these laws are 20–30 years younger than the time presumed for Birger's law.

[3] See Holmbäck and Wessén, *Svenska landskapslagar* II, p. 82 note 20; also Sune Ambrosiani, "Uplandslagens Ärfda B.III—ett bidrag till Erik den heliges historia?" in *Nordiska Studier tillegnade Adolf Noreen*.

England in view of Erik's patronymic (Jedvardsson), if the *dos ad ostium ecclesiae* (limited to one third of the man's possessions) remained in the estate, a right to a third would be established for the wife. This share would be in the nature of community property. This naturally presupposes that a marital right in the estate for the wife did not already exist in the form of a gift of the "dowry" (*dos*) type.

It is possible, however, to go one step further. Under canon law, marriage was a result of gifts of the same kind as those found among the Romans. See the citation to cc. 4 and 6, C.XXX, qu. 5, above.[4] Considering the strong clerical atmosphere surrounding UpL and its legislators, it is plausible to assume that they also wanted, by means of a reference to the Saint King Erik, to emphasize the demands of the Church concerning what was to be observed at marriage.

This point of view also seems to be important in another respect. It is evident from the table that all the provincial laws retained provisions on the "morgongåva" and "hemföljd", even if they were in some cases left undetermined and in other cases limited by a maximum amount. Observance of the practice of giving gifts, even if only as a formality, may be interpreted as the fulfilment of a requirement for an ecclesiastically legal marriage imposed by the Church.

This analysis has attempted to demonstrate that it is possible to interpret the gifts upon entry into marriage found in Norman and Anglo-Saxon law as claims by which "domestic succession" merges into a right of inheritance for the woman and the "morgongåva" into a share of the man's estate. With this interpretation, it also follows that these gifts become claims rather than transfers of physical objects. This is also what happens in Swedish national law. The man's "morgongåva" is set at a maximum of a certain number of marks, depending on his class, according to MELL G 10. A maximum of 24 marks is established by MEStL G 9 pr. "Hemföljd" had already ceased to be a gift in the provincial laws; it was to be returned upon the donor's death and thus had the character of a premature inheritance. The same trend is found in the provisions of the national laws.[5] In particular the provisions of the municipal law on the "morgongåva"[6] give the impression that this right had more and more taken on

[4] *Supra*, p. 57 note 8.
[5] MELL G 12–13, KrLL G 12–14, MEStL Ä 20.
[6] MEStL G 9.

the character of a right of use and enjoyment. This is shown even more clearly by the law of 1734, G IX: 3–6. This law establishes a "morgongåva" in the form of land and real estate in the country or a house and land in the city. The "morgongåva" of land therein is stated to be only for use and enjoyment.[7]

On the other hand, if the "morgongåva" consists only of personal property, only a tenth of the man's share of personal and real property may be taken out upon his death. If the "morgongåva" is more than a tenth, then the gift must be adjusted down to a tenth. Regarding personal property, however, the gift becomes the property of the wife.[8]

Thus, the "morgongåva" is first of all set at a maximum of a third of the man's share of personal and real property, if the gift consists of land and real property in the country or a house or land in the city. If the gift consists of personal property, a maximum of a tenth of the man's share of personal and real property is set. If, however, the man dies without having given a "morgongåva", it is to be set in the amount of one half of the maximum according to the law.[9] This means that in regard to real property, the "morgongåva" is set at one sixth of the man's retained property, and that in regard to personal property it is set at one twentieth of the retained property. Since a sixth is equal to the difference between a half and a third, the provision on real estate means that on the death of her husband the wife receives half of the estate as a combined marital right and "morgongåva".

[7] Law of 1734, G IX: 4.
[8] Law of 1734, G IX: 5.
[9] Law of 1734, G IX: 7.