

Fact Resistance in Closed Communities: Annex

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The following is a collection of quotations from Swedish province laws that were written down in the 1300's. Before that time they had been transmitted from one generation to the next, by 'lawsayers' that memorized the law by heart. The laws had been amended at times, especially when Christianity took over, but there was also a high degree of continuity.

A translation of the province laws into modern Swedish [2] has been used as the major source. A few quotations from the common Swedish rural law (MEL) in its original language [3] have also been included for comparison. These samples are first shown in English translation here, with explanatory comments. The subsequent section contains the same samples in their source versions. First, however, there shall be an explanation of the legal framework that prevailed with respect to ownership within a marriage since the medieval times and until the nineteenth century in Sweden.

The primary purpose of the present annex is to show the concrete evidence for some of the claims that are made in its main article, [1]. However, it may also be of interest in its own right, with its examples of the status of women in Sweden in late medieval times.

Legal Framework

In the legal framework, each marriage involved three entities: the husband's property, the wife's property, and the 'household' (*boet*) which was owned jointly. In a simple situation, each of the personal properties consisted of land and valuables (money or precious metals) that the person had inherited, whereas the household contained cattle, farming utensils, harvest and other foodstuffs, and money that may have been obtained from the sale of some of these. In general, however, the household could include any of these resources.

For the purpose of creation and dissolution, the household was considered to be owned two-thirds by the husband and one-third by the wife. Dissolution would occur when either party died, or in the case of divorce. Each entity was supposed to be managed in its own right. For example, if the husband sold some of his land, then the money received would also be his personal property, and likewise

Notes:

for any land that he might purchase for that money; similarly for the wife and for the household.

There were some specific responsibilities for the husband and for the wife. Normally, the husband represented the family in legal and commercial matters, such as major purchases and sales. Small-scale trading at the local market could be done by either spouse separately. Therefore, even the sale of some of the wife's personal property would be negotiated and executed by the husband, but the law was clear that he could only do this if it was in accordance with the wife's free will. Furthermore, if the husband died before the wife, then she would take his place in all of these respects.

The specific responsibility of the wife was to manage the household and, in particular, to make sure that the harvest and other available food would last throughout the long and cold winter, and that it would suffice for all household members: children, grandparents in their old age, farmhands, and kitchen maids, in particular. This was an important responsibility which was crucial for the welfare of the persons involved. Some years it must have been decisive for their very survival. The wife's responsibility was reflected in the marriage ceremony where she was wedded "to lock and key"; many pictures show a woman with a key at her belt.

The two-thirds/one-third system applied for inheritance as well, since the inherited goods were divided between the children with equal parts for the sons (ie. parts of equal value), equal parts for the daughters, and the former having twice the value of the latter. If the husband died, then his personal property was divided by the children or other heirs, the widow retained her personal property and one third of the household, and the other two thirds was divided between the heirs. The same principle was applied if the wife died first. However, in some cases the widow or widower would retain control of all the goods as a caretaker. One can guess that this was applicable if the children were too young to take possession of their inheritance.

Much of what has been described now applies of course to land-owning families. People that were in other positions, such as those that were engaged for helping with farming or kitchen chores may not have had any common household and just some limited personal property.

After this introduction, here follows translations of selected passages from several of the province laws. The following abbreviations will be used for these laws:

UL = Upplandslagen

SmL = Södermannalagen

HL = Hälsingelagen

ÄVL = Äldre Västgötalagen

YVL = Yngre Västgötalagen

ÖgL = Östgötalagen
VsL = Visby stadslag
MEL = Magnus Erikssons landslag

English Translations

The autonomy of women with respect to marriage

UL Ärvdabalken, 1: How man shall lawfully engage woman. ... The man shall ... father hers and nearest kin approach and their approval search. ... is father not there, then is mother; is mother not there, then is brother; is brother not there, then is sister if she married is, ...; is sister not there, then is paternal grandfather; is not paternal grandfather there, then is paternal grandmother; ...

UL Ärvdabalken, 1.2: Maiden who takes man against father's will or mother's if they live, whether she takes him as husband or without wedding, then her inheritance depends on her father's and mother's mercy but not other kin's. Wish father and mother pardon her what she did, then she takes her full share of heritage.

Note, this means that if both parents are dead, then a woman is free to marry whoever she wishes, without any restrictions or disadvantage.

UL Ärvdabalken, 3: (After the preparations to the marriage ceremony) (bride's father, or whoever acts in his role) shall wed the woman to the man, to honor and to housewife and bed half (= shared bed), to lock and to keys and to legal third in all he owns in chattel or breed can, except gold and servants, and to all those rights that is law of Uppland.

Essentially the same expression in VmL, HL, and in MEL

UL Ärvdabalken, 2: Widow has the right to decide herself about her marriage.

Inheritance

UL Ärvdabalken, 3.1: Now inherit farmer or housewife their relatives, inherit both land and chattel; then own the chattel together, but the land is owned by the one who inherits.

UL Ärvdabalken, 11: About inheritance from parents: however many the siblings are, sister always takes half than brother.

VsL sid 657: Loses a wife her husband and leaves her with one child, belongs to her half the chattel ... and the child receives the other half of the chattel. ...

— and leaves her with more children than one ... keeps she one third of all the chattel. ... And the children carry two thirds of the chattel.

Women's ownership and autonomy

UL Ärvdabalken, 9.1: All that farmer and housewife buy together, both land and chattel, it is called bed-purchase: owns the housewife one third and the farmer two thirds. (The same applies in the case of sale).

MEL Giftobalkenum XX: Now farmer may not land of housewife his trade away, whether they have children together or not, except with housewife's free will and heritage hers, and (shall) trade for better and not for worse.

UL Ärvdabalken, 7.3: Dies farmer from housewife his and are children after, decides the housewife for children and (their) paternal heritage until she remarries.

MEL Giftobalkenum, XV: Now lives housewife with husband hers, and beget children together; dies husband, the mother has right to look after the children's property with the advice of nearest kin, and while she unmarried is.

YVL Giftarbalken, 7: If man engages widow and takes her home and sleeps with her and begets child with her, there are no objections to this. ... Is the child born and beer has been made, then it is born in wedlock; this is called acquired engaged widow.

Essentially the same as ÄVL Giftarbalken, 6.

Note, these rules appear in different laws, but if it can be assumed that they are applicable together, then it means that a widow can form a new family but anyway retain the same independance and legal standing as a man. – The 'beer' probably refers to the celebration of the newborn.

UL Ärvdabalken, 7.1: If husband dies and wife remarries, and if her children's parental heritage is with her, then that heritage shall first be taken aside, and shall they take two thirds of the chattel, then the man is wed to two thirds of her third. In the same way if the wife has died and the husband remarries.

ÖgL XIV, sid 513: Now farmer makes purchase with his wife, it is called wall-purchase, that purchase is valid as long as both live. As soon as either dies, it is not a valid purchase.

YVL IX, sid 429: Wife sells land hers, or man, does not add to household, buys other land herself, it belongs to the one who owned the payment. Are they separated by (death or divorce), all that has not been harvested belongs to the one who owned the land.

Support of parents with old age or disease

Sml Jordabalken, 17: Comes age or disease to man or woman, then are the children obliged to feed father and mother until they die.

Women as agents in legal matters

UL Tingmålalbalken, 11: Is maiden sued, defend her father or kin whatever she is sued for. Is widow sued, defend herself for all cases. Defend farmer housewife his for all cases, whatever they are, except if witnesses appear and she is indicted by them. Witnesses may challenge her like men challenge (each other), and may pay fines housewife according to the testimony.

HL sid 293: In the following cases woman may say oath and bear witness. First if she is present when child is born, whether it is born dead or alive or who she names as the child's father. The second is if cattle make damage to other cattle, or man to cattle or cattle to man.

Svensk text

Kvinnors autonomi i samband med äktenskap

UL Ärvdabalken, 1: Hur man skall lagligen kvinna fästa. ... Mannen skall ... fader hennes och nästfränder söka och deras godvilja efterleta. ... är ej fader till, då är moder; är ej moder till, då är broder; är ej broder till, då är syster om hon gift är, ty ej må mö mö gifta; är ej syster till, då är farfader; är ej farfader till, då är farmoder; ...

UL Ärvdabalken, 1.2: Den mö som tager man mot faders vilja eller moders om de leva, antingen hon tager honom till äkta man eller lönskaläge, då råde för arv kvinnans faders och moders misskund och ej annan frändes eller giftomans. Vill fader och moder förlåta henne saken, då tager hon full arvslott. ...

UL Ärvdabalken, 3: Han (vigsselförrättaren) skall kvinnan med mannen gifta till heder och till husfru och säng halv, till lås och till nycklar och till laga tredjung i allt han äger i lösöre eller avla kan förutom guld och hemmahjon, och till all den rätt som är uppländsk lag.

Väsentligen samma text i VmL, HL, och MEL (Giftobalkenum V). I den sistnämnda säges:

Nu beþis brup gomme gitto maal, þa skal giftoman honum fæstekonun hans giftæ oki hender sætiæ meþ þessum orþum: iak gifter þik minna dottor til heþers ok til husfru, til halua siæng, til laas ok nykla, ok til huarn þen þriþia pæning i æghin (ællæ) ok ægha faan i lös örum, ok til allan þen ræt sum vplandz æru lagh ok þen hælgher erik gaf, i namn þaþors, sons ok þæs hælgha andæ.

UL Ärvdabalken, 2: Änka äger att själv råda för sitt gifte.

Arvsrätt

UL Ärvdabalken, 3.1: Nu ärver bonde eller hustru fränder sina, ärver både jord och lösöre; då äge de båda lösöret, men jorden äger dendera som ärver.

UL Ärvdabalken, 11: Om bröstarv: Ehuru många syskonen ock äro, så tager alltid syster hälften mot broder.

VsL sid 657: Frånfaller från en fru hennes man och lämnar henne ett barn, ... så tillkommer henne hälften av allt godset —Och barnet uppbär den andra hälften av godset ...

... och lämnar henne mer barn än ett, ... så behåller hon tredjedelen av allt godset. ... Och barnen bäre upp de två delarna av godset ...

Kvinnors äganderätt

UL Ärvdabalken, 9.1: Allt det bonde och husfru köpa samman, både i jord och i lösöre, det kallas sängaköp: äge husfrun en tredjung och bonden två lotter av husköpet. *Motsvarande gäller vid försäljning.*

MEL Giftobalkenum XX: Nu ma ei bonde husfru sinna iorþ bort skipta, huat hælder þe barn haua saman ælla ei, vtan meþ husfrunna goþuilia ok arua henna, ok skipte til bætra ok ei til værta.

UL Ärvdabalken, 7.3: Dör bonde från husfru sin och äro barn efter, råde husfrun för barn och fädernearv tills hon åter giftes.

MEL Giftobalkenum, XV: Nu boor kona meþ bonda sinum, ok afla barn saman; dör bonde, þa hauer moþer vizorþ æt se for barna goze meþ nestæ frenda raþe, æ

mæþan hon ogift ær.

YVL Giftarbalken, 7: Fäster man änka, förer hem, lägger sig hos, avlar med henne barn, där äger ingen sak i, ... Varder barn sedan fött och är öl gjort, då är det äktfött barn. Ty kallas hon laga fången, fäst änka.

UL Ärvdabalken, 7.1: Om mannen dör och hustrun gifter om sig, och om hennes barns fädernearv är hos henne inne, då ska först barnafädernet undan skiftas, och tage de två lotter av lösöret, sedan giftes mannen till två lotter i hennes tredjning. På samma sätt om hustrun har dött och mannen gifter om sig.

ÖgL XIV, sid 513: Nu gör bonde köp med kvinna sin, det säges väggaköp vara, det köpet ständar medan bägge leva. Så snart endera dör, då är det ej laga köp.

YVL IX, sid 429: Hustru säljer jord sin, eller man, lägger ej i bo, köper sig annan jord: då är den denderas som jordavärdet ägde. Skiljer sig dem åt Hel eller håg, allt det obärgat är vare denderas som jord ägde.

Omsorg om åldrande eller svårt sjuka föräldrar

SmL Jordabalken, 17: Kommer för man eller kvinna ålderdom eller sot till, då äro barnen skyldiga fader och moder att föda till döddagar.

Kvinnors befogenheter i rättsliga sammanhang

UL Tingmålabalken, 11: Givs mö sak, värje henne fader eller fränder evad sak henne givs. Givs änka sak, värje sig själv för alla saker. Vare pock bonde hustru sins värjare för alla saker, vad sak henne än givs, utom när det är vittnesmål och hon är med vittnen bunden därvid. Bite vittnen henne som män bitas och böte sak sin hustru efter vittnesbanden.

HL sid 293: I dessa mål må kvinna svärja och vittne bära. Det är det första om hon är inne då barn födes, huruvida det föddes dött eller kvickt eller vem hon som barnafader nämner. Det andra är det, om fä gör annat fä skada, eller man gör fä eller får gör man.

References

[1] Erik Sandewall: *Fact Resistance in Closed Communities*. 2023.
<https://www.argumentochfakta.se/artiklar/251/fact-resistance.pdf>

[2] Åke Ohlmarks: *De svenska landskapslagarna*. Stureförlaget, Stockholm, 1976. (The complete texts, translated into modern Swedish, with notes and explanations.)

[3] Codex Iuris Communis Sueciæ Magnæanus. Konung Magnus Erikssons Landslag

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