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Gendering Sexual Crimes in Norway: Changes through Christianisation or Reformation?

Anne Irene Riisøy

Whether the position of women vis-à-vis men in sexual matters gradually deteriorated after the change of religion ca. 1000 CE, is an issue which has caused disagreement among medievalists. However, when the same perspective is applied to the post-Reformation period, Early Modern scholars present an unanimous answer: the change of confession in 1536 initiated a new era regarding official attitudes towards sexuality, which brought greater criminalisation, an increase in the severity of sentences and a deterioration in the position of women. In short, the laws against sexual crimes promulgated after the Reformation put women at a considerable disadvantage. In contrast, Early Modern scholars have considered the Middle Ages to be a period where sexual relations before and during marriage were normally dealt with under civil law, and the aim had been to make the lover pay economic compensation to the offended party, normally the woman's father or husband.[1]

In this article I will argue that the greatest changes in the perception of illicit sexuality happened in the wake of the conversion to Christianity in ca. 1000 CE, and that women were also gradually criminalized for the whole spectrum of extramarital sexuality during the High Middle Ages. In fact, after the Reformation it was not possible to find more sexual acts to criminalise and hence the medieval principles were carried on through the sixteenth and seventeenth centuries. This development is traceable in the Christian laws, which were enacted from the eleventh to the late thirteenth century.[2]

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[1] The most important are K. Telste, *Mellom liv og lov: Kontroll av seksualitet i Ringerike og Hallingdal 1652-1710* (Oslo 1993); H. M. Terjesen, *Blodskam og leiermål i forbudne ledd: En studie med utgangspunkt i kilder fra Rogaland i tidsperioden 1602-1659/61* (Oslo 1994); G. E. Bastiansen, Væ dig Bergen du fule Sodomæ oc Gomorrhæ søster: en analyse av utenomekteskapelige forhold i Bergen 1597-1669 (Unpublished dissertation University of Bergen 1995).

[2] The relevant legislation is discussed in A. I. Riisøy, *Sexuality, Law and Legal Practice and the Reformation in Norway* (Leiden 2009) 9-15. In medieval Norway there were four large legal provinces: Gulathing, Frostathing, Eidsivathing and Borgarthing, each of which had its own representative assembly that codified legislation for ecclesiastical as well as secular affairs. In medieval legislation, sexuality is first and

However, in legal practice from the late thirteenth century onwards, a consistent pattern is discernible through the Middle Ages and Early Modern period; it was first and foremost men who were penalised.[3] I will also argue that this gender imbalance is due to husbands and fathers, who had considerable power to affect whether charges were brought against women. An important reason for this influence is probably rooted in pre-Christian times where control of female sexuality was paramount, and the sanctions were directed against the woman's lover.

The focus in this article will be on fornication (sexual relations between an unmarried man and an unmarried woman), adultery and incest (sexual relations between relatives, either biological kinship or affinity), areas which lend themselves well to an analysis from the perspective of gender, because they involved a man and a woman, and contrary to rape they were per definition not violent acts. Homosexuality and bestiality will not be discussed, because in Norwegian medieval and Early Modern law these were defined exclusively as male crimes.

Revenge and Compensation

The oldest extant laws on sexual relations show that it was the responsibility of men to act if women under their protection became the objects of

foremost regulated by the Christian laws, of which there are several chronological stages. The earliest Christian laws may contain paragraphs that go back to the first half of the eleventh century. Tradition holds that Christian laws were originally introduced to western Norway through the initiative of the Anglo-Saxon bishop Grimkell and King Olaf at an assembly on the island of Moster in Sunnhordland, perhaps in 1022. The *Old Christian Law of the Gulathing* indicates which provisions were attributed to King Olaf in the 1020s or King Magnus Erlingsson in the 1160s when this law was revised and changes introduced. These provisions are called the Olaftext and Magnustext respectively.

[3] This article is based on the results from my doctorate study where I have considered all sources from the whole of Norway from the late thirteenth century until 1600 which document how sexual crimes were dealt with in the legal practice. Making use of published as well as unpublished sources there are a total of 96 cases from the Middle Ages and 768 from the post-Reformation sixteenth century. Each of these cases are listed with reference to where they are published in the appendix in A. I. Rissøy, *Sex, Rett og Reformasjon* (Oslo 2006) 168-201. A further discussion of these sources is presented in the introduction to Riisøy, *Sexuality*.

unwanted sexual attention, and a man who had sexual relations with any other woman but his own wife risked being killed.[4] Controlling female sexuality was clearly the issue, since this was connected to important questions involving family honour, legitimate heirs, transfer of property, and for the elite, it was also connected to political alliances. For the offended party compensation clearly was a less honourable option; in fact paragraph 186 in the secular section in the *Old Law of the Gulathing* explicitly states that a person had the right to compensation only three times – unless he had avenged the wrong in the meantime.[5] Although pecuniary compensation was a legal option, revenge was expected. As an illustration regarding these 'ethics of revenge', Per-Edwin Wallén points to episodes in the sagas where people complain that they do not want to carry their killed relatives in their purse.[6] Studies of the Family Sagas by Meulengracht Sørensen and Jesse L. Byock show that revenge was always directed against the men; women were never blamed, even when they had obviously committed adultery.[7] This conclusion is based mainly on Icelandic sources, however Norwegian and Icelandic legislation share the same principles here:

[4] I have discussed this aspect of the legislation in A. I. Riisøy, 'Komparativt blikk på "verdslig" rett i Eldre Borgartings kristenrett' in: J. V. Sigurðsson and P. G. Norseng ed., *Østfold og Viken i yngre jernalder og middelalder* (Oslo 2003) 163-167. The right to kill for revenge in the provincial laws of the *Gulathing*, § 160 and the *Frostathing* IV § 39, list seven women, *Norges gamle Love indtil 1387*, 5 vol. (Christiania 1846-1895) (Herafter referred to as *NgL*) I, 62-63, 169-170). A translation is found in *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law*, L. M. Larson trans., Records of Civilization Sources and Studies 20 (New York 1935) 132, 273-274. The *Old Christian Law of the Borgarthing*, version II, § 15, (*NgL*, I, 358) lists an astonishing thirteen women for aristocrats and free farmers, with proportionally fewer women the further one descended the social ladder. In addition, female slaves and servants were under the authority of the *pater familias* with regard to their sexuality, but in their case family honour was not considered to have been insulted to such a degree that it justified killing. Rather, the head of the family could claim economic compensation in proportion to the woman's position within the household. G § 198, see also F XI 21, (*NgL*, I, 70-71) 234., *The Earliest Norwegian Laws*, 143-144, 369.

[5] G § 186, (*NgL*, I, 68), *The Earliest Norwegian Laws*, 140.

[6] P. Wallén, 'Hämnd' in: *Kulturhistorisk Leksikon for Nordisk Middelalder* VII (1962) 245.

[7] P. Meulengracht Sørensen, *Fortælling og ære: Studier i islændingesagaerne (*Aarhus 1993) 235-236; J. L. Byock, *Feud in the Icelandic saga* (Berkeley 1982) 235-238.

it was the male lover who faced punishment.

However, it was not sufficient merely to have the law on your side, in the absence of a strong state people in the Early Middle Ages were to a large degree dependant on family, friends and political supporters. The archaeologist Axel Sommerfelt suggests that in Viking Age Iceland it was the right to inherit rather than the degree of kinship which determined who should initiate revenge.[8] This hypothesis has been elaborated upon and it is applicable to the situation in Norway too, where the line was drawn between relatives with and without a claim to inheritance when help to avenge a killing needed to be enlisted.[9] Of particular relevance here, it should be noted that sexuality was regulated by a comparable normative framework because a man's right to inherit from female relatives was explicitly limited to those women whom he had to protect from sexual advances by other men.[10] Vengeance could easily lead to feuds and unrest, and both Church and Crown therefore supported efforts to focus on the right to claim economic compensation, and to limit the responsibility of the extended family when solving conflicts.

However the right to kill in order to gain revenge, which was part of the legal protection afforded to a free person, has its roots in pagan times and this right was so ingrained that it did not vanish overnight when Christianity gained political acceptance. Attempts to curtail violence and personal initiatives for revenge were stepped up in the 1160s when king Magnus Erlingsson (1161-1184) decreed that people who broke a legal settlement in cases of manslaughter and sexual crimes forfeited both property and peace.[11] Acts of vengeance were occasionally levelled against innocent members of a killer's family, and therefore in 1260 king Håkon Håkonsson decreed outlawry for this practice and it became obligatory to

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[8] A. Sommerfelt, 'Comments on Economic Structures in the Early Iron Age', *Norwegian Archaeological Review* 7 (1974) 145.

[9] Dagfinn Skre, *Herredømmet: Bosetning og besittelse på Romerike 200-1350 e. Kr.* (Oslo 1998) 15; Sverre Bagge, *Society and politics in Snorri Sturluson's 'Heimskringla'* (Berkeley 1991) 113.

[10] B II 15, (*NgL*, I, 358) links the right to kill in revenge to the right to inherit (*Allar pær konor er madr stendr til arfs æftir*). In *Gulathing*, G § 197, (*NgL*, I, 70), *The Earliest Norwegian Laws*, 143, the right to inherit is limited to those women a man could ask economic compensation for.

[11] G § 32, (*NgL*, I, 19-20), *The Earliest Norwegian Laws*, 58-60. Cf (F V 44-46), and in F V § 44, (*NgL*, I, 182), *The Earliest Norwegian Laws*, 290.

accept an offer of settlement.[12] During the reign of king Håkon's son Magnus the Law-mender, the legal possibility of revenge was removed altogether and the responsibility of the extended family had come to an end. With the *Landslaw* – codified in 1274 and adapted to the conditions of the cities with the *Townlaw* two years later – legal uniformity was achieved in Norway, and with this law the right to seek economic compensation became the only option in cases of fornication and adultery. The number of women who were under the authority of male relatives was considerably reduced. The *Landslaw* accords a man the right over merely four women: his wife, daughter, mother and sister, while according to the older provincial laws a free man's rights to seek compensation or take revenge extended over seven to thirteen women.[13] The *Norwegian Law* of 1604 is also based on these principles.[14] It is also worth noting that the right to compensation by the *Landslaw* and the later *Norwegian Law* of 1604 is connected to the right to inherit.[15] This is wholly in agreement with the older legal principles regarding the right to revenge in such cases.

Between 1300 and 1600 a total of 35 cases where men had to pay compensation for sexual relations have survived.[16] From this period I have not found any cases where revenge was exacted. In certain parts of the country it may however have taken quite some time for these new principles to gain acceptance.[17] In 1395 bishop Øystein of Oslo seriously reprimanded the people of western Telemark, a remote area in south Norway. Allegedly they frequently took revenge after they had collected the compensation for a killing. In remote areas the situation may have been similar regarding illicit sexuality.

[12] F intro. § 8, (*NgL*, I, 123), *The Earliest Norwegian Laws*, 216.
[13] L IV 4 and L IV 5, (*NgL*, II, 51-52), 46-47.
[14] *Kong Christian den Fjerdes norske Lovbog af 1604* (Christiana 1855), III 22 (wife) and III 25 (unmarried women, *møer eller quinder*), 65, 67-68.
[15] L IV 30 (29), (*NgL*, II, 72).
[16] Each of these cases are listed with reference to where they are published in the appendix in Riisøy, *Sex, Rett*, 168-201.
[17] *Diplomatarium Norvegicum: Oldbreve til kundskab om Norges indre og ydre forhold, sprog, slægter, sæder, lovgivning og rettergang i middelalderen* (Christiania and Oslo 1847) (Hereafter referred to as DN) IX, nr. 186.

Christianisation and Criminalisation

Gradually sexuality was considered a matter of criminal law, and when Christianity was politically accepted in Norway during the first half of the eleventh century, violations of Christian moral norms were criminalised by new legislation, the Christian laws, and accepted by the provincial assemblies. Also acts which had not been stigmatised before, and which had concerned a rather limited group of male elites, such as polygamy and the keeping of concubines, became criminal acts. In the *Old Christian Law of the Gulathing* prohibitions of incest, bigamy, sexual activity on certain days of the week and year, and bestiality is found in the *Olafstext*. This means that they were introduced before the revision in 1163/64, probably even in the eleventh century.[18]

In the initial stages, the criminalisation of sexual acts cannot have been much more than a theoretical programmatic statement. The possibilities of implementing the new laws must have been rather limited and some of the new principles would not easily have gained acceptance. For example, King Harald (1046-1066) married Eillisiv in *Gardariki* (around present day Kiev and Novgorod), when he was already married to another woman. This union was in direct contravention of § 25 of the *Old Christian Law of the Gulathing* prohibiting bigamy.[19] It should also be mentioned that the Early Medieval definition of incest was extremely wide and at conflict with traditional concepts. For instance when the papal envoy Nicolas Brekespeare visited Norway in the mid-twelfth century in order to establish the Church Province of Nidaros, he forced the womanising King Sigurd (1136-1155) to conclude a compromise with him. As Erik Gunnes suggests, the reason for this lay less in the king's general relations with women, but rather in the particular one with his cousin Kristin.[20]

An important step forward on the road to criminalising the whole spectrum of extramarital sexuality was probably made with the establishment of the Church Province of Nidaros in the mid-twelfth century and with the growing influence of canon law that it entailed.[21] During the

[18] §§ 24, 26, 25, 27, 30, (*NgL*, I, 15-17, 30), *The Earliest Norwegian Laws*, 53-54, 57-58.
[19] (*NgL*, I, 16), *The Earliest Norwegian Laws*, 54-55.
[20] E. Gunnes, *Erkebiskop Øystein: Statsmann og kirkebygger* (Oslo 1996) 60.
[21] This province also comprised Iceland, Greenland, and Sodor which included the Faroes, the Orkneys and the western Isles of Scotland. In 1272/1273 the dioceses

second half of the twelfth century, new rules regarding marriage and its conclusion were introduced. The requirement of individual consent, the prohibition of divorce and the rule of celibacy for clerics all touched on sexual matters and came to contribute to a further diversification of sexual crimes. As Gunnes has shown, the strong influence of canon law during Archbishop Eystein's revision of the *Old Law of the Frostathing* in the 1170s is palpable. [22] Amongst others, Eystein probably prohibited adultery and fornication. [23] It seems that Archbishop Eystein's contemporary bishop Thórlákr of Skálholt, in the late twelfth century suggested three years' penance for fornication.[24] Also, during a council and synod held in Bergen in 1163 or 1164 important changes were made to the *Old Law of the Gulathing*, in particular to its Christian Law. [25] Homosexuality was criminalised and at the same time revisions and precisions were made to extant legislation; for example, the prohibition of incest was more clearly defined.[26]

By the late twelfth century in the region of the *Frostathing* there is reason to believe that the laws criminalising sexuality were in fact implemented. Generally speaking, the possibilities to apply the laws increased during the course of time. Church organisation became more and more refined based on the parish system, and later also on provosts, and several generations would have grown up under the influence of Christian teachings and practice, regulated by the Christian laws. During the Middle

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of the Orkneys and the Hebrides were formally transferred to the Scottish archdiocese of St. Andrews.

[22] Gunnes, *Erkebiskop Øystein*, 149-171; idem, 'Erkebiskop Øystein som lovgiver', *Lumen* 39 (1970) 127-149; idem, 'Erkebiskop Øystein og Frostatingsloven', *Historisk Tidsskrift* [Norway] 52 (1974) 109-121.

[23] Gunnes, *Erkebiskop Øystein,* 160. The *Old Christian Law of the Frostathing*, § 4, 'Vm legorðs sekt' [Concerning punishment for fornication] criminalises sexual relations between two unmarried partners *(NgL*, I, 149) *The Earliest Norwegian Laws*, 247. The first part of the paragraph runs: 'If a woman lies with a man whom she is not allowed to possess, she owes a fine of three marks, just as he does with whom she lies.' The preceding paragraphs concern different forms of illicit sexuality, like incest and adultery (*Vm horan*).

[24] E. Bull, *Folk og kirke i middelalderen: Studier til Norges historie* (Kristiania 1912) 120; notes that Thórlákr prescribed three years penance for fornication/indecency between people who are not related.

[25] *Gulatingslovi*, K. Robberstad ed. and trans. (Oslo 1937) 12.

[26] G § 32, G § 24, (*NgL*, I, 19-20; 24-25), *The Earliest Norwegian Laws*, 59-60, 53-54.

Ages, the archbishop and the bishops claimed fines incurred due to infringements of the Christian laws. *Sverris Saga* describes how during the reign of Magnus Erlingsson the archbishop managed to arrange a particularly advantageous agreement, probably with the assembly at the *Frostathing*. Fines to the archbishop were to be paid according to their value in silver and not at face value such as fines to the king.[27] A section in the *Old Christian Law of the Frostathing* noting which fines the archbishop was entitled to and how they were to be calculated corroborates the saga's information.[28] When fines to the Church were to be paid in their value in silver and not at face value, this amounted to approximately a two-fold increase. The matter was to be a bone of contention under the next king, Sverre Sigurdsson, as appears from Pope Celestine III's letter of privileges from 1194. The pope prohibited kings and chieftains to change the written laws of the land or to change the fines *pecuniarias penas* against ancient custom and to the detriment of the Church or clerics unless the bishops and wise men consented.[29] A response by Pope Celestine III in 1196 to a complaint addressed to him by the chapter of Nidaros tells us that laymen passed sentences in matters regarding *spiritualis iurisditio*.[30] These so-called 'spiritual cases', cannot be anything other than cases concerning a breach of the Christian laws.[31] The surviving medieval cases of breach of *Christian laws*, from the late thirteenth century onwards, show that sexual crimes were in the majority, and they may have been so a hundred years earlier too.[32]

From a gender perspective it is necessary to stress that the criminalisation of sexuality was not static during the Middle Ages. In all likelihood, the Church's view of extramarital sexuality as a sin was decisive here; the fight against sin and crime became two sides of the same coin. There was a close relationship between individual criminal responsibility and the aspects of sin because an individual's soul needed to be purged from sin and this same criminal individual had to be brought in front of a

[27] This conflict is described in *The Saga of King Sverri of Norway* (Sverrisaga), J. Sephton trans. (London 1899, repr. Llanerch Publishers, 1994) 140-141.
[28] F III § 2, (*NgL*, I, 148), *The Earliest Norwegian Laws*, 246.
[29] Pope Celestine III's letter of privileges from 1194, *DN*, II, no. 3, 2-5.
[30] *DN*, I, no. 1, 1.
[31] This term is discussed thoroughly by E. Gunnes, 'Kirkelig jurisdiksjon i Norge 1153-1277', *Historisk Tidsskrift* [Norway] 49 (1970) 137-148.
[32] Details in A. I. Riisøy, *Stat og kirke: rettsutøvelsen i kristenrettssaker mellom Sættargjerden og reformasjonen* (Oslo 2004) 178-195.

court to suffer secular punishment. This duplication in the legislation, defining one and the same act as both criminal and sinful, which was probably inspired by Anglo-Saxon Church law, characterises the Christian laws from the very beginning.[33] In the so-called *Olafstext* in the *Old Christian Law of the Gulathing* a fine to the bishop usually went hand in hand with confession and penance, in the formulation 'ganga til skripta ok bæta við Krist' (going to confession and doing penance).[34] Because the individual was responsible for his or her actions towards God, the culpability was gradually individualized. Due to this, only the criminal and sinful individual was threatened with punishment and not his or her family, and thus women too came to be criminally responsible in the same way as men.

Regarding incest, the earliest Christian laws prosecute exclusively the man who is threatened with outlawry. It is the male partner who forfeits property and peace, and who has to go into exile. This is in direct contradiction to the younger Christian laws of the mid-thirteenth century, where it is unequivocally stated that both partners (*þau badhe*), were to be punished with outlawry.[35] Concerning adultery, the younger Christian laws take on the principle of equality for men and women in criminal law. There is a development in the legislation regulating sexuality, from it having initially civil law consequences directed exclusively against men, to finally criminal prosecution of both men and women as sinful and criminal individuals. With the probable exception of the *Old Christian Law of the Frostathing*, adultery and fornication were still not penalised in the Christian laws at the end of the twelfth century.[36] These two categories were criminalised throughout the kingdom by the younger Christian laws of the

[33] A. Taranger, *Den angelsaksiske kirkes indflydelse paa den norske* (Kristiania 1890) 299-300. See also T. P. Oakley, *English Penitential Discipline and Anglo-Saxon Law in their Joint Influence* (New York 1923) 145; O. Tveito, 'Erkebiskop Wulfstan av York og de eldste norske kristenrettene', *Norsk Teologisk Tidsskrift* 3 (2007) 171-186.

[34] See for '*ganga til skripta oc bæta við Krist*' *NgL*, V, 129. The *Old Christian Law of the Gulathing* attributes several paragraphs which also mention penance to King Olaf and Bishop Grimkell; §§ 7, 8, 20, 21, 23, 24, 28, 29. See also *Medieval Handbooks of Penance. A Translation of the Principal Libri Poenitenitales and selections from related documents*. Records of Western Civilization, J. T. McNeill and H. M. Gamer ed. and trans. (New York 1938, reprint 1990) 392-393, *Note on Penitential Provisions in Norse Law*.

[35] NB II § 26, (*NgL*, IV, 175); NB I § 22, (*NgL*, II, 302-303); NG § 26, (*NgL*, II, 335).

[36] Gunnes, *Erkebiskop Øystein*, 160.

mid-thirteenth century, and constitute the last elements in the development towards the criminalisation of a whole spectrum of sexual acts.

Equal in Law – unequal in actual legal practice

Although legislation from the High Middle Ages through the seventeenth century is characterised by the principle that men and women were equal in the eyes of criminal law with regard to adultery, fornication and incest, in actual legal practice this was different. It was first and foremost men who were prosecuted for sexual crimes in the Middle Ages, in the post-Reformation sixteenth century, and in the seventeenth century. How can this imbalance be explained?

In approximately three quarters of all cases of adultery, which seems to have mainly occurred between one married and one unmarried partner, the evidence suggests that only one of the parties involved was punished and that was usually the man. This pattern is noted from the period 1300-1600, and it continues in the seventeenth century.[37]

Harriet Marie Terjesen proposes that civil status might be a factor in the puzzle as to why many more men than women were sentenced for adultery. Based on extensive source material she notes that it was more likely that a married woman was charged than an unmarried woman.[38] Another relevant question which has been raised is whether social status was a factor in the overrepresentation of men in adultery cases. Kari Telste discusses whether this may have been due to farmers abusing their position and forcing their maids to have sex with them. Although Telste quotes some cases where farmers did exert pressure or force, I agree with her conclusion that there is insufficient data to assert that they enjoyed some

[37] For further specification for the period 1300-1600, see Riisøy 2009, chapter 8: 'Who Was punished, and for What?' Regarding the seventeenth centurty, see Terjesen, *Blodskam og leiermål*, 82.

[38] Ibidem, 79-84. Out of ten cases of double adultery seven women and eight men were accused. In comparison, 148 men and only 23 women were married out of the 171 cases of simple adultery in the first instance. In 57 percent of the cases where a married woman had been unfaithful an unmarried man was charged. In comparison, in only thirteen percent of the cases where a married man had been unfaithful an unmarried woman was charged.

sort of unwritten 'right'.[39] From the post-Reformation sixteenth century there are very few clear cases where the farmer or his sons had sexual relations with maids.[40] In Norway it seems that social status explains the prevalence of men in relatively few cases of adultery.

It is important to point out that the numbers showing that more men than women were sentenced are calculated from surviving legal documents and registers of fines. However, these documents only show us the adulterous relationship that had become publicly known. In this respect Gro Elisabeth Bastiansen's study on extramarital sexuality in Bergen is an interesting and important corrective, because of the 36 cases of simple adultery she has enough data to deduce that nineteen men and seventeen women were married, showing an almost balanced gender distribution.[41] However men are strongly overrepresented in payments of fines. In percentage the distribution is 86 men, six women and eight both men and women.[42] This is similar to my calculations of how many men and women paid fines during the post-Reformation sixteenth century. [43] Thus Bastiansen's analysis underlines an important methodological point: the information that usually men paid the fines does not automatically indicate that only men were unfaithful. It seems that married women were just as likely to be unfaithful as married men, but at a certain point, either before or during legal procedures, the women disappear from the sources. In order to explain the preponderance of men in cases of adultery I will therefore

[39] Telste, *Mellom liv og lov*, 155-156, 160.

[40] Three cases where the married farmer had had relations with a maid, *Norske Lensrekneskapsbøker 1548-1567*, 7 vol. (Oslo 1937-.) (Hereafter referred to as *NLR)*, I, 76, year 1557; *NLR*, II, 146, year 1560; *Nils Stubs Optegnelsesbøger fra Oslo Lagthing 1572-1580*, H. J. Huitfeldt-Kaas ed. (Christiania 1895; repr. 1982) 41. An unpublished account roll for Sunnhordland for the year 1597 lists two men who paid fines for fornication with, respectively, the mother's and the stepfather's maid.

[41] Bastiansen, 'Væ dig Bergen', 88. In 30 cases, only the men paid any fines, while there were only two cases where only the women paid and three cases where both the men and women paid.

[42] Bastiansen, 'Væ dig Bergen', 89-90.

[43] Riisøy, *Sexuality*, 144-152. Out of these 180 cases in total, in eight cases the accused was either acquitted (four cases, of which three women and one man), or the result is unknown (one case, a woman), or the final decision was delayed (three cases, of which one man, one woman, and one both man and woman). There is not information concerning the cases of single adultery to decide on who was the married partner.

suggest that the cuckolded husband influenced whether charges were levelled against his unfaithful wife. Support for this explanation is found in legislation.

A decree issued by Håkon V Magnusson (1299-1319) for Bergen, stipulates that an unfaithful wife had to do penance and repay her husband, admittedly without giving any more details as to how this was to be done. After the husband had forgiven his wife, he was to announce the reconciliation to the lawman and the town bailiff.[44] This decree stresses the duty of the unfaithful woman to make amends with God and her husband. Several prohibitions in this decree were re-enacted in the post-reformation bye-laws of Bergen, particularly in a decree of 1573 which stipulates that it was forbidden a property owner to house 'whoring women, who have not taken public confession or are forgiven by their husbands'.[45] Yet again, the unfaithful wife was supposed to make amends with God and her husband, and there are more examples of legal concepts, which accord the right to decide over criminal charges to the head of the family. A decree from 1514 states that if the head of the family wanted to press charges in cases where daughters, wives or servants had been involved in illegal sexual relations, the royal steward ought to help the head of the family. The steward, the decree specifies, cannot initiate a lawsuit on behalf of the public authorities.[46]

Legislation along these lines was not unique to Norway. James A. Brundage finds that it was customary in several European regions during the Middle Ages to raise charges against unfaithful men while unfaithful women were punished by their husbands.[47] A glance at Norway's neighbouring countries, Denmark and Sweden, reveals that there too this principle applied.[48] It is also interesting to note that a late medieval Swedish

[44] *NgL*, III, 211.

[45] *Samling af Gamle Norske Love*, 2. Part, H. Paus ed. (København 1752) 368, point 26.

[46] Decree of 1514, *Norges gamle Love, andre rekke, 1388-1604* (Christiania and Oslo 1912) IV, 65-66.

[47] J. A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago 1987) 519.

[48] Chapter 14 concerning *Sacrilege and Adultery* of the Danish ecclesiastical law of Zealand, *Danmarks gamle Landskabslove*, vol. VIII, *Valdemars Sjællandske lov, Ældre og yngre redaktion samt Sjællandske Kirkelov*, E. Kroman ed. (Copenhagen 1941) 452-453: "hor sak ma ængen man manz konæ giuæ num han siælf" [No man shall raise a case of adultery against a married woman, except her husband]. Several Swedish regional laws underline that no one but the husband could bring charges against an

law compares those who seduce married women to thieves. The *Book on Thieves* in the Swedish *Landslaw* of 1442, formulated under Christopher of Bavaria, states that the best possession a farmer has is his legally wedded wife. Furthermore, the law points out that the man who steals her from the farmer; he is the worst and biggest thief. If the lover was caught red-handed and sentenced accordingly, he was to be 'hanged higher than other thieves'.[49] This was probably a highly symbolic form of execution, which ensured that his humiliation would be the greatest possible. Hanging was a common form of punishment for thieves, and Kari Ellen Gade remarks that the higher up a criminal was hanged, the greater the humiliation.[50] Thus in the case of whoring with a married woman the punishment was in proportion to the crime; the 'thief' had after all stolen the farmer's 'best possession'.

Thus, it seems that adultery was considered to be far more than a mere break of moral or ethical norms. It is possible that such rules were originally devised to counter the Christian laws, which per definition made adultery a crime committed by men *and* women. In comparison, as we have seen above, the oldest extant secular legislation views adultery not as an attack on marriage as a sacrosanct institution but as an insult to the rights enjoyed by the husband. Thus granting the husband the right to take revenge – to kill his wife's lover – or to claim economic compensation. I will suggest that a husband's rights over his wife may well have been so ingrained in popular custom that new ecclesiastical principles never became universally accepted. In contrast, enforcing the principle that the male lover was to be brought before a public court was probably much more straightforward; in any case he had to pay compensation to the cuckolded husband. This made the next step, fines to the bishop or the king, much simpler.

At least as far as Norway is concerned, adultery committed by the wife seems to have entailed a number of aspects, which existed side by side. It was a sin in the eyes of God and if the husband refused to pardon her or

adulterous wife, unless her adultery was known to all in the district, in which case the bishop's steward could bring charges against her. *Kulturhistorisk leksikon for nordisk middelalder fra vikingetid til reformationstid*, 22 vol. (Copenhagen 1956-1978) (Hereafter referred to as *KL)* XX, 506.

[49] *KL*, XX, 506.

[50] K. E. Gade, 'Hanging in Northern Law and Literature', *Maal og Minne* 3-4 (1985) 167.

if it had been very public it was considered a crime against the bishop and after the Reformation it was considered a crime against the king. Adultery was definitely also considered an infringement on the rights of the husband.

In cases of fornication the imbalance in the distribution of gender is even greater, with men vastly outnumbering women; overall more than 90 percent of the culprits as they appear in the legal records are men. The system, which allowed the heads of households to decide whether members of that household, including unmarried women, were to face charges for illicit sexual behaviour, may help to explain the preponderance of men. From the post-Reformation sixteenth century I have found that very few women paid fines to the king because they had committed crimes of fornication. Perhaps these women were singled out because they lived in concubinage and refused to cease their behaviour or led a loose life.[51] Bastiansen documents that the few women who did pay fines for fornication were notorious.[52] As Grethe Authén Blom and Birger Kirkeby stress, in a society where everyone knew one another and much of each others affairs, it would have been difficult to claim a woman's 'looseness' if this had not been the case.[53]

There continues to be a certain imbalance in the gender distribution in cases of incest. For the nineteen medieval cases of incest the information we have is primarily about the final judgement: usually fines, but occasionally also the death penalty. In 80 percent of the cases we have evidence of only the man being prosecuted, whereas for the 43 cases of incest from the post-Reformation sixteenth century only the man was prosecuted in 58 percent of the cases.[54] However, the margin of error is quite large since the total number of cases is very small. Only a few

[51] Riisøy, *Sexuality*, 152-157. In total 498 cases, of which 458 cases with men only, 27 cases with women only, and thirteen cases with both men and women.

[52] Bastiansen, 'Væ dig Bergen', 75, 96.

[53] B. Kirkeby, 'Soldater og leiermål på 1600-tallet', *Historisk Tidsskrift* [Norway] 81 (2002) 411; G. A. Blom, 'Loven og livet. Holdninger til kvinner i senmiddelalder og tidlig nyere tid, belyst gjennom rettsdokumenter', *Tidsskrift for Retsvidenskap* 5 (1991) 567-569.

[54] Riisøy, *Sexuality*, 157-163. Remaining figures for the Middle Ages: 10 percent only mention women and 10 percent both the men and the women; for the post-Reformation sixteenth century only women in 7 percent and both men and women in 35 percent.

additional cases where only women were charged would change the statistical picture quite dramatically.

During the period 1300-1600, the distribution of men and women according to the degree of kinship shows considerable variation. A great prevalence of men is evident mainly in the least serious form of incest, with a relative of the fourth or of an unknown degree.[55] The preponderance of men is less pronounced in the seventeenth century. In fact Kari Telste, who researched the second half of the seventeenth century, has found a balanced gender distribution regarding persons summoned to the local assemblies and persons sentenced.[56]

In order to explain the preponderance of men in cases of incest when the lovers were not too closely related, it is conceivable that the *pater familias* also here could influence whether or not charges were brought against women. Some information found in laws and studies on later periods also show that age, mental state, elements of coercion and recidivism all had an effect on the severity of the sentence. *The Old Christian Law of the Frostathing* in principle decrees outlawry for both men and women in cases of incest with a close relative. Exceptions are made for men who were insane and for women who had been subjected to coercion. These women merely were to do penance, after consultation with the bishop.[57] Regarding women's criminal responsibility in these cases, coercion by the man was considered extenuating circumstances. This rule is also found in a similar formulation in *Archbishop Jon's Christian Law* of 1273, § 49.[58] Torleif Hansen has examined cases in which an appeal was made in front of Bergen lawthing, a court of justice for western Norway situated in the city of Bergen, during the first three decades of the eighteenth century. Frequently, a married man became interested in his wife's unmarried relative (sister or niece), or his stepdaughter. Hansen discerns a readiness to favour women with pardons and reprieves (especially of the death sentence), in cases where coercion had been used. It also appears that there was commonly a significant age difference between the women, who were often younger than twenty, while

[55] Riisøy, *Sexuality*, 157-163. In seven out of a total of eight cases, only men were charged.
[56] Telste, *Mellom liv og lov*, 144-152, 245. As Telste's table 24 shows, nine men and nine women were summoned, eight men and seven women were sentenced, one man was pardoned, and it is possible that prosecution of 2 women was abandoned.
[57] F III § 3, (*NgL*, I, 149), *The Earliest Norwegian Laws*, 247.
[58] J § 49, (*NgL*, II, 375).

the men typically were ten years their senior. The lawthing also usually annulled death sentences for women who were merely fifteen or sixteen years of age.[59]

Although relatively more men than women were charged for incest, the preponderance of men here is far less pronounced than in cases of adultery and fornication. And during the course of the seventeenth century there was an even distribution between men and women, irrespective of the degree of kinship involved. One reason why women were far more frequently charged with incest may be that this crime was also to a large degree considered a breach of divine law which is also reflected in the form of the death penalty. While for instance people involved in grave cases of incest risked burning on the stake – thus total elimination of the sinner and his sins, I have never found adulterers and rapists who were executed (or threatened with execution) in this way.[60]

Yet even if women were less liable than men to be sentenced for a sexual crime, they were exposed to other kinds of gender-specific sanctions. An important aspect of the civil law side of sexuality, which was introduced to Norwegian law in 1274 through the *Landslaw,* was that women who initiated an illegitimate sexual relationship or who married without obtaining their guardian's consent risked losing their inheritance to their closest relative. Legal practice shows that these rules were frequently applied.[61] Women who engaged in illegal sexual acts were also subjected to shameful sanctions in the form of visible symbols and rituals; men were spared these humiliations. Both before and after the Reformation legislation stipulated different dress codes, in order to distinguish between the honourable and the 'loose' women. For instance in 1573 a comprehensive dress code was issued, forbidding all prostitutes and loose women to wear the same clothes as respectable women. Here, the post-Reformation legislators were probably inspired by an undated decree of Håkon V Magnusson (1299-1319) for Bergen. Another highly symbolic sanction was the ceremony of 'churching', leading women back into the church after they had given birth, and a visible symbolic line was drawn between 'honourable' and 'loose' women. This custom has its background in The Old Testament and it

[59] T. Hansen, *Bergen lagting som straffedomstol i appellsaker 1702-1737: En undersøkelse av appellordningen og domspraksis* (Bergen 1993) 182, 187-188.
[60] Riisøy, *Sexuality*, 94-110, 157-163.
[61] I have elaborated on this aspect in the chapter *Losing One's Inheritance* in Riisøy, *Sexuality*, 163-169.

implied that after giving birth a woman is unclean for a certain period. Therefore the woman should not touch anything holy or enter the temple. Else Mundal refers to Archbishop Eiliv's third statute from the 1320s, which decrees that married women were to be churched honourably, in contrast to unmarried mothers and women who had given birth after an adulterous affair. Similar legislation was also issued after the reformation and they were also applied in practice.[62] The question of bodily purity – or impurity – was also addressed in Bishop Thórlákr of Skálholt's penitential, which prescribes a three-year penance for intercourse with menstruating women.[63] Possibly men's fear of women's blood or fluids is reflected here. In several of her works, religion historian Gro Steinsland stresses that it was Christianity which first introduced the idea that humanity was in principle sinful, and it was Christianity which attached notions of uncleanliness to the human body and sexuality. Ideas on sexual impurity had no roots in Norse mythology and life.[64] Concepts of impurity connected to female sexuality and reproduction arrived in Norway as a by-product of Christianity, and also here Lutherism adhered to already long-established principles.

Conclusion

There was a development in the legislation regulating sexuality, from it having initially civil law consequences directed exclusively against men, to finally criminal prosecution of both men and women as sinful and criminal individuals. When the political elite finally accepted Christianity in the eleventh century, new laws criminalising sexuality were gradually introduced: first of all, prohibitions of incest and bigamy. Finally, the younger Christian laws of around 1250 decreed the criminalisation of the complete spectrum of extramarital sexuality for the entire country. I see a long continuity here; in fact after the Reformation it was not possible to find more acts to criminalise. Consequently, the traditional view of a break at the time of the

[62] E. Mundal, 'The Double Impact of Christianization for Women in Old Norse Culture' in: K. E. Børresen, S. Cabibbo and E. Specht ed., *Gender and Religion* (Rome 2001) 246. (*NgL*, III, 261). For instance *Erik Rosenkrantz' Recess* of 1562 for the fief of Bergenhus Bastiansen, 'Væ dig Bergen' 29; Telste, *Mellom liv og lov*, 97.

[63] S. Rafnsson, 'The Penitential of St. Torlakur in its Icelandic context', *Bulletin of Medieval Canon Law*, New Series 15 (1985) 25.

[64] G. Steinsland, *Eros og død i norrøne myter* (Oslo 1997) 158-160.

Reformation needs to be dismissed.

Although legislation authorised prosecution of men and women for adultery, fornication, and incest, both before and after the Reformation, in legal practice significantly more men than women were charged. It should not necessarily be assumed that these numbers correspond equally to the numbers of men and women who in fact committed sexual crimes. The most likely explanation for these 'missing women' in the criminal records is probably the fact that the woman's father, husband or the head of family where the woman might be in service, could influence whether she was to be charged or not. This practice seems to be rooted in pre-Christian norms where extramarital sexuality was viewed as an insult to the rights enjoyed by the husband or close male relative over a woman's person, which could be settled by granting him the right to take revenge or to claim economic compensation.

Regarding the application of the criminal laws, then, the discrimination was in fact levelled against men. However, in other areas women were hit hard. Women who initiated an illegitimate sexual relationship risked losing their inheritance to their closest relative and besides symbolic but very shameful sanctions that were visible in clothing and the churching of women after birth were directed solely against women.